

S. HRG. 107-196

**CONFIRMATION HEARING ON THE
NOMINATION OF JOHN ASHCROFT
TO BE ATTORNEY GENERAL OF THE
UNITED STATES**

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

—
JANUARY 16-19, 2001
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Serial No. J-107-1
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**NOMINATION OF JOHN ASHCROFT TO BE
ATTORNEY GENERAL OF THE UNITED STATES**

TUESDAY, JANUARY 16, 2001

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 1:34 p.m., in room SH-216, Hart Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kennedy, Kohl, Feinstein, Feingold, Schumer, Durbin, Hatch, Thurmond, Grassley, Specter, Kyl, DeWine, Sessions, Smith, and Brownback.

Senator HATCH. If we can have order? Can we have order, please?

Mr. Chairman, it is with a great deal of honor and privilege that I present you as our new Chairman with this very important gavel to be able to keep order during these hearings and hearings thereafter.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S.
SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. Thank you, Mr. Chairman. I will protect the gavel carefully in the few hours, the very few hours I get to do it. I have a feeling I will be presenting you with one next week. For the public to know, this gavel was actually made by my son, Kevin, in seventh grade, which shows you how long it has been since I have been Chairman of anything.

It is a privilege to call these hearings to order, and I welcome my friend, Orrin Hatch, and all the continuing members on both sides of the aisle. We are being rejoined this year by Senator Durbin of Illinois. Senator Durbin was a very valuable member of this Committee when he served here before leaving to go to a different Committee. Dick, we are delighted to have you back.

We are also joined by Senator Brownback, who has been in the Senate for some time, but this is his first service here. Sam and I have worked together on a number of significant pieces of legislation. Sam, I am delighted to have you in the Committee.

Senator BROWNBACK. I am happy to join you.

Chairman LEAHY. I understand my neighbor from New Hampshire who is sitting in on these hearings and will be leaving. I am sorry to have that happen because Senator Smith and I have also worked together on matters. And we do have the ability to check with each other on what the weather is along the Connecticut River.

Senator Cantwell of Washington State will be joining us, but she and Senator Biden are at the memorial service for our former colleague Alan Cranston in California. Senator Cantwell first came to Washington as a staff member of Senator Cranston. Senator Biden and I along with several others here served with him. They would be here if not for that. And, of course, we have the nominee, Senator Ashcroft, his wife, Janet, and others whom we will get to in a few minutes. I welcome Senator Ashcroft, who certainly is no stranger to this Committee room, along with his family here.

I have said many times, as most of us have, that the position of Attorney General is of extraordinary importance. The Attorney General is the lawyer for all the people. He is the chief law enforcement officer in the country. That is why the Attorney General not only needs the full confidence of the President; he or she also needs the confidence and the trust of the American people.

We all look to the Attorney General to ensure even-handed law enforcement and protection of our basic constitutional rights, including the freedom of speech, the right to privacy, a woman's right to choose, freedom from government oppression, and equal protection of all our laws.

The Attorney General plays a critical role in bringing the country together, bridging racial divisions, and inspiring people's confidence in their government. Senator Ashcroft has often taken aggressively activist positions on a number of issues that deeply divide the American people. While he had a right to take these activist positions, we also have a duty to evaluate how these positions would affect his conduct as Attorney General.

On many of these issues, and on battles over executive branch or judicial nominees, Senator Ashcroft was not just in the minority in the U.S. Senate, but in the minority among Republicans in the Senate. Now, we have to ask if somebody who has been that unyielding on a policy outlook can unite all Americans. That is an important question for the Senate.

The hearing is not about whether we like Senator John Ashcroft or call him a friend. All of us like him and know him. It is not about whether we agree or disagree with him on every issue. Many of us have worked productively with him on selected matters, and we have disagreed with him on others.

Let me be very clear about one thing. This is not about whether Senator Ashcroft is racist, anti-Catholic, anti-Mormon, or anti-anything else. Those of us who have worked with him in the Senate do not make that charge.

At the same time, I know that all Senators and the nominee agree that no one nominated to be Attorney General should be given special treatment just because he or she once served in the Senate.

Fundamentally, the question before us is whether Senator Ashcroft is the right person at this time for the critical position of Attorney General of the United States. The Appointments Clause of the Constitution gives the Senate the duty and responsibility of providing both its advice and its consent.

Among the areas we will explore with Senator Ashcroft is how he fulfilled his constitutional duty as a Senator in exercising his own advise and consent authority in connection with executive and

judicial nominations. We will explore the standards he would use in making recommendations to the President on executive and judicial appointments if he is confirmed as Attorney General.

President Kennedy observed that “to govern is to choose.” What choices the next Attorney General makes about resources and priorities will have a dramatic impact on almost every aspect of the society in which we live. The American people will want to know not just whether this nominee will commit to enforce the laws on the books, but what his priorities will be, what choices he is likely to make, and what changes he will seek in the law.

Most importantly, we will want to know what changes he will seek in the constitutional rights that all Americans currently enjoy. These include what positions he will urge upon the Supreme Court and, in particular, whether he will ask the Supreme Court to overturn *Roe v. Wade* or to impose more burdensome restrictions on a woman’s ability to secure safe and legal contraceptives.

We are proceeding expeditiously with these hearings, as requested by President-elect Bush, and as I told him I would. But I have also said from the outset that these hearings have to be thorough and fair, and they will be.

[The prepared statement of Chairman Leahy follows:]

STATEMENT OF HON. PATRICK LEAHY, CHAIRMAN, U.S. SENATOR FROM THE STATE OF VERMONT

It is a privilege to call these important hearings to order. I welcome Senator Hatch and all our continuing Members on both sides of the aisle. We are being re-joined this year by Senator Durbin, and joined by Senator McConnell, Senator Brownback and Senator Cantwell. I look forward to working together with all of you. On behalf of the Committee, I also welcome Senator Ashcroft and his family here today as we begin hearings on his nomination to be Attorney General of the United States.

THE IMPORTANCE OF THE POSITION OF ATTORNEY GENERAL

The position of Attorney General is of extraordinary importance, and the judgment of the person who serves as Attorney General affects the lives of all Americans. The Attorney General is the lawyer for all the people and the chief law enforcement officer in the country. Thus, the Attorney General not only needs the full confidence of the President, he or she needs the confidence and trust of the American people. All Americans need to feel that the Attorney General is looking out for them and protecting their rights.

The Attorney General is not just a ceremonial position. Rather he or she controls a budget of over \$20 billion and directs the activities of more than 123,000 attorneys, investigators, Border Patrol agents, deputy marshals, correctional officers and other employees in over 2,700 Justice Department facilities around the country and in over 120 foreign cities. Specifically, the Attorney General supervises the selection and actions of the 93 United States Attorneys and their assistants and the U.S. Marshals Service and its offices in each State. The Attorney General supervises the FBI and its activities in this country and around the world, the INS, the DEA, the Bureau of Prisons and many other federal law enforcement components.

The Attorney General evaluates judicial candidates and recommends judicial nominees to the President, advises on the constitutionality of bills and laws, determines when the Federal Government will sue an individual, business or local government, decides what statutes to defend in court and what argument to make to the Supreme Court, other federal courts and State courts on behalf of the United States Government. The Attorney General distributes billions of dollars a year in law enforcement assistance to State and local government and coordinates task forces on important law enforcement priorities. There is no appointed position within the Federal Government that can affect more lives in more ways than the Attorney General. We all have a stake in who serves in this uniquely powerful position and how that power is exercised.

We all look to the Attorney General to ensure even-handed law enforcement; equal justice for all; protection of our basic constitutional rights to privacy, including a woman's right to choose, to free speech, to freedom from government oppression; and to safeguard our marketplace from predatory and monopolistic activities, and safeguard our air, water and environment.

As I said at the confirmation hearings for Edwin Meese to be Attorney General, "[w]hile the Supreme Court has the last word on what our laws mean, the Attorney General has often more importantly the first word."

Our current Attorney General, Janet Reno, has helped us all make unprecedented strides in combating violent crime, protecting women's rights, protecting crime victims rights and reducing violence against women. The nation's serious crime rate has declined for an unprecedented eight straight years. Murder rates have fallen to their lowest levels in three decades and since 1994 violent crimes by juveniles and the juvenile arrest rates for serious crimes have also declined. Our outgoing Attorney General must be commended for greatly improving the effectiveness of our law enforcement coordination efforts, federal law enforcement assistance efforts and for extending the reach of those efforts into rural areas. Her success shows what can be achieved and reemphasizes how important the position of Attorney General is to all Americans.

In addition, the Attorney General has come to personify fairness and justice to people all across the United States. Over the past 50 years, Attorneys General like William Rogers and Robert Kennedy helped lead the effort against racial discrimination and the fight for equal opportunity. In terms of addressing the issues that have divided our country, bringing our people together and inspiring people's confidence in our government, the Attorney General plays a critical role.

This hearing is not about whether we like Senator John Ashcroft or call him a friend, which many of us do; not about whether we agree or disagree with him on every issue, since many of us have worked productively with him on selected matters and disagreed with him on others; and certainly *not* about whether Senator Ashcroft is racist, anti-Catholic or anti-Mormon—those of us who have worked with him in the Senate do not make that charge.

What is an important question for the Senate is whether a nominee who has taken aggressively activist positions on a number of issues on which the American people feel strongly and on which they are deeply divided can unite all Americans and have their full trust and confidence. In the days following the announcement of the President-elect's intention to nominate John Ashcroft, many people from different communities and points of view have expressed their concerns with or support for this selection for Attorney General. The President-elect says that his choice is based on finding someone who will enforce the law, but all must concede that this is a highly controversial choice.

The recent presidential election, the margin of victory and the way in which the vote counting in Florida was ordered to stop through the intervention of the United States Supreme Court remain a source of public concern. Deep divisions within our country have infected the body politic over the last several years as matters became increasingly partisan. This Committee and the way it conducts itself can help heal those wounds and help begin to restore confidence in our government.

These hearings provide the nominee with the opportunity to make his case why he should be approved by the Senate as the Attorney General of the United States, to convince the great number of Americans who view this selection with skepticism that they should have confidence in him and trust him, and to respond to his critics. I have met with Senator Hatch and strived to work with him to ensure that these hearings will be full, fair and informative. They provide an important opportunity for the American people, through their elected representatives, to ask the nominee about fundamental issues and the direction of federal law enforcement and constitutional policy that affect all of our lives. They provide an opportunity for members of the public to speak directly to us about their concerns and their support for this nomination. At a time of political frustration and division, it is important for the Senate to listen. One of the abiding strengths of our democracy is that the American people have opportunities to participate in the political process, to be heard and to feel that their views are being taken into account. Just as when the American people vote, every vote is important and should be counted so, too, when we hold hearings we ought to do our best to take competing views into account.

THIS IS AN HISTORIC TIME

We live in an historic time. During the last few years the country and the Congress have experienced events without precedent or without precedent for over 100 years. We saw the House of Representatives impeach a popularly-elected President

for the first time in our history. The Senate conducted an impeachment trial for only the second time in history and a bipartisan majority voted not to convict and not to remove the President from office.

We have witnessed the closest presidential election in the last 130 years and possibly in our history. For the first time, a candidate who received half a million fewer popular votes was declared the victor of the presidential election based on electoral votes.

The Senate, for the first time in our history, is made up of 50 Democrats and 50 Republicans and this Committee, for the first time in its history, will be composed of equal numbers of Democrats and Republicans. On Saturday, Senator Hatch will again become Chairman of this Committee. Accordingly, the Committee begins its consideration of this nomination under a Democratic Chairman and will conclude it under a Republican Chairman.

Over the last 200 years the confirmation process has evolved. The first Congress established the office of the Attorney General in 1789 but confirmations were handled by the full Senate or special committees. It was not until 1816 that the Senate established the Judiciary Committee as one of the earliest standing Committees, chaired initially by Senator Dudley Chase of Vermont.

It was not until 1868 that the Senate began regularly referring nominations for Attorney General to this Committee. In the 26 years that I have been privileged to serve in the United States Senate, these confirmation hearings have become an increasingly important part of the work of the Committee.

Of the 15 cabinet nominees not to be confirmed over time, nine were rejected by the Senate after a floor vote. Of those, one was a former Senator, John Tower, in 1989. Two were nominees to serve as Attorney General. One of those rejected Attorney General nominees was Charles Warren, an ultraconservative Detroit lawyer and politician nominated by President Coolidge who was voted down by a Senate controlled by the President's own party due to concern that Warren's prior associations raised questions about his suitability to be Attorney General.

"Progressive Republicans, recalling that Warren had aided the sugar trust in extending its monopolistic control over that industry believed this appointment was a further example of the President's policy of turning over government regulatory agencies to individuals sympathetic to the interest they were charged with regulating [T]he progressive Republicans combined with the Democrats in March 1925 to defeat the nomination narrowly The President then nominated an obscure Vermont lawyer, whom the Senate immediately confirmed." Richard Allen Baker, "Legislative Power Over Appointments and Confirmations," *Encyclopedia of the American Legislative System*, at p.1616.

After the Senate rejected the nomination of Charles Warren, President Coolidge nominated John Sargent, a distinguished lawyer from Ludlow, and the only Vermonter ever to serve as the Attorney General of the United States.

Of the nine Senators who have previously been Attorneys General, seven were serving in the Senate and resigned in order to become the nation's top law enforcement officer. Indeed, it has been more than 30 years since a Senator was nominated to be Attorney General. Senator William Saxbe of Ohio resigned his Senate seat in 1974 to pick up the reins of the Justice Department in the aftermath of Watergate, at a time that saw two prior Attorneys General indicted toward the end of the Nixon Administration.

There was a time, of course, when "senatorial courtesy" meant that Senators nominated to important government positions did not appear before Committees for hearings. I am sure all Senators and the nominee agree that no one nominated to be Attorney General should be treated specially just because he once served in the Senate. I am confident that, as a former member of this Committee, the nominee understands that our constitutional duty rather than any friendship for him must guide us in the course of these proceedings. I expect this Committee and the Senate to be courteous to all nominees and, for that matter, all witnesses and all people. The fact that many of us served with Senator Ashcroft and know Senator Ashcroft and like John Ashcroft does not mean that the Committee and the Senate will not faithfully carry out its constitutional responsibility with regard to this nomination.

THE TASK AT HAND

Fundamentally, the question before us is whether Senator Ashcroft is the right person for the critical position of Attorney General of the United States at this time. The Appointments Clause of the Constitution gives the Senate the duty and responsibility of providing its advice and consent. The Constitution is silent on the standard that Senators should use in exercising this responsibility. This leaves to each Senator the task of figuring out what standard to apply and, most significantly,

leaves to the American people the ultimate decision whether they approve of how a Senator has fulfilled this constitutional duty.

Many of us believe that the President has a right to appoint to executive branch positions those men and women whom he believes will help carry out his agenda and policies. Yet, the President is not the sole voice in selecting and appointing officers of the United States. The Senate has an important role in this process. It is advise and consent, not advise and rubberstamp. As we begin a new Administration, the extensive authority and important role of the Attorney General, the need for the Attorney General to have the trust and confidence of all the people, and the controversial positions taken by the President-elect's nominee, require us to consider whether this nominee is the right person for the critical position of Attorney General of the United States at this time in our history.

Over the last several years, Republicans have made much of the Senate's "advise and consent" power and used objections, secret holds and narrow ideological considerations in blocking and voting against presidential nominees. Among the areas we will explore with Senator Ashcroft is how he fulfilled his constitutional duty as a Senator in exercising his advise and consent authority in connection with executive and judicial nominations. We will explore the standards he would use in making recommendations to the President on executive and judicial appointments if confirmed as Attorney General.

We will also want him to explain any differences he sees in the role of the Attorney General and positions he has previously held and how that different role will affect his actions, policies, priorities, and positions. And we will explore how Senator Ashcroft would exercise the awesome power of the Attorney General and administer the programs and laws that Congress has enacted.

While urging rigorous senatorial scrutiny of cabinet nominations, scholars explain: "A lack of interest by an administrator or overt hostility to a legislative program can eviscerate the policies that Congress has taken pains to announce as national goals. Administrators so disposed can shatter agency morale and create uncertainty for career personnel, who may not know whether they are supposed to implement or sabotage the statutory objectives." William G. Ross, *The Senate's Constitutional Role In Confirming Cabinet Nominees and Other Executive Offices*, 48 Syracuse Law Review 1123, 1150 (1998).

I have been a prosecutor and I know what it means to exercise prosecutorial discretion, with the result that some laws get enforced more aggressively than others, some missions receive priority attention and some do not. No prosecutor's office—unless you are an independent counsel—has the resources to investigate every lead and prosecute every infraction. A prosecutor may choose to enforce those laws that promote a narrow agenda or ones that protect people's lives and neighborhoods. An inquiry into Senator Ashcroft's actions as a State Attorney General, Governor and as a Senator may provide a window on how he might choose to exercise his prosecutorial discretion.

The American people will want to know not just whether he will enforce the laws on the books today, but also what changes he will seek and what positions he will take before the Supreme Court in defining the constitutional rights that all Americans currently enjoy. In particular, the American people will want to know whether he will urge the Supreme Court to overturn *Roe v. Wade* or impose more burdensome restrictions on a woman's exercise of her right to choose or ability to secure legal, safe contraceptives.

Moreover, the Attorney General plays an important role in selecting a President's nominees to the federal judiciary. The President-elect has said he will not use a litmus test on abortion for his judicial appointments, but will the Attorney General only recommend to him those candidates who share Senator Ashcroft's opposition to abortion, even in cases of incest and rape?

The Committee will want to know what changes he will seek in the laws in this country, both at the federal level and at the state level, through federal mandates. For example, during the debate on the Hatch-Leahy juvenile justice bill in May 1999, Senator Ashcroft offered an amendment to require states, before they would be eligible for federal juvenile grant funds, to prosecute as adults juveniles older than 13 years who used or possessed a gun in the commission of certain violent crimes. That amendment was voted down when it became clear that almost forty-eight states would lose their eligibility for federal grant funds.

We are proceeding expeditiously with these hearings, as requested by President-Elect Bush, with bipartisan agreement to do so even before we have received a complete FBI background report or Senator Ashcroft's complete response to the Committee questionnaire for this nomination. We will not and should not move forward to consider this important nomination until we have received these documents and

have had a reasonable opportunity to review them. Indeed, should any questions be prompted by review of those documents, we may decide that further hearing is necessary before we report the nomination—and I will be glad to confer with the next Chairman of this Committee about that eventuality should it arise.

I have said from the outset that these hearings must be thorough and fair. The President-Elect and his nominee have said that they expect tough questioning and that the nominee is prepared to answer. We would ill serve the American people if, as has happened on occasion, we became distracted with what has to be called the politics of personal destruction. On the other hand, we would be neglecting our sworn duties to the American people if we did not ask questions to determine what kind of Attorney General the nominee would likely be.

I would like to review some housekeeping matters and outline the procedures I intend to follow through the hearing. We will try to be balanced and fair with respect to time. We will start by according each Senator an opportunity for brief opening remarks. Thereafter, we will turn to the nominee for any opening remarks that he would like to make. Following the opening statement of Senator Ashcroft, Senators will have the opportunity to question the nominee for 15 minutes each. After the completion of the first round of questions we will continue with a second, shorter round and so on until we have concluded the initial questioning of the nominee. We will then turn to other witnesses for statements and their responses to questions from Members of the Committee. With the cooperation of Senator Hatch, I expect that we will be able to provide a final witness list shortly. Throughout the process we will try to keep the nominee, witnesses and the public advised of the schedule.

Chairman LEAHY. Senator Hatch?

**STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM
THE STATE OF UTAH**

Senator HATCH. Thank you, Mr. Chairman. I am glad to welcome the members of the Ashcroft family and you, Senator Ashcroft, and the witnesses here today, including Senator Ashcroft's highly accomplished wife, Janet, who has been a professor of business law here in Washington, D.C, at Howard University for the past 5 years. I want to take a moment to let the Ashcroft family know how much we appreciate their sacrifices while John has served in public office.

John Ashcroft is no stranger to the Senate Judiciary Committee. He served on our Committee with distinction over the past 4 years, working closely with members on both sides of the aisle on a variety of issues ranging from privacy rights to racial profiling. As a member of the Committee, he proved himself a leader in many areas, including the fight against drugs and violence, the assessment of the proper role of the Justice Department, and the protection of victims rights.

John has an impressive record with almost 30 years of public service: 8 years as Missouri State Attorney General during which time he was elected by his 50 State attorney general peers to head the National Association of Attorneys General; 8 years as Governor of the great State of Missouri, during which time he was elected by the 50 Governors to serve as the head of the National Governors Association; 6 years in the U.S. Senate, 4 of which he has served here with us on the Senate Judiciary Committee.

Of the 67 Attorneys General in the history of this country, only a handful come even close to having even some of the qualifications that John Ashcroft brings in assuming the position of chief law enforcement officer of this great Nation.

The Department of Justice, of course, encompasses broad jurisdiction. It includes the executive administration of organizations ranging from the Drug Enforcement Administration, the Immigra-

tion and Naturalization Service, the U.S. Marshals Service, the Federal Bureau of Investigation, all of the United States Attorneys throughout the country, and the Bureau of Prisons. This department also includes, among other things, enforcement of the law in the areas of antitrust, terrorism, fraud, money laundering, organized crime, drugs, and immigration, just to mention a few.

To effectively prevent and manage crises in these important areas, one thing is certain: We need a no-nonsense person with the background and experience of John Ashcroft at the helm. Those charged with enforcing the law of the Nation must demonstrate both the proper understanding of the law and a determination to uphold its letter and spirit. This is the standard I have applied to nominees in the past, and this is the standard that I am applying to John Ashcroft.

During John Ashcroft's 30-year service for the public, he has worked to establish a number of things to keep Americans safe and free from criminal activities: tougher sentencing laws for serious crimes, keeping drugs out of the hands of children, improving our Nation's immigration laws, protecting citizens from fraud, and protecting competition in business. He has supported funding increases for law enforcement. He held the first hearings ever on the issue of racial profiling. He has been a leader for victims rights in courts of law and helped to enact the Violence Against Women bill, provisions making violence at abortion clinic fines non-dischargeable in bankruptcy, authored anti-stalking laws, fought to allow women accused of homicide to have the privilege of presenting battered spouse syndrome evidence in the courts of law. As Governor, he commuted the sentences of two women who did not have that privilege. He signed Missouri's hate crimes bill into law.

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

Senator Ashcroft, during these hearings we are eager to hear, and the American people are eager to hear your plans for making America a safer place to live. A great number of people have said to me that they are tired of living in fear. They want to go to sleep at night without worrying about the safety of their children or about becoming victims of crime themselves.

I know you, and I am familiar with your distinguished 30-year record of enforcing and upholding the law. And I feel a great sense of comfort and a new-found security in your nomination to be our Nation's chief law enforcement officer.

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

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

Finally, Mr. Chairman, you know that I would have preferred a format similar to that followed for President Clinton's nominees and prior nominees for the last four Attorney General nominees: no more than a 2-day hearing, with outside interest groups submitting their testimony in writing. But I am sure that you will endeavor to be fair as we proceed with this hearing. I have confidence in that, and I look forward to these proceedings and look forward to participating in them.

Thank you, Mr. Chairman.

[The prepared statement of Senator Hatch follows:]

STATEMENT OF HON. ORRIN HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Mr. Chairman, let me begin by acknowledging you as the Chairman of the Committee as we begin this new session. I wish you the best in your first confirmation hearing.

I see members of Senator Ashcroft's family here with him today, including his highly accomplished wife who has been a professor of business law, here in the District, at Howard University for the past five years. I want to take a moment to let the Ashcroft family know that we appreciate their many sacrifices while John has served the public.

John Ashcroft is no stranger to the Senate Judiciary Committee. He served on our Committee with distinction over the past four years—working closely with members on both sides of the aisle on a variety of issues ranging from privacy rights to racial profiling. As a member of the Committee, he proved himself a leader in many areas, including the fight against drugs and violence, the assessment of the proper role of the Justice Department, and the protection of victims rights.

John has an impressive almost 30-year record of public service:

- (1) 8 years as Missouri State Attorney General during which time he was elected by his attorney general peers across the nation to head the National Association of Attorneys General.
- (2) 8 years as Governor of the State of Missouri during which time he was elected by the SO governors to serve as head of the National Governors' Association.
- (3) 6 years in the U.S. Senate, 4 of which he has served with distinction on the Judiciary Committee.

Of the 67 Attorneys General in the history of this country, only a handful come close to even having *some* of the qualifications that John Ashcroft brings in assuming the position of chief law enforcement officer of this great nation.

The Department of Justice, of course, encompasses broad jurisdiction. It includes the executive administration of organizations ranging from the Drug Enforcement Administration, the Immigration and Naturalization Service, the U.S. Marshall Service, the Federal Bureau of Investigations, all of the United States Attorneys, to the Bureau of Prisons. It includes, among other things, enforcement of the law in areas including antitrust, terrorism, fraud, money laundering, organized crime, drugs, and immigration, just to mention a few. To effectively prevent and manage crises in these important areas, one thing is certain: we need at the helm a no-nonsense person with the background and experience of John Ashcroft. Those charged with enforcing the law of the nation must demonstrate both a proper understanding of that law and a determination to uphold its letter and its spirit. This is the standard I have applied to nominees in the past, and this is the standard I am applying to John Ashcroft here.

During John Ashcroft's 30-year career in public service, he has worked to establish a number of things to keep Americans safe and free from criminal activities:

- (1) Tougher sentencing laws for serious crimes.
- (2) Keeping drugs out of the hands of children.
- (3) Worked to improve our nation's immigration laws.
- (4) Protected citizens from fraud.
- (5) Protected competition in business.
- (6) He has supported funding increases for law enforcement.
- (7) He held the first hearings ever on racial profiling.

- (8) He has been a leader for victims' rights in the courts of law and otherwise.
 - (9) He helped to enact the Violence Against Women Bill.
 - (10) He supported provisions making violence at abortion clinic fines non dischargeable in bankruptcy.
 - (11) He authored anti-stalking laws.
 - (12) He has fought to allow women accused of homicide to have the privilege of presenting battered spouse syndrome evidence in the courts of law. As governor, he commuted the sentences of two women who did not have the privilege of presenting battered spouse syndrome in their case.
 - (13) He signed Missouri's hate crimes bill into law.
- I could go on and on. His record is distinguished.

Senator Ashcroft, during these hearings, we are eager to hear—and the American people are eager to hear—your plans for making America a safer place to live. I can't begin to tell you the number of people who have said to me that they are tired of living in fear. They want to go to sleep at night without worrying about the safety of their children or about becoming victims of crime themselves. As someone who knows you as a person and who is familiar with your distinguished 30-year record of enforcing and upholding the law, I can tell you that I feel a great sense of comfort and a new-found security in your nomination to be our nation's chief law enforcement officer.

Mr. Chairman, we have served with John Ashcroft, and we know that he is a man of integrity, committed to the rule of law and the Constitution. We know that he is a man of compassion, of faith, and of devotion to family. We know that he is a man of impeccable credentials and many accomplishments. Abraham Foxman, National Director of the AntiDefamation League, last week praised Senator Ashcroft as a "fair" and "just" man. Sometimes in life, though, the measure of a person is best seen in times of adversity. So it is with John Ashcroft who, after a difficult battle for something that meant a great deal to him—re-election the Senate—resisted calls to challenge the outcome of that election. His own words during this difficult time say it best: "Some things are more important than politics, and I believe doing what's right is the most important thing we can do. I think as public officials we have the opportunity to model values for our culture—responsibility, dignity, decency, integrity, and respect. And if we can only model those when it's politically expedient to do so, we've never modeled the values, we've only modeled political expediency." Contrary to what a few special interest groups with a narrow political agenda would have us believe, these are not the words of a divisive ideologue, they are the words of a *uniter* who is willing to do the right thing, even when it means putting himself last.

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

I was saddened to read in the New York Times on Saturday that "the leader of a major liberal group opposing Mr. Ashcroft's nomination expressed disappointment that the comments were not much different from those many politicians offer in religious settings." They quoted this "leader" as saying "[t]his, clearly, will not do it," this person said of hopes that the speech might help defeat the nomination." I ask my colleagues to be especially cognizant in this context of the enormous harm that will come to our Nation and our democracy if we fall into the traps of the narrow special interest and allow the politics of personal destruction to continue for the benefit of a narrow few but to the detriment of a greater many.

John Ashcroft, like many of us, is a man of strongly held views. I have every confidence, based on his distinguished record, that as Attorney General, he will vigorously work to enforce the law—whether or not the law happens to be consistent with his personal views. I know that some of my colleagues will want to question the nominee on that point in particular, and I look forward to those exchanges.

Finally, Mr. Chairman, you know that I would have preferred a format similar to that followed for President Clinton's nominees for Attorney General: a two-day hearing with outside interest groups submitting their testimony in writing. But I'm sure that you will endeavor to be fair as we proceed with this hearing. Thank you.

Chairman LEAHY. Thank you, Senator Hatch, and I can assure you the hearings will be fair. There are 280 million Americans who have views on who should be Attorney General. There will be interest groups of the left or the right who may have suggestions. Ultimately, there are only 100 Americans who will get to vote on that issue, and those are the 100 Members of the Senate. The whole tone of the debate and the final outcome will be decided by us.

Just so we can understand how we will do this, we will give each Senator an opportunity for brief opening remarks. I would ask that they keep it to 3 or 4 minutes. We will then turn to the nominee both for the introductions and opening remarks. And then we will have the opportunity to question the nominee for 15 minutes each the first go-round and then shorter ones if we need to continue questions after that.

What I would like to do, once we have all finished our opening statements, is to take a very short break so that those who are going to introduce him and all other witnesses will know what is going to happen. But with that, I would turn to the distinguished senior Senator from Massachusetts, also former Chairman of this Committee, Senator Kennedy.

**STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR
FROM THE STATE OF MASSACHUSETTS**

Senator KENNEDY. Thank you.

Mr. Chairman, thank you for holding these hearings. They may well be the most important hearings that our Committee will have this year. The power and reach of the Department of Justice is vast, and the person at its head must have the ability and the commitment to enforce the laws vigorously. The reality and perception of fairness must be without question.

During Senator Ashcroft's quarter-century in public service, he has taken strong positions on a range of important issues in the jurisdiction of the Justice Department. Unfortunately and often, he has used the power of his high office to advance his personal views in spite of the law of the land.

The vast majority of Americans support vigorous enforcement of our civil rights laws, and those laws and the Constitution demand it. Senator Ashcroft, however, spent significant parts of his term as Attorney General of Missouri and his term as Governor strongly opposing school desegregation and voter registration in St. Louis.

The vast majority of Americans believe in access to contraception and a woman's right to choose, and our laws and Constitution demand it. Senator Ashcroft does not, and his intense efforts have made him one of the principal architects of the ongoing right-wing strategy to dismantle *Roe v. Wade* and abolish a woman's right to choose.

Deep concerns have been raised about his record on gun control. He has called James Brady "the leading enemy of responsible gun owners." Senator Ashcroft is so far out of the mainstream that he has said citizens need to be armed in order to protect themselves against a tyrannical government. Our government? Tyrannical? In fact, he relies on an extreme reading of the right to bear arms under the Second Amendment to the Constitution to oppose virtually all gun control laws.

He doesn't show the same respect for the right of free speech under the First Amendment. In 1978, as Attorney General of Missouri, he tried to use the antitrust laws to undermine the right to free speech of the National Organization for Women and prevent a boycott of Missouri by the organization over the State's refusal to ratify the Equal Rights Amendment.

As these few examples demonstrate, the clear question before the Senate is whether, if confirmed as Attorney General, Senator Ashcroft will be capable of fully and fairly enforcing the Nation's laws to benefit all Americans, even though he profoundly disagrees with many of the most important of those laws. His past actions strongly suggest that he will not.

Senator Ashcroft's record in Missouri and in the Senate is extremely troubling on this basic question. Many of us, probably all of us, who have served with Senator Ashcroft respect his ability on the issues and his intense commitment to the principles he believes in, even though we disagree profoundly with some of those principles. We know that while serving in high office he has time and again aggressively used litigation and legislation in creative and inappropriate ways to advance his political and ideological goals. How can we have any confidence at all that he won't do the same thing with the vast new powers he will have at his disposal as Attorney General of the United States?

President-elect Bush has asked us to look in Senator Ashcroft's heart to evaluate his ability and commitment to enforce the laws of our country. But actions speak louder than words, and based on his repeated actions over many years, it is clear that Senator Ashcroft's heart is not in some of the most important of the Nation's laws.

The person who serves as Attorney General must inspire the trust and respect of all Americans. Inscribed in stone over the center entrance to the Department of Justice is this phrase: "The place of justice is a hallowed place." All Americans deserve to have confidence that when the next Attorney General walks through the doors of Justice and into that hallowed place, he will be serving them, too.

Thank you, Mr. Chairman. I look forward to the hearings.

Chairman LEAHY. Thank you, Senator Kennedy.

We will put Senator Biden's statement in the record.

[The prepared statement of Senator Biden follows:]

STATEMENT OF HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR FROM THE STATE OF
DELAWARE

Dear Mr. Chairman:

I very much regret not being able to be here today for the start of these hearings, but I am in California representing the Foreign Relations Committee and the Senate at the memorial service for our late colleague and friend, Alan Cranston.

Let me also preface my remarks by welcoming John Ashcroft, our former colleague and Judiciary Committee member.

"You are . . . to become the people's lawyer more than you are to be the President's lawyer. Consequently, the question relating to your nomination is not merely whether or not you possess the intellectual capabilities and the legal skills to perform the task of Attorney General, and not merely whether you are a man of good character and free of conflict of interest that might compromise your ability to faithfully and responsibly and objectively perform your duties as Attorney General, but whether you are willing to vigorously enforce all the laws and the Constitution even though you might have philosophical disagreement

with them, and whether you possess the standing and temperament that will permit the vast majority . . . of the American people to believe that you can and will protect and enforce their individual rights.”

That is what I said in my opening statement at the confirmation hearings for Attorney General in 1984, and that is still the standard that has to be met today. Permit me to elaborate why I believe so much is at stake in these hearings for the American people.

For me, one of the most memorable things about the unforgettable presidential election recently concluded was Joe Lieberman’s frequent comment, “Only in America.”

That seemingly off-the-cuff remark resonated deeply with many Americans because, in a simple way, it speaks to the notion that the United States has unique qualities and values:

It’s true that other countries value democracy, but most of them are not places where unlimited opportunity abounds for every citizen ...where merit and ability trump inheritance ...where individual potential is not constrained by class, by religion, or by race.

“ONLY IN AMERICA”

To this very day, at the beginning of this new century, millions of people from every corner of the globe still want to come to America, because they believe we stand for equality, justice and opportunity.

Those of us living comfortable lives in this great country sometimes forget that these ideas are not abstractions for the vast multitude of people less fortunate.

Millions of American citizens and their ancestors took the words on the Statue of Liberty quite literally: .

Give me your tired, your poor, your huddled masses yearning to breathe free. . . the wretched refuse of your teeming shore. Send these, the homeless, tempest-tossed to me.

Many of us learned our family narratives at the feet of people like my grandfather Ambrose Finnegan, whose mother Dolly came to this generous country, yearning to breathe free.

But not every narrative ends with a grateful grandson who knows that whatever measure of success I’ve had is due to the values I learned at home.

The sad truth is that in this country there are many for whom the dream has not been realized, who still confront indignities, prejudice and worse.

We are a great nation not because we are perfect, but because we hold out the promise—the *guarantee*—that those stymied by unfair practices and policies have an address where they can go to demand justice. That address is the courthouse, and the United States Department of Justice.

And the nation’s chief law enforcement officer, the Attorney General, is the embodiment of that guarantee that justice will not be delayed, that it will not be denied, that it will not be compromised. . . that it must, and will, be served.

It is not enough for a servant of the court, and especially for an attorney general, to simply acknowledge that we have laws that ought to be enforced.

We have made significant progress in my lifetime, but given the reality of race relations in this country, which remain unresolved, I believe an attorney general must demonstrate real leadership in this area. I want someone in that position who will make vigorous enforcement of civil rights a very high priority.

The single most important issue that pushed me to run for public office was civil rights. My first job as a lawyer in 1968 was as a public defender in the city of Wilmington.

I ended up representing a lot of the guys I lifeguarded as a teenager. . . guys who grew up in the public housing area over on the city’s east side known as “The Bucket.” As the name implies, it was a rough area.

And there weren’t a whole lot of cops on the Wilmington police force with the same color skin as the guys I was defending.

In 1968, when I graduated law school and became a public defender, Wilmington, like lots of cities, was racially divided. There were national guard troops on the streets.

I knew I couldn’t change the world, or even what was happening in “The Bucket,” but I thought I could make a difference, and I hope I have.

But when I look out my Senate office in Wilmington, I look out past downtown and see “The Bucket,” and I know we have a lot of unfinished business.

So, Mr. Chairman, thank you for the opportunity to share with this committee my views about what I believe is at stake in these hearings.

I will want to ask specific questions regarding how Senator Ashcroft views the role of Attorney General in the context of leading the fight to ensure that civil rights laws are vigorously enforced. We have come too far as a nation to ignore these issues.

In closing, let me add one final comment in reply to those who suggest it is inappropriate to raise substantive issues, or to discuss philosophical views during the judiciary committee's scrutiny of this nominee.

John Ashcroft has devoted himself for the past quarter century to public service. I assume his motivation to run for office was the same as mine ...he wanted to make a difference.

I know he is proud of his record, and so, evidently, is the president-elect. Let us not pretend the nomination of John Ashcroft to be the next Attorney General is for any other reason than because he has strongly held views—one might even say he has a clearly defined political ideology—that would govern his actions in that highly sensitive office.

I believe it is disingenuous to suggest John's record ought not be reviewed, discussed and debated. I'm pretty certain John is prepared for that discussion, and I look forward to hearing his views.

Again, Mr. Chairman, thank you very much.

Chairman LEAHY. We will turn to my good friend from South Carolina, Senator Thurmond.

**STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR
FROM THE STATE OF SOUTH CAROLINA**

Senator THURMOND. Thank you.

Mr. Chairman, I am very pleased that President-elect Bush has chosen John Ashcroft to serve as his Attorney General.

Senator Ashcroft is one of the most qualified people selected for this position in many years. He served two terms as Attorney General of Missouri, rising to become the leader of the National Association of Attorneys General. He was then elected Governor of Missouri, also serving for two terms, and rising to chair the National Governors' Association. I would also note that he has a fine wife and family.

Most recently, Senator Ashcroft has been an effective leader in the Senate with a record of legislative accomplishments. For example, he was instrumental in passing a methamphetamine bill to help keep drugs out of the hands of children. Also, he worked in a bipartisan manner with Democrats to support COPS program funding for law enforcement.

In the Senate, his job was to make the laws, but as Attorney General, his job will be to enforce the laws. It is clear that he understands that people in different positions have different roles because he has expressed concerns about Federal judges who do not understand the separation of powers. I am confident that as Attorney General he will enforce all the laws to the best of his ability, whether he helped enact them or not.

I hope that these hearings will not be about whether the nominee agrees with each Senator on every issue. After all, he is the President's choice, and the President makes the ultimate policy decisions. The question should be whether he is qualified and will enforce the laws. The answer is clearly yes.

Twenty years ago, I recommended him to be Attorney General for President Ronald Reagan and would like to place that letter into the record.

Chairman LEAHY. Without objection.

Senator THURMOND. And I would like for that to appear at the end of my statement.

Chairman LEAHY. Without objection.

Senator THURMOND. I recognized his abilities then and in the passing years while he has served as Governor and Senator has always reinforced my belief he would have made a fine Attorney General in 1981. He will make an outstanding Attorney General in 2001.

Thank you, Mr. Chairman.

[Senator Thurmond's letter follows:]

HON. STROM THURMOND
WASHINGTON, D.C. 20510
November 17, 1980

Mr. Edwin Meese III
Office of the President-Elect
1726 M Street, NW
Washington, D.C. 20036

Dear Ed:

Among the more important appointments that President-Elect Reagan soon will make is that of Attorney General of the United States. In this regard, I want to bring to your attention The Honorable John Ashcroft, presently Attorney General of the State of Missouri.

John Ashcroft was elected the 38th Attorney General of Missouri in 1976. He was just reelected to another term in that office, demonstrating the trust that the people of Missouri have in this very bright, very dedicated young man.

I first met John Ashcroft in 1976. At that time, I was immediately impressed with him. More recently, as I traveled around the country speaking on behalf of Governor Reagan, I had the pleasure of seeing John again. In fact, he introduced me on one such visit to Missouri to attend a Reagan-Bush rally.

I consider John Ashcroft to be one of our more promising young Republican leaders and believe that he represents the kind of young but experienced talent that could be used well in the Reagan Administration in the post of Attorney General.

I am submitting a packet of informational materials on John. I hope that you will review them carefully and that you will conclude, as I have, that John deserves to be at the top of your list of nominees for the post of Attorney General.

If I can provide other, additional materials of assistance to you in this regard, please let me know.

With kindest personal regards and best wishes,

Sincerely,

STROM THURMOND

Chairman LEAHY. Thank you, Senator Thurmond. We will put into the record a statement by Senator Biden, who, as I said, is at Senator Cranston's funeral, and we will turn to the distinguished Senator from Wisconsin, Senator Kohl.

STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KOHL. Thank you, Mr. Chairman.

Senator Ashcroft, welcome back to this Committee. Based upon what I know of your record thus far, I could not vote for you to be a Supreme Court Justice, but this is different. As I have said to previous nominees for Attorney General, when considering Cabinet nominations, I approach the process prepared to give deference to the President's choice. The President is entitled to surround himself with the people he trusts.

This deference, however, does not rise to the level of blind acceptance, and so, Senator Ashcroft, you have a responsibility to convince this panel and the American people that your views will not

interfere with the administration of justice. Laws are administered and interpreted by people. You have strong convictions. You often wear them on your sleeve, and you take great pride in your convictions. You certainly are not to be faulted for this.

But it is not credible to say that you or anyone can just administer the law like a robot as if the law is not subject to feelings or strong convictions. It is up to you to explain to us why your convictions will not permeate or dominate or even overwhelm the Department of Justice.

Remember, the Attorney General must be a role model and not a lightning rod for certain causes. You have been passionate about many issues, civil rights, abortion, gun safety, and the environment, to cite just a few, but there must be no doubt in the minds of Americans that you will fairly enforce the law. The Attorney General must vigorously advocate for all Americans and, most particularly, protect those who cannot defend themselves.

Your many years as a politician make some people wonder whether you are prepared to dispassionately administer the law. Surely, you understand that many of the positions you have taken are unpopular with some members of this Committee. You shouldn't be condemned for disagreeing with people, but, rather, you must convince the American people that you will enforce the laws of the land in a way that will make us proud and will make us feel that it is justice that is certainly being done.

I have enjoyed working with you as a colleague, and I look forward to this hearing and your answers to our questions.

Thank you.

Chairman LEAHY. Thank you.

I turn to the distinguished senior Senator from Iowa, Senator Grassley.

**STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR
FROM THE STATE OF IOWA**

Senator GRASSLEY. Thank you, Mr. Chairman. I am pleased to welcome Senator John Ashcroft back to the Committee today. I know him from working with him to be a man of integrity and also a person who loves America.

I have been privileged to serve with John here in the Senate and on the Judiciary Committee for the past 6 years. During this time, I have come to respect John's legal abilities and his keen insight into public policy.

John shares my concern about crime and has worked hard in the war against drugs. He has helped to increase funding for local law enforcement and pushed for tougher sentences for criminals. John is also extremely concerned about the victims of crimes, having signed into law Missouri's Victims Bill of Rights when he was Governor of that State.

John also co-sponsored the Violence Against Women's Act when he was here in the Senate.

Now, John and I come from States where agricultural issues are very important, and we have had a number of discussions about how to address the myriad of problems that are facing family farmers today. He is concerned about ensuring competitive markets and a level playing field for farmers and independent producers. Based

on my experience with Senator Ashcroft's work here in the Senate, I know that he is committed to doing what is right for the family farmer.

John Ashcroft is a man of the law. He is eminently qualified to serve as this Nation's Attorney General. His background as Governor and Attorney General of Missouri are some of the strongest qualifications that I have seen for this job. I believe that he will vigorously enforce all of our Nation's laws. I believe that Senator Ashcroft will uphold the rule of law for all Americans which will be a refreshing change from the way things were done in the present administration where the Justice Department was more of a defense counsel for the President than the Nation's chief law enforcer. John Ashcroft's integrity, then, will be a breath of fresh air.

I do want to make a comment about the mob of extremists who have hit the air waves and are trying to intimidate Members of the Senate into voting against Senator Ashcroft. I hope that my colleagues have the intestinal fortitude to stand up to these extremist accusations. It is remarkable that accusations of bias and racism have increased to a roaring crescendo now that John Ashcroft has come up for confirmation because, if John Ashcroft is so bad, then why did the people of Missouri elect him Missouri Attorney General, Governor, and Senator? Would the majority of Missouri citizens support such a biased and extreme man to serve and represent them for well over two decades? I don't think so. Would the National Association of Attorneys General and the National Governors' Association, two national associations representing both Republican and Democratic Attorneys General and Governors, name such a biased man to lead their organization? I don't think so, but the smear goes on.

I, for one, will make my decision based on facts, not innuendo and rumor and spin. I will not let special interest groups with an agenda far out of the mainstream hijack the Judiciary Committee. John Ashcroft is a man of great character, integrity, and trust, all values which are absolutely necessary for public service.

He is an excellent lawyer, committed to enforcing all the laws. Above all, I know that John Ashcroft to be a man concerned about the well-being of our country and committed to doing what is right for all Americans. I believe John Ashcroft will be an excellent Attorney General, and at this point, I see absolutely no legitimate reason why he should not be confirmed.

I yield.

Chairman LEAHY. I thank the Senator.

I should just note for the record, Senator Hatch had expressed a wish that we would follow a procedure in which we would only hear from the nominee, or the hearing would take at most 2 days. Our Committee hearing has been a little bit more varied than that.

I would note that when a Democratic President nominated Griffin Bell in a Democratic-controlled Senate, we had a hearing for 7 days and we heard from 26 witnesses.

When President Reagan nominated Ed Meese and there was a Republican-controlled Senate, the hearings were in two parts. The first was 4 days with 31 witnesses. The second part was 3 days with 17 witnesses.

With President Clinton, the hearing for his first nominee, Ms. Baird, was for 2 days. There were going to be a number of outside witnesses, but, of course, the nomination was withdrawn.

Having said that, as I have told the distinguished Senator, my good friend from Utah, that if he has witnesses that he wants heard, of course, they will be heard. There will be no unnecessary delays.

I would turn now to the distinguished—

Senator HATCH. If the Senator would yield for just one comment on that?

Chairman LEAHY. Of course.

Senator HATCH. In the last four Attorneys General, we had one day for Richard Thornburgh, we had 2 days for Attorney General William Barr, we had 2 days for Janet Reno, and I might mention she was the sole witness, Barr was his sole witness, other than the introducers, and I think Dick Thornburgh was his sole witness.

I might add that I can remember when Janet Reno came up, and I had every special interest group on the right wanting to oppose her. I refused to allow that, and we took their statements and paid attention to it, but I didn't do what we are doing here today.

Now, you have the right to make this decision. All I am saying is that I want to point out that the last three or four didn't go more than 2 days.

Chairman LEAHY. Well, I notice among our—

Senator HATCH. And they were the sole witnesses.

Chairman LEAHY [continuing]. List of left-wing witnesses, Heritage Foundation and a few like that, I suspect—

Senator HATCH. Well, for Meese, two conservatives, that is true, way back when.

Chairman LEAHY. I suspect, Senator Hatch, that you are going to have all the witnesses you want, but I would also note, as I said, when the Democrats were in control of the Senate with a Democratic President, it did take us 7 days and 26 witnesses. These are my seminal hearings, you see, Senator Hatch. It is the influence of your party in taking 4 days, 31 witnesses.

Anyway, moving along—

Senator HATCH. Just one more point.

Chairman LEAHY [continuing]. Can we hear from the distinguished Senator—

Senator HATCH. Mr. Chairman, just one more point of privilege.

Chairman LEAHY. I am trying to speed this thing up.

Senator HATCH. Well, we know that J.C. Watts asked to testify, and he is not on the Members one, and we would like to have Hon. Kenneth Hulshof testify on the same panel as Hon. Ronnie White because he can—

Chairman LEAHY. He is on the Members panel.

Senator HATCH. He was the prosecutor and one of the cases—

Chairman LEAHY. He is on a Members panel.

Senator HATCH [continuing]. And we would like him to be on that panel because then it would be fair because then he can explain what happened.

Chairman LEAHY. Well, Orrin, let's go on with the—

Senator HATCH. Well, I hope you will give consideration to that because it would be highly unfair if you don't.

Chairman LEAHY. Well, the difficult thing is, as you know, we sent you over our list of witnesses and then we waited and waited and waited for days to hear back from you.

Senator HATCH. I always waited for yours as well.

Chairman LEAHY. The distinguished and highly competent senior Senator from California.

**STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR
FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Mr. Chairman, I believe that the people of this Nation deserve an Attorney General who will be honest, strong, and fair, whose integrity is beyond question and who will vigorously protect the rights of every American under law.

In my meeting with Senator Ashcroft, I assured him that I would keep an open mind and do everything I possibly could to see to it that he got a full and fair hearing, and I believe he is going to get just that. So I have not yet taken a position on whether I would or would not support his nomination to be Attorney General of the United States.

But Mr. Ashcroft's past positions on civil rights, on human rights, on segregation, on affirmative action, on a woman's right to choose, on gun laws are very different from my own.

All of the above areas are today covered by law. For civil rights, we have the Civil Rights Act and Title VII. For a woman's right to choose, the United States Supreme Court has adjudicated *Roe v. Wade*. For gun control, the ban on assault weapons which I had something to do with, the National Firearms Act and the Brady bill are all laws of our land.

We all know Senator Ashcroft as an independent thinker, as a strong advocate for his beliefs. Many of us on this Committee have worked with him on various pieces of legislation, I, for one, on methamphetamine, and he has been gracious, true to his word, and a very good person with whom to work.

For the past 6 years as Senator and before that as Governor, John Ashcroft served as a representative of the people of Missouri. This advocacy was both appropriate and strong-minded, but the Attorney General of the United States must be prepared to use the full force and authority of that position to vigorously enforce all laws, regardless of personal belief.

It is not enough, for example, for an Attorney General to say he will enforce the laws and then appoint a Solicitor General whose goal will be to undercut them, and all of this raises in my mind serious questions.

Can we expect, for example, an unabashed and vocal opponent of reproductive rights for women to vigorously enforce laws that protect a woman's right to choose? Will Senator Ashcroft continue to vigorously enforce the Freedom of Access to Clinic Entrances Act and retain the National Task Force on Violence Against Health Care Providers? Would justice under his leadership provide a vigorous defense of *Roe v. Wade*? Will he fully enforce and support the ban on assault weapons and large-capacity ammunition clips and the Brady law? Would he be steadfast in opposition to allowing violent felons to obtain guns simply by applying for this right to be

restored? Would he unwaveringly and vigorously use the Office of Attorney General to protect Americans from violent hate crimes and other civil rights violations? Would he ensure that no citizen's right to vote is compromised by an illegal act? These are questions that don't relate to character or integrity, but they are also questions that must be answered.

Today, we begin the process of ensuring that our system of laws will be enforced with moral authority and fair effectiveness. So I look forward to asking some tough questions, hopefully receiving some good answers, and giving Senator Ashcroft the full and fair hearing.

Thank you very much, Mr. Chairman.

Chairman LEAHY. Thank you.

I turn now to the distinguished senior Senator from Pennsylvania, Senator Specter.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman.

From the opening statements, it is perfectly apparent that the battle lines are pretty well drawn. It is pretty hard to even agree on a schedule. Fortunately, the conference room, hearing room table is set in advance, so there is no dispute about that, and for a Senate which has talked so much about bipartisanship, we have not gotten off to a very good start on the first issue which we are confronting.

It would be disingenuous for any of us to say that we don't have views about former Senator John Ashcroft. Having worked with him for 6 years, including extensive work on this Committee, I had thought that I knew John Ashcroft pretty well until I started to read about him in the papers and listen to the electronic media seriously.

We know about his strong ideological views, and the critical factor, obviously, is whether John Ashcroft has the ability and the willingness and the temperament to separate his own personal views from law enforcement, and there is a big difference.

On a lesser scale, I served as a prosecuting attorney, D.A. of Philadelphia. So I know what it is like to enforce laws that I don't particularly agree with, and I think it is fair and this Committee has a constitutional responsibility to find out from John Ashcroft that he will give assurances to the American people on critical issues.

Now, the matter has already been raised about the right to choose and access to abortion clinics, and I think it is significant that Senator Ashcroft voted on a bankruptcy issue counter to those who would try to stop abortions. The issue was whether somebody who had a judgment in a civil case would be discharged in bankruptcy, which is the general rule, without getting too deeply involved. John Ashcroft voted that they should not be discharged in bankruptcy if the judgment came from blocking an abortion clinic.

There are legitimate concerns about the First Amendment as to Attorney General John Ashcroft's views if he is confirmed enforcing the separation of church and State.

There is no doubt about the latitude for a President's Cabinet for, in effect, the President's lawyer, although the Attorney General is the lawyer of the American people as well, and there is also no doubt about the enormous difference between a Federal judgeship, say a Supreme Court judgeship where ideology would play a very different role than would the Nation's chief law enforcement officer.

We are under a microscope, as we all know, ladies and gentlemen, and I hope that we can put partisanship aside. There is no doubt that if it becomes a partisan issue that this nomination can be blocked by a refusal to cutoff debate, and feelings are running very, very high, lots of calls on both sides, great intensity. I have not seen this much intensity for more than a decade, not that we haven't had it in this room, but not for more than a decade, and if the passions run high enough and partisanship takes over, it will not be in the interest of the American people.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator.

The distinguished Senator from Wisconsin, Senator Feingold.

**STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR
FROM THE STATE OF WISCONSIN**

Senator FEINGOLD. Thank you, Mr. Chairman.

Let me begin by touching on two general principles to guide our consideration of Cabinet nominations.

The first principle is that the Constitution imposes the duty on the President to faithfully execute the laws, and he is expected to propose new laws. To carry out these duties, the President needs advisors and policymakers in the Cabinet to advance the President's program. Over the history of such nominations, the Senate, with rare exceptions, has given the President broad leeway in choosing subordinates.

The second principle that I think should govern nominations is what we might call the political golden rule. We, as Democrats, should, if at all possible, do unto the Republicans as we would have the Republicans do unto us. A Democratic President ought to be able to appoint to the Cabinet principled people of strong, progressive, or even liberal ideology, and, therefore, a Republican President ought to be able to appoint people of strong conservative ideology.

Now, whether doing so is good politics or, more importantly, is wise in light of a promise to unify the Nation after a very close election is a very important issue for a sustained national debate, but that is not at the core of our responsibility in this body to advise and consent on Cabinet nominations.

As to the case of former Senator John Ashcroft for Attorney General, I think John Ashcroft is highly qualified from the points of view of competence and experience. During the past 6 years, I have had the opportunity to get to know John Ashcroft as a colleague. I have had little contact with him outside the Senate floor or the Committee rooms.

In one of those very few encounters, I and Senator Paul Wellstone were walking outside the Capitol, and John Ashcroft offered us a short ride to our homes. Let me tell you on the record, it should give at least some comfort that he was not nominated for

Secretary of Transportation. It was a kind gesture, but a wild, somewhat hair-raising, ride.

Advice and consent, however, is not about who is a nice guy or collegiality, and in all seriousness, this is a very painful nomination for many Americans in light of John Ashcroft's views and votes on many issues, ranging from the right to choose, to gay and lesbian rights, to affirmative action, the environment, to others. And I am also alarmed by some of these views.

Yet, my own direct experience with John Ashcroft has been positive in the sense that he has been much more open to my strong feelings on issues such as the outrageous practice of racial profiling than almost all of his Republican colleagues on this Committee and in the Senate as a whole. He and his staff not only permitted, but assisted in a significant and powerful hearing on racial profiling in the Constitution Subcommittee which John Ashcroft and I led at the time.

Nonetheless, although that experience is certainly relevant to my consideration, I want the individuals in groups that have raised concerns about the nominations to know this. I understand and agree that that experience should be one, and only one, of many other more important factors to be considered in judging the fitness of this nominee as Attorney General.

In fact, as I consider the merits of this nomination, I can't help but take this moment to express my concern about the attitude and approach that the former and then future Republican majority in the Senate has taken since 1996 in considering executive appointments and judicial appointments.

The previous majority—and, yes, sometimes led by John Ashcroft—seemed never to accept the legitimacy of President Clinton's 1996 victory. Instead, in my view, they unfairly blocked many legitimate qualified appointees such as Bill Lann Lee, Ronnie White, and James Hormel. I think this is wrong, and even Chief Justice Rehnquist blamed the understaffing of the Federal judiciary on this questionable approach. This is the very partisanship with which the American people have grown so frustrated and dismayed.

So it is not easy for me to tell those who have fought so hard for Clinton and then for Gore that we should follow the golden rule, do the right thing, and not use a similar approach during the next 4 years. That is my inclination, but I openly wonder at what point do we have to draw the line, given the previous majority's refusal to accord the Democrats the very deference that they, the Republicans, now seek.

Let me also commend the individuals and groups, with whom I agree on virtually all of the key issues, for promoting a significant national discussion on this nomination. Despite criticism, you are right to intensely scrutinize this nomination. Regardless of the outcome, this process will reap long-term benefits as these legitimate and heartfelt concerns are heard by all Senators and the American people.

But, in the end, Mr. Chairman, let me also repeat my conviction as this hearing begins that voting records and conservative ideology are not a sufficient basis to reject a Cabinet nominee, even for Attorney General. I say this as a progressive Democrat from Wis-

consin who hopes that the William O. Douglasses and Ramsey Clarks of the future will be appointed to executive positions and Cabinets and not be rejected on that basis along. In other words, Mr. Chairman, being in the middle of the road is not a requirement for a Cabinet position.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

I will turn to the distinguished Senator from Arizona, Senator Kyl.

**STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE
STATE OF ARIZONA**

Senator KYL. Thank you, Mr. Chairman.

I think it is appropriate, first, that we welcome our colleague back to this Committee, and I do that with great fondness, and also his wife, Janet, who is here.

Second, that we focus a little bit on the standard for judging nominees of the President to Cabinet positions, and both Senators Feinstein and Feingold have, I think, spoken eloquently to that point here and I would like to in a moment as well.

The last Cabinet Secretary we had a chance to vote on was the Treasury Secretary, Larry Summers, and I remember at the time, he had spoken out very strongly against tax cuts, and I am very much for tax cuts.

I thought some of the things he said were relatively outrageous in that regard, but I voted to confirm him as did, I think, every one of my colleagues because of the standard which I think has historically been applied.

I would like to quote an eloquent statement of that standard by a member of this Committee in connection with another nominee a few years ago. Our colleague at that time said, "The Senate has a responsibility to advise and consent on Department of Justice and other executive branch nominees, and we must always take our advice and consent responsibilities seriously because they are among the most sacred, but I think most Senators will agree that the standard we apply in the case of executive branch appointments is not as stringent as that for judicial nominees. The President should get to pick his own team. Unless the nominee isn't competent or some other major ethical or investigative problem arises in the course of our carrying out our duties, then the President gets the benefit of the doubt. There is no doubt about this nominee's qualifications or integrity. This is not a lifetime appointment to the judicial branch of Government. President Clinton should be given latitude in naming executive branch appointees, people to whom he will turn for advice," and our colleague went on to say with respect to this particular nominee, "Yes, he has advised and spoken out about high-profile constitutional issues of the day. I would hope that an accomplished legal scholar would not shrink away from public positions on controversial issues as it appears his opponents would prefer. One can question Professor Dellinger's positions and beliefs, but not his competence and legal abilities." The eloquence, of course, is easily recognized as that of the Chairman, Senator Leahy of Vermont, speaking on behalf of Walter Dellinger

who was confirmed for Assistant Attorney General for the Office of Legal Counsel in which he acquitted himself admirably.

I think that is the standard, and when applying it to John Ashcroft, there can be no doubt that he should be confirmed.

Others have spoken of his qualifications. Perhaps it would be of interest to note that he is the first Attorney General nominee in the history of the United States that has served as State Attorney General, Governor, and U.S. Senator. Only 6 of the 67 former U.S. Attorneys General had even some of Senator Ashcroft's experience. He led the National Association of Attorneys General. He was Chairman of the National Governors' Association, as well as Chairman of the Education Commission of the States, and as all of my colleagues know, he served on this Committee and chaired the Subcommittee on the Constitution.

He has the intelligence, a degree from Yale and a prestigious law degree from the University of Chicago, and, of course, I think no one has questioned his integrity.

Now, there have been questions raised. I think if my colleagues have an open mind, as both Senator Feinstein and Senator Feingold noted, Senator Ashcroft can answer many of these questions. I would just note, for example, that with respect to the charge that he opposes virtually any gun control, you can be assured that that is simply incorrect, and he will make that clear.

I think at the end of the day, one thing is very clear. There have been two interesting assertions made with respect to Senator Ashcroft by opponents. The first is that he has very strong convictions, faith, and belief in God. Indeed, he does.

The second is that he may not enforce the law and the Constitution. Well, the second assertion is at odds with the first. You can be assured that when John Ashcroft places his hand on the Bible and swears to uphold the laws and the Constitution that he will do that on behalf of the people of the United States of America.

Chairman LEAHY. I would note, as my friend from Arizona has quoted me, just so people understand the setting for that vote on Walter Dellinger, this was a matter that had been delayed by secret holds on the Republican side for months, and I was arguing we should vote him up or vote him down. He was not the Attorney General. He would take orders from the Attorney General, something that makes a big difference, but what I wanted was a vote up or down, and when the secret holds were released, he was confirmed.

I would turn to the distinguished senior Senator from New York.

**STATEMENT OF HON. CHARLES E. SHUMER, A U.S. SENATOR
FROM THE STATE OF NEW YORK**

Senator SCHUMER. Thank you, Mr. Chairman, and welcome, Senator Ashcroft.

I know we have our differences, but I want to thank you for being open and honest with us in this process and making yourself available to all of our questions. In return, let me be straight with you. As you know, I have misgivings about your nomination to be Attorney General. I haven't come to this conclusion easily. Unquestionably, you deserve a full and fair hearing and a real chance to tell your side of the story.

Moreover, I believe we owe a significant level of deference to the President in his choices for Cabinet. The President does not have *carte blanche*, but usually the presumption at least begins in favor of his nominees. I will support the vast majority of the President's—the President-elect's nominees even though I don't agree with them on many issues.

I know that a number of my Democratic colleagues initially voiced some support for your nomination because of this presumption, but I think now that the record has been more closely reviewed, the burden of proof has shifted back to you.

When we met privately last week, I asked Senator Ashcroft what role ideology should play in our confirmation process. I meant that question sincerely. It is a difficult issue that many of us are wrestling with.

A few years ago, Senator Ashcroft opposed the nomination of Bill Lann Lee to be the Assistant Attorney General for the Civil Rights Division at DOJ. At the time, this is what he said about Lee, "He has obviously the incredibly strong capacities to be an advocate, but I think his pursuit of specific objectives that are important to him limit his capacity to have a balanced view of making judgments that will be necessary for the person who runs that division." Looking back now, I think Senator Ashcroft was correct, at least when it comes to evaluating nominees who have an ideological bent that is significantly outside the mainstream.

In other words, the issue should be whether a nominee's fervent beliefs and views are so one-sided that we lose faith, that the American people lose faith in that person's ability to carefully evaluate, abide by, and control the law, the law as it is, not as he might like it to be.

This is even more the case for an Attorney General nominee because the position requires the utmost in balanced judgment, clarity of thought, sound use of discretion, and cautious decision-making.

The question I hope these hearings will help us to answer is whether John Ashcroft's passionate advocacy of his deeply held beliefs over the past 25 years will limit his capacity to have the balanced world view necessary for an Attorney General. This is a man who has dedicated his career to eliminating a woman's right to choose. He believes that abortion is murder, that it is wrong, and that it must be stopped. He has led the charge to enact new hurdles and restrictions against choice.

Senator, you have told me you will enforce the law, but your saying so isn't enough. When your Solicitor General gets the chance to tell the Supreme Court to follow *Roe v. Wade*, will you demur? When the HHS Secretary calls you for an analysis of new regulations restricting the right to choose, will your analysis be based solely on the current state of law? When you allocate the billions of dollars that DOJ receives, how much will go to protecting the clinics where you think murder is being committed?

Senator Ashcroft, as much as I respect you as a person and your faith, your past causes me grave concern on these issues, and like Bill Lann Lee, when you became the Attorney General of Missouri, you did not advocate, you did not relinquish your role as a passionate advocate. You sued nurses who dispensed contraception and

continued litigating against them for years, despite being told by every court you came before that you were wrong. You sued the National Organization of Women under the antitrust laws to muzzle their attempt to pass the Equal Rights Amendment. Will you now use as United States Attorney General that office to continue crusading against those you passionately and fervently disagree with?

Senator Ashcroft, the issue boils down to this. When you have been such a zealous and impassioned advocate for so long, how do you just turn it off? This may be an impossible task.

I would say to my friend from Wisconsin, this goes beyond ideology. It goes directly to and is unique to the Cabinet position of Attorney General, the chief law enforcement officer of the land.

Senator Ashcroft has been a leading advocate against gun control. He has fought to kill legislation that would have made it easier to catch illegal gunrunners. He has vociferously opposed even child safety locks and the assault weapons ban. When the U.S. Attorney from New York or Wisconsin calls him and pleads for more resources to prosecute gunrunners, will this be a priority?

For many years in Missouri, Senator Ashcroft was a leading advocate against desegregation. He has been on the forefront of arguing against gay rights and for lowering barriers between church and State.

In short, John Ashcroft has for decades now been knee-deep in many of the most significant, yet divisive issues in our country. What this hearing must get at is whether he can now step outside this ideological fray, set his advocacy to one side, and become the balanced decisionmaker with an unclouded vision of the law that this country deserves as its Attorney General.

Thank you, Mr. Chairman.

Chairman LEAHY. The distinguished Senator from Ohio, Senator DeWine.

**STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM
THE STATE OF OHIO**

Senator DEWINE. Mr. Chairman, thank you very much.

We are now at a place in our Nation's history where sometimes it seems as if there is a direct relationship between the qualifications, the experience, the length of service of a particular nominee, and how contentious and how difficult the nomination process is.

Today, we have a nominee who has extensive experience, who is extremely well qualified, Assistant Attorney General of Missouri, 8 years as Attorney General, 8 years as Governor, 6 years as U.S. Senator, a member of this Judiciary Committee. Therefore, I guess it should come as no surprise that he has taken positions, that he has taken positions on many, many issues. He has cast thousands of votes, and he has a long track record.

Nor, frankly, should it come as a surprise that a record of a quarter of a century would generate criticism. I think we would worry if he hadn't taken tough positions. I think we would worry if after a quarter of a century, there wasn't something controversial about what he had said or what he had done.

I intend during this hearing to listen. My personal experience with John Ashcroft over the last 6 years convinces me that he is a man of integrity, he is a man of honor, he is a man of courage.

The position of Attorney General is unique, as my colleagues have already pointed out, among members of the United States Cabinet. His is in many respects the most difficult job because he is the person who must by statute give advice to the President of the United States, but he is also, in essence, the chief law enforcement officer of the country.

Ultimately, the tenure of John Ashcroft as Attorney General or the tenure of any Attorney General will be judged not on any one particular decision that he will make, not on any one particular policy that he will take. Ultimately, this Attorney General and any Attorney General will be judged on how he is perceived, how he is perceived by the public on much more essential issues and much more essential questions. The question of whether or not he was a man of integrity, whether or not he was a man of honesty, whether or not he had the courage to tell the President yes when it was right to tell him yes and also to tell him no if that was what he needed to tell him.

I am going to listen, but I am convinced, based upon what I have heard so far and what I know about John Ashcroft, that after he has been Attorney General, the people will look up and say, "Yes, this was a man of integrity. We did not always agree with him. We may have disagreed with him on some issues. Maybe he wasn't always right, but he gained the respect of the American people and he brought honor and integrity to the office."

Chairman LEAHY. Thank you, Senator.

Just to let people know where we are, we have four more Senators to speak, and we have been trying to stay within the 3 to 4 minutes each. What I will do at the end of these four, we will take, as I have told Senator Ashcroft and Senator Bond and Senator Hutchison and others, a short break just so we can recoup and then come back and have the introductions and the opening statements.

The distinguished Senator from Illinois, Senator Durbin.

**STATE OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM
THE STATE OF ILLINOIS**

Senator DURBIN. Thank you, Mr. Chairman.

It is good to be back on the Committee, and it is interesting that this would be the kickoff for my return to the Committee, a hearing of this consequence.

Chairman LEAHY. We like you senior Senators over here.

Senator DURBIN. Yes. Well, thank you.

I agree wholeheartedly with the statement made by Senator Hatch relative to the nature of this hearing and this investigation.

John Ashcroft, this should have nothing to do with your personal life or family life. As some have said, the politics of personal destruction should come to an end, and I don't believe this hearing will engage in any questions relative to that, nor should it, for good reason. You have a fine family that you are very proud of, and we have plenty to concern ourselves with relative to the issues before us.

Some have suggested, though, that we are off to a rocky start here in this evenly divided Senate by having such a contentious hearing. Well, this hearing was not the idea of any Democrat. It happened to be the idea of the Founding Fathers in Article II, section 2, when they said it would be the responsibility of the Senate to give advice and consent to the President of the United States in his nominations. I don't think that that was a casual reference or surplus verbiage. I think, in fact, they decided very carefully that they would restrain the power of the President and make certain that the chosen leader of our Nation would be subject to review in these decisions by another branch of Government.

Senator Ashcroft, on the day of December 22nd, when President-elect George Bush nominated you to be Attorney General, you made a statement, a brief statement, which many of us have seen, and said at one point, and I quote, "President-elect Bush, you have my word that I will administer the Department of Justice with integrity. I will advise your administration with integrity, and I will enforce the laws of the United States of America with integrity."

"Integrity," by a common definition, is an unwavering commitment to a set of values. There is no quarrel that your public life shows a commitment to a set of values. There is no doubt that your service as Attorney General will be guided by a set of values. The question before this Committee is what will those values be. Will they be the values embodied in the laws of the land, many of which you have publicly opposed, a woman's right to choose, sensible gun control, civil rights laws, human rights protections? Will they be the values of President-elect Bush and Vice President-elect Cheney, many of which differ from your own public record? Will they be your values, the values in your heart which have guided you throughout your public life?

The role of the Attorney General is described in the definition of the Department of Justice, first, to enforce the law, and that is fairly obvious, and in conclusion, it says to ensure "the fair and impartial administration of justice for all Americans." Can you guarantee fair and impartial administration of justice if you believe some Americans are undeserving or engaged in conduct which you find morally objectionable?

As sound as America's principles may be, we must concede we are not a perfect people. We have struggled throughout our history with issues of equality for women, African Americans, Hispanics, new Americans, the disabled, people of diverse religious belief, people with different sexual orientation.

This last election has left America divided, and I know that the new President has suggested that he wants to unite this great Nation, and I sincerely hope that he can. He knows that his biggest challenge will be to reach out and win the confidence of many who opposed him, families and women and minorities and new Americans and those concerned that his views are outside the mainstream of American values, and no office has a more direct impact on the lives and fortunes of these groups, and all Americans for that matter, than the Office of Attorney General.

If minority voters feel disenfranchised by backward election technology and politically biased oversight, it is the Attorney General who must protect their rights.

If women feel their reproductive choices, including the right to choose the best family planning for them, is threatened by violent demonstrators, it is the Attorney General who must protect them.

If those with different sexual orientation feel the pain of discrimination and threat of bodily harm, it is Attorney General and the Department of Justice who must protect them.

Senator Ashcroft, several weeks ago, you and I were on an airplane together, you with your wife and I went alone to the funeral of former Missouri Governor Mel Carnahan. It was a wonderful gesture on your part to be there, considering the fact that you were in the midst of a campaign. It was a funeral service that I will long remember.

At the end of that service as I was leaving, someone pointed to me and said, "Senator Durbin, this group over here is the Missouri Supreme Court," and I said, "Is Justice Ronnie White among them?" They said, "Yes. He is the gentleman standing over here."

I went over and met him for the first time and introduced myself. I said, "I am Senator Dick Durbin of Illinois, and you are Justice Ronnie White, are you not?" He said, "Yes."

Senator Ashcroft, I said to him, "I want to apologize to you for what happened on the floor of the U.S. Senate. That never should have happened." He faced an embarrassment and a humiliation on the floor of the Senate which did not have to happen.

If there was a heartfelt belief by the Senators from Missouri that he should not have been a Federal district court judge, it should never have reached that point in time, and it rarely ever does in the history of the U.S. Senate.

I have said to you personally, and I will say to you at this hearing, I am going to be asking you a number of questions about that decision and about the process and the way this man was treated. I think that is going to tell me a great deal about your conduct if you become Attorney General.

During the course of this hearing, Senator Ashcroft will be given a chance to explain his vision of the office, to reconcile clear conflicts between his public record and the new responsibilities he seeks, and to give us and America a chance to look into his heart. This open, fair hearing is an opportunity which was often denied to many who sought the approval of this Committee, but it is an opportunity which you will have.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator, and we will put Senator Cantwell's statement also in the record. As I said, she is at our former colleague Senator Cranston's funeral.

[The prepared statement of Senator Cantwell follows:]

STATEMENT OF HON. MARIA CANTWELL, A U.S. SENATOR FROM THE STATE OF
WASHINGTON

Senator Ashcroft, I join with my colleagues in welcoming you to the Judiciary Committee, a committee on which you have served and which I am just joining. I am honored that my first appearance on this committee involves the consideration of an extremely important nomination, that of the Attorney General of the United States.

I share my colleagues' belief that the president has historically been deferred to in his choice of nominees for the Cabinet. Nonetheless, the Constitution entrusts the Senate with providing advice and consent on those nominees and we must take that duty extremely seriously. As members of the Judiciary Committee and the United

States Senate, we must ensure that our deference is tempered by consideration of the qualifications of the nominee and his or her willingness to abide by and uphold the laws of the land.

On the first point, Senator Ashcroft, it appears that your background would indicate that you have the credentials for this position. You have devoted many years to public service, including serving as Attorney General of the State of Missouri, as well as Governor and Senator from that state. I am sure that I speak for all of us on the Judiciary Committee when I say that there are no doubts that you have extensive and appropriate experience to fill the position of Attorney General of the United States of America.

My questions will focus on the second point: whether you will faithfully and zealously enforce the laws of our land in the areas of women's reproductive rights, including the prevention and prosecution of clinic violence. I will have questions on your record on enforcing and upholding the civil rights of all Americans. And, as a new Senator from the Pacific Northwest, I hope to determine your intentions on enforcing and upholding laws that protect our clean air and water, our natural resources, and the environment—all issues that are critically important to my constituents and all Americans.

Along with my colleagues, I believe that each American citizen should feel assured that our Justice Department will defend his or her constitutionally protected rights. During the hearing, I will be interested in learning whether and to what extent you would enforce our laws and protect those rights despite your strong opposition to some of the laws you would be in charge of enforcing.

I look forward to my first hearing as a member of the Judiciary Committee and listening to your answers to our questions.

Thank you.

Chairman LEAHY. I would recognize the distinguished Senator from Alabama, Senator Sessions.

**STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM
THE STATE OF ALABAMA**

Senator SESSIONS. I thank the Chairman.

John, welcome to the pit. Those were the words of Alan Simpson, I believe, when Justice Scalia appeared here, and it is not a pleasant place to be. There are effective organized groups. One of the members said there is a seasoned coalition, there is a seasoned group that knows how to tarnish individuals who come before a Committee when they want to. And as Senator DeWine noted, you indeed have a long and distinguished career that includes a lot of litigation and a lot of positions that you have taken that you believed was right, and there is somebody that can complain about a lot of that. And I hope the burden of proof has not shifted. That wouldn't be appropriate. But it would be consistent with what Senator Simpson said in this Committee once, that people are more like—we are more like prosecutor and accused than a confirmation hearing.

Well, I love the Department of Justice. I spent 15 years in the Department as an Assistant United States Attorney, 12 years as United States Attorney, served five different Attorneys General. I believe in that Department. It is a great Department. It is the Department of Justice. And, frankly, we may have had an Attorney General who was right on some of our colleagues' ideological issues, but I don't think the Department has run well. I think there are some problems there. I think it needs new, vigorous, positive leadership, and as people have described your background, I think you are perfect for that. And I am honored to support you. I don't expect anything to come out that would change my mind. Certainly the things that have come out that I have seen and studied are in-

significant differences of opinion that we might have that should not change our view about your qualifications.

The Attorney General is a law enforcer. There is a big difference between a politician and a Senator where we vote on policy and executing policy. To me, I haven't had much difficulty making the switch from prosecutor, professional career, Attorney General in Alabama, to the—actually, I may have had more problem than you are going to have going back.

[Laughter.]

Senator SESSIONS. But there is a difference, and it is pretty clear in our minds. And I think as an 8-year Attorney General you will not have any problem going back and enforcing the law as written.

I would say this: I was surprised, Senator Specter, that John supported Chuck Schumer's bankruptcy bill. I tried my best to stop that amendment, and didn't know you had voted the other way on that. But it was—

Chairman LEAHY. You are going to have plenty of time to let him know what you think about that.

Senator SESSIONS. But I don't think the Attorney General is particularly unique in setting policy. HHS people, they set policy about all kinds of contraceptives, very sensitive issues and health issues. There are sensitive issues in labor that the Labor Secretary gets to set. I am not sure the Attorney General gets to set many issues at all, basically just has to carry out the laws that are set.

I do think bipartisanship is important. I support President Bush's commitment to bipartisanship. I am going to try to do better this time. I supported Trent Lott in trying to reach an agreement that we wouldn't be fighting here in the beginning of this session, even though some felt maybe it had gone too far.

We need to work together, and I think this hearing is a bit of a test. The independent groups, hard left that they are, have ever right to speak and advocate and raise questions. But I think this body needs to evaluate it and give John Ashcroft a fair hearing in terms of what was known to him, what were the circumstances when he made these decisions, and not take them out of context and give it a spin that is unfair to him.

All of us have done things that have been taken out of context and twisted about. It could be an honest statement but be a misrepresentation of what is happening.

John has not been an obstructionist here. I have looked at the numbers. He has voted for 95 percent of President Clinton's judicial nominees. He voted for 26 of 17 African American. The only one that was raised, Ronnie White, is the only one he has opposed. And he had a personal and good reason for that, in my view.

He is going to be a champion of prosecution of gun laws. Under this administration, prosecutions have dropped. I have talked to John about it, and he has committed to me that he is going to work to increase the number of people that are prosecuted for violation of gun laws in America, and in my view, that can be done dramatically with no new resources, frankly.

And on Bill Lann Lee, this Committee split on that vote, and Chairman Hatch—if you would like to read a brilliant address on it, read his speech on the floor about why he opposed Bill Lann Lee. That was not a racial thing. It was a serious discussion about

his views about whether or not he would actually follow the *Adarand* Supreme Court decision. The *Adarand* case he said he would support, but the way he defined it in our view was not an accurate definition of it. So then he would not be enforcing *Adarand* if he didn't properly understand *Adarand*. So that was the basis of our opposition there.

So I would just say this: I believe that John Ashcroft has all the gifts and graces to make a great Attorney General. I believe he will be a great Attorney General. I believe he will serve this country with distinction. I believe this Department will flourish under his leadership. I know he will be responsive to us if we have problems. I know and he knows who the captain of the ship is, and that is the President, at whose pleasure he serves.

I believe in John. I think all of us do. I ask each member of this Committee, listen to the complaints but think about the context, the values he held. Ask yourself if he abused his office or did wrong on any significant matter. I don't think you will find that to have occurred, and I would like to see a very strong vote for John Ashcroft for Attorney General.

Thank you.

Chairman LEAHY. I thank the Senator from Alabama and will yield now to my neighbor from New Hampshire, Senator Smith.

STATEMENT OF HON. BOB SMITH, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator SMITH. Thank you very much, Mr. Chairman and, Senator Ashcroft and Janet, welcome, I think.

Thomas Paine once said, "These are the times that try men's souls," and then he spoke of the sunshine patriots. And you are not a sunshine patriot. You are willing to stand here and take it. You don't deserve some of the things that have been said about you and will be said about you. And I know it is tough, but there are a lot of us, I think, frankly, on both sides of the debate that appreciate the fact that you are willing to do just that.

It is not pleasant for me as a personal friend of yours—and I will admit that publicly—to hear terms such as "racism" applied to you, my friend. That is unworthy, those who make the charges, and it is certainly not in the best interest of the political debate in this country.

Senator Kohl, I believe, a few moments ago said that the Attorney General of the United States should be a role model. If I could pick a role model for my two sons, I would pick John Ashcroft, and I wouldn't hesitate one moment to do just that. Throughout his career, his entire career in politics, in his own words, he has sought to bring America to its highest and best. He loves his country. He loves Missouri. He loves his family. He loves the law. And he loves the Constitution, and, yes, he loves his God. That is not a disqualifier. That is a qualifier. That is not a divider. That is a uniter.

There is a lot of cynicism in this town, and people think there is too much politics in politics. We have heard some of it in the public debate leading up to this hearing. We will hear some of it. We have already heard some of it in the hearing. But John Ashcroft is a guy who is always looking to do what is right.

I am reminded—and I think Senator Durbin alluded to it—of John Ashcroft coming in to the Republican conference after the sudden and tragic death of Governor Mel Carnahan, his opponent, emotionally talking about that in the confines of that room with only his colleagues there, announcing to all of us that he would suspend his campaign immediately, for at least the next 10 days. While that happened, the other side geared up to defeat him. But John did the right thing. That is the kind of man he is. That is the kind of man he is, so when you hear the criticisms, be reminded of the kind of person that he really is.

I have never known him to look at a poll or a focus group to make a decision. He looks to the law. He looks to the Constitution. He looks to the Founding Fathers. America does not need an Attorney General who is concerned about public opinion. Americans want an Attorney General who is concerned about the law and the Constitution, an Attorney General who will not only enforce it but be an aggressive and vociferous advocate for it and the Constitution.

President-elect Bush could have picked another person for Attorney General, but he couldn't have picked a better person for Attorney General. There will be witnesses who are going to say that because John Ashcroft is a man of religious faith that he won't enforce the law. On the contrary, I would say that knowing the importance Senator Ashcroft places in his faith, I can't think of anyone else I would place more confident in to support the law.

Senator Feingold mentioned a few moments ago that some of the decisions or some of the views that Senator Ashcroft has taken are painful to some on his side. I might also say some of the views that the current Attorney General has taken have been painful on our side. But when he puts his hand on the Bible, as Senator Kyl said, and swears to enforce the law, he means it. He will do it.

We are not going to hear much today, except on this side of the table, about the qualifications of Senator John Ashcroft. They have been mentioned a thousand times, and I want to say them again: two-term Missouri Attorney General, head of the National Association of Attorneys General, receiving a commendation for that, two-term Missouri Governor, head of the National Association of Governors, U.S. Senator and former member of this Judiciary Committee. We won't hear a lot about that from the other side because that is not the issue to them.

As a matter of fact, John Ashcroft may be the most qualified candidate ever nominated for Attorney General. And, again, we are not going to be focusing on those qualifications from the other side.

In 1993, Janet Reno said, "The only reason for the death penalty is vengeance. What I want is to put the bad people away and keep them away." A strong statement from the Attorney General, opposed to the death penalty. But Janet Reno applied the law of the land, which is the death penalty. There is no fear here.

In conclusion, President-elect George Bush has chosen a like-minded conservative to serve as his U.S. Attorney General. We should respect that choice, as has been said here. Just as Republicans by a vote of 98-0 confirmed Janet Reno—and I will say to my colleagues, if it is painful, if I can vote for Janet Reno, you can vote for John Ashcroft.

[Laughter.]

Senator SMITH. Again, Mr. Chairman, let us set aside the mud-slinging, set aside the rhetoric. This is a decent, honorable man. Let's focus on the qualifications of John Ashcroft to be the next U.S. Attorney General.

My friend, they are going to put you down a bumpy road. There is no question about it. But you have got good shock absorbers, and you are bigger than the politics of self-destruction. Handle it well, as I know you will, and the American people, once they know who you are, once they get to know you, they will be with you.

Thank you.

Chairman LEAHY. I thank the Senator from New Hampshire, and I do wonder if he is feeling badly about voting for Attorney General Reno. At least he has the satisfaction of knowing that while the national crime rate went up for the 12 years before she came there, it went down for the 8 years she was there. So that will give you a chance to point to a very good accomplishment.

Having said that—

Senator SESSIONS. It didn't go down all those years. Just a few.

Chairman LEAHY. It didn't go down any before.

Senator SESSIONS. Yes, it did.

Senator HATCH. Enough said.

Senator SESSIONS. I will show you the numbers. I was there.

Chairman LEAHY. Well, maybe it went down when you were U.S. Attorney.

Senator HATCH. It is going to go down a heck of lot more under Attorney General Ashcroft, I guarantee you that.

[Laughter.]

Chairman LEAHY. I wish you would stop delaying this, Senator Hatch. We have got to get going with this.

Now I welcome again the distinguished Senator from Kansas, who is a friend to all of us in this body, and we are delighted to have him here in the Committee. Please go ahead.

**STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR
FROM THE STATE OF KANSAS**

Senator BROWNBACK. Thank you, Mr. Chairman. And it is a pleasure to join this Committee. I look forward to serving on it on the important issues that come here before this Committee, and this is one of them.

John, welcome, and, Janet, delighted to have you folks here. I am looking forward to your confirmation as Attorney General and your serving with distinction in that capacity as you have every place else you have served in your long public career that you have had thus far.

As a personal note, you know, they say a true friend is somebody who give you the shirt of their back. My apartment complex I was in in town was in a fire this last year, and I was standing out in the streets with not much else that I got out with. And the Ashcrofts came over and gave me a roof over my head for several days and took me in, and unlike Senator Feingold's experience driving, I would put you as Secretary of HUD in a moment.

[Laughter.]

Senator BROWNBACK. The housing was excellent, wonderful accommodations, and they were very kind. And I would dare say they would do that for anybody in this room, not just me. That is the kind of people that John and Janet Ashcroft are. And I had a personal experience, and I deeply appreciate that kindness you showed me then and you have all along.

Our States share a common border. We have served on two committees together, the Commerce and Foreign Relations Committees. Our offices are just down the hall from each other. So we have had a chance to work on a lot of things together. But, really, much more important than either geography or committee assignments, John has shared with me through his life, through the things that he has done, through what I have observed, what I have seen, what I have talked with him about, his honesty, his integrity, his devotion to his family and to his Creator, his principled character, and his steadfast belief that each of us is put here on Earth to help our fellow man and to leave this world a better place for all of our children, for those here now and those yet to be.

And contrary to the assertions of those who make a living exacerbating the tensions that divide us as a Nation, I know John Ashcroft is committed to our Nation's promise of equal justice for all, no matter what their stage of life. He has been an outstanding public servant, an example of public service that many of us on this dais would be proud to have.

Now, in the Constitution, Article II, Section 3 provides that the President "shall take care that the laws be faithfully executed." I am certain John has already read that provision many, many times.

John, when President-elect Bush nominated you to head the Department of Justice, he stated that he believed in your "commitment to fair and firm and impartial administration of justice." When you accepted President-elect Bush's nomination, you reaffirmed for the world to hear your commitment to equal justice under the law, something you have served your entire life with distinction and will continue to do so.

Mr. Chairman, let me close my brief statement by saying to our guests at the witness table that, John, you are missed here in the Senate. You really are. But I look forward to voting for your confirmation and to working with you as Attorney General of the United States, and you are going to do an outstanding job.

Thanks.

Chairman LEAHY. Thank you.

I see no other Senators have statements to make. We will take a 10-minute break, and before everybody leaves, a lot of people want to come in. If there is anybody who is—I say this without a great deal of expectation, but if there are those who wish to leave and give their seats to others, there are those available to take the seats. And I mention this because we will have closed-circuit TV in Dirksen 226 with chairs and so forth.

With that we will stand in recess.

[Recess from 3 p.m. to 3:22 p.m.]

Chairman LEAHY. If everyone could get seated? So we can understand where we stand, before we go to Senator Ashcroft's testimony, we will first have three distinguished Senators who are here

who wish to introduce him, and following tradition, as he is from Missouri, we will first to the senior Senator from Missouri, Senator Bond.

Senator BOND. Mr. Chairman, if you don't mind, I might defer to the other members of the panel for their first introductions, and I would be happy to relinquish my spot and follow as the third of the introducers.

Chairman LEAHY. The Senator, of course, has that right. I thank him for his courtesy, and then we will go to Senator Carnahan, the other Senator from Missouri.

**PRESENTATION OF THE NOMINEE BY HON. JEAN CARNAHAN,
A U.S. SENATOR FROM THE STATE OF MISSOURI**

Senator CARNAHAN. Thank you, Mr. Chairman, Senator Hatch.

Three months ago this very day, I could not possibly have imagined that I would be here. And I suspect that Senator Ashcroft could say the same. During the time that John Ashcroft served the State of Missouri, my late husband, Mel Carnahan, also served in public life, as State treasurer, Lieutenant Governor, and Governor. So I have an appreciation for the many burdens that Senator Ashcroft and Janet and his family have had to bear in order to serve.

Now a new burden rests upon his shoulders and upon each Member of the U.S. Senate. We are considering the nomination of Mr. Ashcroft to be the Attorney General of the United States, one of the most powerful and sensitive offices in the Nation.

I urge you to show him fairness but not favoritism, to welcome all the facts without fear, and to base your decision on principle and not partisanship. I ask you to look beyond any history of friendship or disputes and to look beyond the bonds or divisions of party and to look beyond the urging of interest groups expressing either support or opposition to this nomination. Instead, let us base our decision on the facts as they are determined by a full and fair hearing. I believe that is how we can best serve the interests of the people of America.

Mr. Chairman, Senator Hatch, as a proud resident of the "Show Me" State and a member of this esteemed body, I come here today to introduce to you my fellow Missourian, John David Ashcroft. Thank you.

Chairman LEAHY. Thank you very much, Senator.

Senator Hutchison, along our original procedure, we will go to you. Senator Kay Bailey Hutchison of Texas.

**PRESENTATION OF THE NOMINEE BY HON. KAY BAILEY
HUTCHISON, A U.S. SENATOR FROM THE STATE OF TEXAS**

Senator HUTCHISON. Thank you, Chairman Leahy, Chairman Hatch, and other members of the Committee.

I am pleased to be here in support of my good friend, former Senator John Ashcroft, whom I have known for many years before he became my colleague. In fact, I was in Kansas City with him and Janet when he had his first press conference after suspending his campaign for the U.S. Senate for 10 days out of respect for his deceased opponent.

The people of America saw the true heart of John Ashcroft in the way he handled the tragic death of Mel Carnahan. He showed magnanimity in his defeat. He put the people of Missouri before his own self-interest.

Mr. Chairman, I think he will do the same for the people of America as Attorney General of the United States.

John and I have served together for 6 years. He brings an impressive background, which all of you have heard several times today. I also think it is worth mentioning because I think it adds to the integrity of this family to mention his wonderful wife, Janet, who has spent the last 5 years showing her commitment to education and diversity by teaching at one of our great historically black colleges, Howard University.

Senator Ashcroft and I have worked together on many issues, and I want to mention a few of those here because he was a leader. He was leader in cosponsoring my legislation to eliminate the marriage tax penalty, which has the effect of taxing many women at higher rates when they enter the workplace. Last year, he and I worked together to reauthorize the Violence Against Women Act. He and I both introduced legislation to amend the current stalking laws to make it a crime to stalk someone via electronic means, such as the Internet. This new criminal law is now in place.

John led the effort to allow hourly wage earners, particularly working mothers, the ability to craft flexible work schedules to better meet the demands of both job and family. While in the Senate, John Ashcroft voted to prohibit people convicted of domestic violence from owning a firearm. John also took a very important issue, increasing the rights of victims. While he was Governor, he enacted a victims rights law in Missouri and has been a staunch cosponsor with Senator Kyl on the victims rights constitutional amendment, along with Senator Feinstein. Also while Governor, he appointed the first women to the Missouri Supreme Court.

So I would say to this Committee, maybe you might not agree with John Ashcroft on every issue. I think there will be legitimate philosophical differences between Congress and the executive branch. But as I have heard all of the opening statements today, there has been no question whatsoever of John Ashcroft's qualifications, his experience for this job, and his absolute, total integrity.

On the question of enforcing the law, I don't think there is any question that John Ashcroft will uphold and enforce all the laws of our country and do it vigorously. So in nominating John Ashcroft, President-elect Bush has made his choice, and I believe the Congress should respect the new President's decision.

I am pleased to be here, and I thank you, Mr. Chairman, for giving me the opportunity to say a few words on behalf of my former colleague, a person for whom I have great respect.

Chairman LEAHY. Thank you, Senator Hutchison, and I appreciate your taking the time to be here.

Senator Bond, we will go now to you, please.

**PRESENTATION OF THE NOMINEE BY HON. KIT BOND, A U.S.
SENATOR FROM THE STATE OF MISSOURI**

Senator BOND. Mr. Chairman, Ranking Minority Member, temporarily, Senator Hatch—

Chairman LEAHY. He wants you to emphasize, he wants you to repeat "temporarily."

[Laughter.]

Senator BOND. Temporarily, Senator Hatch. If I may submit my full statement for the record, I will try to summarize it because I have a good bit to say about the man I am honored to present today, President-elect Bush's nominee for Attorney General.

It is a proud day for me, for the State of Missouri, and for this body. As a well-respected former member of this body, John Ashcroft doesn't need to be introduced to you.

I go back to 1973. I had the responsibility to appoint a State auditor from Missouri, and based upon what I saw as promise in John Ashcroft, his character, intelligence, and commitment to public service, I selected him. For 28 years, I have watched him work every day in the best and highest traditions of this country. Those of you who worked with him in the Senate have had an opportunity to see that.

If you were to ask me one word to describe John Ashcroft, it would be integrity, and integrity means a steadfast adherence to a strict moral or ethical code. I would say to my colleagues on the Committee that code subsumes within it adherence to the Constitution and laws.

Throughout John Ashcroft's career as Attorney General and Governor, he has done that. But in this new position I can think of no one better to be the chief law enforcement agent of this country. He believes in strong and fair law enforcement. He has a consistently strong record on law enforcement, and it is supported by those on the front lines of law enforcement.

If you would permit me, Mr. Chairman, I wish to recognize Mary Ann Viverette, chief of police for Gaithersburg, Maryland, who is here today on behalf of the International Association of Chiefs of Police, 18,000 members strong, who know firsthand how crucial it is to have the support of someone like John Ashcroft in the Attorney General's office. They are behind John, and I thank you very much, Chief.

Mr. Chairman, in recent weeks we have seen self-described proponents of various activist groups try to convince Senators that there is a different John Ashcroft than the man we know personally. Like a sidewalk con artist, these groups are asking Senators, "Who are you going to believe, me or your own lying eyes?" Well, they are asking members of this body to embrace a caricature of John Ashcroft over Senators' own close knowledge of the man's fine record, built on this Committee and on the Senate floor.

I have been disappointed in some of the things that I have heard said about John Ashcroft. Slash and attack methods are something we have seen far too often in Washington, and I believe the American people are sick and tired of it.

Nevertheless, there are legitimate questions that can and should be raised, and several members of the Committee have raised the reasonable question of whether John Ashcroft can be trusted to enforce the laws with which he personally disagrees. Well, I am here to tell you that I have observed him, and I can give you the Missouri "show me" test. He will enforce the laws.

We can assume that most, if not all, United States Attorneys General have disagreed with some of the laws they were charged with enforcing. But why is it now that John Ashcroft, a conservative and committed Christian, is charged by some extreme groups of special interest that he would somehow be unable to enforce the laws because of his beliefs? I see some elements of religious bigotry in that.

John Ashcroft has stated and repeated firmly that he believes his religion teaches him that he should not impose his religious beliefs on anybody else. He has, however, sought, as we all have, to change the law where he deeply believes it was inadequate or wrong.

Undoubtedly, every member of this Committee can find votes cast or positions taken by John Ashcroft with which we disagree. I certainly can. Obviously, some of you find many issues on which you disagree legislatively with John Ashcroft. But that is not the point.

When you look at the record, you will see that John Ashcroft believes in enforcing the law as it stands. As Missouri's Attorney General, he was my lawyer when I was Governor. In 1982, despite his opposition to abortion, he issued an opinion in which he ruled that the Missouri Division of Health could not release to the public information on the number of abortions performed by particular hospitals.

Despite his personal view that life begins at conception, he issued an opinion that Missouri law did not require a certificate of death if the fetus was 20 weeks old or less.

Despite his own personal commitment to the distribution of Bibles and other religious materials, he issued an Attorney General's opinion in 1979 that a Board of Education has no legal authority to grant permission to any organization to distribute religious material to any or all the study body on school property.

And although he stated his opposition to racial set-asides, he issued an opinion in 1980 that allowed the Missouri Clean Water Commission to award a 15 percent State grant to the Metropolitan St. Louis Sewer District to establish a minority business enterprise program.

The John Ashcroft you and I know will be a good Attorney General. I can think of no nominee who is better qualified, Senator Kyl, and many of you have already spoken about the qualifications. I must say in deep regret that the characterization of John Ashcroft's record by my distinguished colleague from Massachusetts is flat simply wrong. That is not the person that we in Missouri know and respect.

John Ashcroft will and can continue to serve this Nation with distinction. He knows the legislators' job is to write the laws and the Attorney General's job is to enforce it.

The American people have a right to expect something better than an Attorney General who bends the law to serve a President's political needs and personal views. I know John Ashcroft would never engage in such behavior. He will faithfully, fairly, and effectively administer the laws of this great land. He is not one to bend the laws to his personal beliefs.

I come before this Committee to respectfully ask that John Ashcroft's nomination to be Attorney General be judged on the basis of the content of his character and the charges against him which are personal and insubstantial be dismissed and that this Committee and the full body confirm him as United States Attorney General.

[The prepared statement of Senator Bond follows:]

STATEMENT OF HON. KIT BOND, A U.S. SENATOR FROM THE STATE OF MISSOURI

Mr. Chairman. Ranking Minority Member Hatch.
Members of the Committee and colleagues.

I am honored to come before you today to present President-elect Bush's nominee for Attorney General. It is a proud day for me. It is a proud day for Missouri. And it should be a proud day for the United States Senate.

As a well-respected former member of this body, John Ashcroft needs no introduction to you.

Each of you knows him as I do: A good and honest man who has spent his life in the service of the good people of Missouri and the nation. John Ashcroft is a man whose personal beliefs animate his lifetime of selfless service to Missouri and the nation.

In 1973, I had the responsibility to appoint a State Auditor for Missouri and based upon what I saw to be the promise in John Ashcroft—his character, intelligence and commitment to public service—I selected him. For 28 years, I have watched him work every day in the best and highest tradition of this country. Many of you have also seen that during the last six years, when John served with distinction on this very committee.

I know this man. Each of you know this man. And he is a good man whose service reflects well on his friends, his family, Missouri and on this great body.

If asked by the Judiciary Committee to use only one word to describe John Ashcroft, I would be forced by the weight of facts and my own personal experience to select the word "INTEGRITY."

I can think of very few of our colleagues—regardless of party—who better personifies that virtue.

And in this day and age, what exactly does that mean? INTEGRITY.

It means a "steadfast adherence to a strict moral or ethical code."

Throughout John Ashcroft's career, as Missouri's Attorney General, as Missouri Governor for two terms, as United States Senator, he has demonstrated above all else a "steadfast adherence to a strict moral and ethical code."

I can think of no better man to be the nation's chief law enforcement officer. Everything about John Ashcroft's record of public service—and personal character—tells us that he will be faithful to the law. A "steadfast adherence to a strict moral or ethical code" is precisely the virtue that must be held by the person entrusted with enforcing the laws of the land.

John Ashcroft has built a record during his service of strong support for law enforcement. It is not new. It goes back to when he served as our state's Attorney General and as Governor. Everything about John's career tells us that he understands one thing above all else: the promise contained in this nation of laws can only be realized when all the laws are properly enforced.

Strong law enforcement is good for all Americans. What higher responsibility is there for a government than to provide the safety and security citizens require to pursue their full potential? An unsafe street or neighborhood infringes upon the freedom of law-abiding citizens. It is no mistake that the goal of establishing Justice and ensuring domestic tranquility reside in the very first sentence of our Constitution.

John Ashcroft's consistently strong record on law enforcement is supported by those on the front lines.

Mr. Chairman, permit me to recognize Mary Ann Viverette, Chief of Police for Gaithersburg, Maryland, who is here today on behalf of the International Association of Chiefs of Police—an 18,000 member organization of the top law enforcement leaders in their communities. They know first-hand what crime does to neighborhoods and people. And they know how crucial the support of people like John Ashcroft is to their efforts. They are behind John Ashcroft all the way. Thank you, Mary Ann.

Mr. Chairman, in recent weeks, we have seen self-described spokesman of various activist groups try and convince Senators that there is a different John Ashcroft

than the man they know personally. Like a sidewalk con artist, these activist groups ask Senators: “who are you going to believe, me or your own lying eyes?” They are asking members of this body to embrace a caricature of John Ashcroft over Senators’ own close knowledge of this man’s fine record, built on this Committee—and on the Senate floor.

That is just plain wrong.

A well-respected former member of this body deserves better than that.

John Ashcroft deserves better than that. Our new President and the American people deserve better than that.

I must tell you, what I have seen in the weeks following John Ashcroft’s nomination has deeply disappointed me.

I have seen activist groups band together to wage an attack campaign against John Ashcroft. The irony is clear to all of us who are familiar with how Washington really works—this attack campaign really has nothing to do with John Ashcroft’s ability to be a great Attorney General on behalf of the American people.

It is all about advancing the activist attackers’ agendas. By targeting and setting out systematically to smear John Ashcroft, they seek to rally their own troops, raise money and secure publicity.

These slash-and-attack methods against John Ashcroft are something we have seen far too often in Washington in recent years. Something the American people are just plain sick and tired of seeing.

Let’s be perfectly clear about what they are doing: they are trying advance their own interests by engaging in the politics of personal destruction. They are trying to build themselves up by tearing John Ashcroft down. That is just plain wrong. It is a tactic we must reject.

One of the false charges thrown against John Ashcroft is that he cannot be trusted to enforce laws with which he personally disagrees. We can assume that most if not all United States Attorneys General have disagreed with some of the laws they were charged with enforcing. Why is it now that in John Ashcroft, a conservative and committed Christian, that doubts are aired—and given credence—about his ability to enforce the law?

Some activists who claim to embrace and promote religious diversity and tolerance seem unable to extend their beliefs to a conservative Christian. I thought we broke that barrier when John F. Kennedy became President and we saw that he did not put his Catholic beliefs above the law of the land. And what of our colleague Joe Lieberman, whose candidacy for Vice President and his public religious utterances tore down even more barriers? Should religious diversity and tolerance be extended only to some religions and not others? What we see in the campaign against John Ashcroft is nothing less than religious bigotry.

John Ashcroft has stated and firmly believes that his religion teaches him that he should not impose his religious beliefs on anybody else. He has a deep and abiding faith, but he also understands the preeminence of temporal law in the United States Constitution and the laws of this land. He has sought, as we all have, to change the law where he deeply believed it was inadequate or wrong.

Undoubtedly, every Member of this Committee can find votes cast or positions taken by John Ashcroft with which we disagree. I certainly can. Obviously, some of you find many issues on which you disagree legislatively with John. But that is not the point.

When you look at the record you will see that John Ashcroft believes in enforcing the law as it stands. As Missouri Attorney General, he was my lawyer when I was Governor. In 1981, despite his opposition to abortion, he issued an Opinion (Attorney General Opinion No. 5, October 22, 1981 [1981 WL 154492]), in which he ruled that the Missouri Division of Health could not release to the public information on the number of abortions performed by particular hospitals. He also ruled that in order to protect the patient-physician privilege, access to health data maintained by the Division of Health was subject to review only by Public Health officers.

Despite his personal view that life begins at conception, he issued an Opinion (Attorney General Opinion No. 175, September 23, 1980 [1980 WL 115450]), that Missouri law did not require any type of death certificate if the fetus was 20 weeks old or less.

Despite his own personal commitment to the distribution of bibles and other religious materials to assist people in developing a spiritual understanding of their relationship with God, he issued an Attorney General opinion in 1979 (Attorney General Opinion No. 8, February 8, 1979 [1979 WL 37969]) that a Board of Education has no legal authority to grant permission to any organization to distribute religious material to any or all the student body on school property.

Although he has stated his opposition to racial set-asides, he issued an Attorney General Opinion in 1980 (Attorney General Opinion No. 59, April 9, 1980 [1980 WL

115410) that allowed the Missouri Clean Water Commission to award a 15 percent state grant to the Metropolitan St. Louis Sewer District to establish a minority business enterprise program.

The John Ashcroft you and I both know will be a good attorney general. As a matter of fact, I can think of no nominee who has had more experience and better preparation for the office of Attorney General of the United States. He served with distinction as Attorney General in my State of Missouri and he was selected by his fellow Attorneys General to lead their national association.

He served with distinction as a two-term Governor, winning with huge margins in a state where Democrats have traditionally out-pollled Republicans. That tells you all you need to know about John Ashcroft's politics and values: they are the same advocated by the great majority of Americans. And it tells you how out of touch with America some of these activist opposition groups are.

John has served a term in the United States Senate and served on this very committee where he dealt with many of the issues that are before the Department of Justice.

John Ashcroft will continue to serve this nation with distinction. He knows that the legislators' job is to write the laws and that Attorneys General enforce those laws.

The American people have the right to expect something better than an Attorney General who bends the law to serve a President's political needs and personal views and I know John Ashcroft would never engage in such behavior. He will faithfully, fairly and effectively administer the laws of this great land.

I come before this committee and ask that John Ashcroft's nomination to be Attorney General be based on the content of his character. And that this committee—and the United States Senate—reject the slime campaign against this fine man.

Failure to support this nominee would not only be a disservice to John Ashcroft, it would also tarnish the reputation of this institution.

We must not let that happen.

Thank you.

Chairman LEAHY. I thank the Senator.

Senator KENNEDY. Mr. Chairman, I appreciate what Senator Bond has mentioned. I will come back during the question period, and we will have an opportunity to have an exchange with the nominee.

Chairman LEAHY. Whatever the Senator wants. It is somewhat extraordinary for somebody introducing somebody to take issue with an opening statement of a Senator on the panel, and I would give opportunity for you to respond now if you want.

Senator BOND. I would be happy to.

Senator KENNEDY. We will wait until the question period.

Chairman LEAHY. Why don't we do this? I thank all three of the introducers, and why don't I let you leave, and maybe the staff can move this around a little bit so that Senator Ashcroft could sit in the center, move the name tags around and the rest.

I thank Senator Hutchison, Senator Carnahan, and Senator Bond. I thank you for being here.

Chairman LEAHY. Senator Ashcroft, would you please stand to be sworn? Do you swear or affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth?

Senator ASHCROFT. I do.

Chairman LEAHY. Please be seated. Senator Ashcroft, before you begin your statement, it has been mentioned several times that you have family and friends here. Would you like, following our normal procedure at these things, to point out family members or others you may wish to in the audience?

Senator ASHCROFT. Mr. Chairman, if it pleases the Committee, I would make that a part of my opening remarks.

Chairman LEAHY. It is totally your choice. Go ahead.

STATEMENT OF THE NOMINEE, JOHN ASHCROFT, OF MISSOURI, TO BE ATTORNEY GENERAL OF THE UNITED STATES

Senator ASHCROFT. Mr. Chairman, Senator Leahy, Senator Hatch, members of the Committee—

Senator THURMOND. Would you speak in your loud speaker?

Senator ASHCROFT. Yes, Senator Thurmond, I will. Thank you very much.

Senator SESSIONS. You should know that by now, John.

[Laughter.]

Senator ASHCROFT. It is a case of how soon we forget. What struck me most is that I came here and I had a distinct and clear signal that being out of the Senate is different, because each other Member of the Senate was designated as “honorable,” and I’m just designated as “Senator,” and I’m trying to figure out what the difference is between being honorable and being a Senator.

Chairman LEAHY. Be careful. You may lose some votes over here.

[Laughter.]

Senator HATCH. I don’t think so.

Senator ASHCROFT. Thank you. It is a high honor for me to appear before you today for consideration as the Attorney General of the United States of America. I first want to extend my appreciation to the Senators from my home State of Missouri, Senators Bond and Carnahan, for the courtesy and kindness of participating in an introduction for me at this Committee today. And, of course, it is most pleasing that Senator Kay Bailey Hutchison of Texas would join them by adding introductory remarks on my behalf. I extend to her my sincere appreciation as well.

For 4 years I had the privilege of sitting with you on this Committee. During that time I never thought of it simply as the Judiciary Committee. Instead, I thought of it being the “Justice” Committee, for this distinguished body is the ultimate legislative voice on America justice. It was an honor to serve with you in that noble endeavor.

Today I am here in a far different capacity. President-elect George W. Bush has designated me to lead the “Justice” Department—the principal executive voice on American justice and what must be, should be, and continue to be the role model for justice the world over.

It is not only with honor, therefore, that I sit before you today; it is with an awesome sense of responsibility. For I know that, if confirmed on my shoulders will rest the responsibility of upholding American justice, a tradition that strives to bring protection to the weak, freedom to the restrained—I wasn’t going to introduce my grandson, Jimmy, at this point.

[Laughter.]

Chairman LEAHY. Jimmy, what you got going for you, there are a lot of grandparents on this panel.

Senator ASHCROFT. Thank you, Jimmy. He upstages me around the house, too. I’m not what I used to be.

Our tradition in the Justice Department that strives to bring protection to the weak and freedom to the restrained, liberty to the oppressed, and security to every citizen.

Mine will be the same mantle carried by my predecessors: by Edmond Randolph, President George Washington’s choice to be Amer-

ica's first Attorney General; by Robert Kennedy, who found within himself the courage to surmount America's historic racial intolerance and to lend powerful assistance to the burgeoning civil rights movement.

I understand the responsibility of the Attorney General's office, I revere it, I am humbled by it. And if I am fortunate enough to be confirmed as the Attorney General, I will spend every waking moment—and probably some sleeping moments as well—dedicated to ensuring that the Justice Department lives up to its heritage—not only enforcing the rule of law, but guaranteeing rights for the advancement of all Americans.

The Attorney General must recognize this: The language of justice is not the reality of justice for all Americans. My wife has helped me with anecdotes of her from her experience to understand that there are millions of Americans who wonder if justice means hostility aimed at “just us.” From racial profiling to news of unwarranted strip searches, the list of injustice in America today is still long. Injustice in America against any individual must not stand. This is the special charge of the U.S. Department of Justice.

No American should be turned away from a polling place because of the color of her skin or the sound of his name.

No American should be denied access to public accommodations or a job as a result of a disability.

No American family should be prevented from realizing the dream of home ownership in the neighborhood of their choice just because of skin color.

No American should have the door to employment or educational opportunity slammed shut because of gender or race.

No American should fear being stopped by police just because of skin color.

And no woman should fear being threatened or coerced in seeking constitutionally protected health services.

I pledge to you that if I am confirmed as Attorney General, the Justice Department will meet its special charge. Injustice against individuals will not stand. No ifs, ands, or buts. Period.

The Attorney General is charged with the solemn responsibility of serving as the attorney for the United States of America. The Attorney General is the people's counsel. The Attorney General must lead a professional, non-partisan Justice Department that is uncompromisingly fair, defined by integrity, and dedicated to upholding the rule of law. I pledge to you that if I am confirmed as Attorney General, I will serve as the Attorney General of all the people.

Today, I would like to spend a few minutes telling you a bit about myself and my family and my beliefs.

I am the grandson of immigrants. My father was a pastor and a college president. I was raised in Springfield, Missouri, in a home where all of God's children were welcome. In fact, my parents gave up their bed so many times that I thought that they actually knew all of God's children who came to visit. That lesson of hospitality and generosity was just one of many my parents urged on me.

I went to Yale University where I dreamed of playing quarterback. When I got there, I discovered that either I was slow or everybody else was really fast. So I studied hard, and I was fortunate

enough to graduate and then attend the University of Chicago Law School.

For me, the law was about the promise of justice, the promise that under law, all men, all women, all people are equal. While in Chicago, however, I did find one person I thought a little more equal than all the others, a woman of grace and charm and intellect and not insignificantly to me as a young man, a woman that I thought was the most beautiful I had ever seen. The only thing better than her, I thought, would be two of them.

[Laughter.]

Senator ASHCROFT. After rebuffing me several times, my persistence overcame her better judgment. She has stuck with me for 33 years, and members of the Committee, her name is Janet Ashcroft. I am privileged to have her with me today.

I am also pleased to tell you that she is an accomplished legal author and has spent the last 5 years teaching law in the Business Department of Howard University here in Washington, D.C.

I am also pleased as well to welcome her identical twin sister—they are not as identical as they used to be, but I could always tell them apart—Anne Giddings, to the hearing today.

Senator THURMOND. Tell her to raise her hand.

[Laughter.]

Senator ASHCROFT. Yes. Will the real Janet Ashcroft please stand up?

[Applause.]

Senator ASHCROFT. And, Anne, would you stand up with your sister, please? Thank you.

I wanted also to introduce my daughter, Martha Grace Patterson who is an attorney from Kansas City, attorney and mother, my grandson, Jimmy Patterson, who has already made his presence known to you. I regret that my eldest son, John Robert Ashcroft, whose faculty responsibilities at Forest Park Community College in St. Louis required his presence with students and cannot be with us today. Additionally, I regret that active-duty responsibilities of my son, Andrew David Ashcroft, in the United States Navy make impossible his attendance at this hearing. I am grateful for my family. They are wonderful people. They are not wonderful because of me. They are wonderful in spite of me. They are a wonderful support and help to me. I thank God for them.

Upon graduating from law school, I returned to Missouri where I taught business law at Southwest Missouri State University, and after 5 years of teaching, I embarked on a quarter-century career in public service serving the people of Missouri. In 1973, the then-Governor Kit Bond appointed me as State auditor. Two years later, then-Attorney General Jack Danforth appointed me Assistant Attorney General. I could not have had two more accomplished and distinguished mentors in public life than Jack and Kit. Beginning in 1976, I was elected to the two terms as Attorney General, then two terms as Governor, and unfortunately—well, pardon me. Just one term as the United States Senator.

In the course of the six statewide election campaigns, I came to know the people of Missouri very well. Missouri is representative of the rich diversity of the American people. The people of the Show Me State respond to the plainspoken honesty and tolerance

of men like Jack and Kit and, of course, Harry Truman. I am pleased they elected me to statewide office five times.

Eighteen years of my service in elective office have been focussed on enforcing the law, 6 years enacting the law. I know the difference between enactment and enforcement, and my record shows that.

I am here today as the Attorney General designate. I know what the office requires. I have been an Attorney General before. I understand that being Attorney General means enforcing the laws as they are written, not enforcing my own personal preference. It means advancing the national interest, not advocating my personal interest.

For example, in 1979, I issued an Attorney General's opinion stating that under the State constitution and law of Missouri, a local school board of education had no legal authority to grant permission for the distribution of religious publications to the student body on public school grounds.

On another occasion, contrary to the demands of pro-life advocates, I directed State government, the State government of Missouri, to maintain the confidentiality of abortion records because a fair reading of the law required it. Throughout my tenure, I did my level best to enforce fully and faithfully the laws as they were written and to protect the legal interests of the State of Missouri when it was attacked and when the institutions of the State were attacked. I did this without regard to any personal policy preferences, and when I left the Attorney General's office, Missouri was a State more committed to fairness and justice.

From my experience, I also understand that the citizen's paramount civil right is safety. Americans have the right to be secure in their persons, in their homes, and in their communities. Gun violence, violence against women, drug crime, sexual predators, they all threaten to deny this most fundamental of rights to be secure in the person, property, and community of individuals. It is a core responsibility that Government, led by the Attorney General and the Department of Justice, cooperating with local law enforcement officials, will secure this right.

Children don't learn in schools overrun by neighborhood violence. Jobs will not be found in communities where criminals own the streets. No American who now feels threatened should have to move in order to live in a safer neighborhood.

My record on these issues is clear and unmistakable, and my determination is unwavering. I will continue to work to deter and punish violent criminals who use guns. I will vigorously force Federal domestic violence laws and utilize the Violence Against Women Act to assist States in this effort. Likewise, we will put new vigor into the fight against the illegal drug organizations and redouble our vigilance against terrorists.

During my service as both State Attorney General and Governor, we increased the number of full-time law enforcement officers by over 60 percent. We also lengthened prison sentences for criminals and significantly increased juvenile prosecutions for serious crimes. During my tenure as Governor, we won passage for a Missouri Victim's Bill of Rights. We secured \$100 million in increased funding to combat violence against women. We also increased funding for

anti-drug programs by almost 40 percent, and three-quarters of that went for education, prevention, and for treatment.

As a Senator, I voted to deny the right to bear arms to those convicted of domestic violence. I supported increased funding for victims and helped enact legislation combatting telemarketing scams against seniors. I supported mandatory background checks for gun show sales and increased Federal funds for law enforcement at the local level. I have always been pleased by my support from law enforcement officers, those now here today for whom I am grateful and those who in past times have endorsed me most recently in my campaign for the Senate by the Missouri Federation of Police Chiefs and the St. Louis Police Officers Association. On the strength of this record and my commitment to the personal security and safety of the people of the United States of America, I pledge my commitment to secure the rights of all Americans to safety and security in their daily lives.

I also know from my service that a successful Attorney General must be able to listen and find common ground with leaders of diversely held viewpoints. Few organizations reflect the diversity and strongly held views as much as the bipartisan National Association of Attorneys General. I was honored when my fellow State Attorneys General elected me president of that association. I was humbled when they recognized me for outstanding service and presented me with the distinguished Wyman Award. I was similarly honored when the bipartisan National Governors' Association elected me to serve as their Chairman.

I know something about the role of an Attorney General. As I said earlier, the Justice Department has a special charge to protect the most vulnerable in our society from injustice. I take pride in my record of having vigorously enforced the civil rights laws as Attorney General and Governor. Not only did I enforce the law, I took proactive steps to expand opportunity. I signed Missouri's first hate crime statute. By executive order, I made Missouri one of the first States to recognize Martin Luther King Day. I led the fight to save Lincoln University, the Missouri university founded by African-American Civil War veterans.

I took special care to expand racial and gender diversity in Missouri's courts. I appointed more African-American judges to the bench than any Governor in Missouri history, including appointing the first African American on the Western District Court of Appeals and the first African-American woman to the St. Louis County Circuit Court. It was my honor to appoint the first two women to the Missouri Courts of Appeals and the first woman to the Missouri State Supreme Court, the only woman ever to have been appointed to that court.

No part of the Department of Justice is more important than the Civil Rights Division. I look forward to the President's appointment with your advice and consent of a talented and dedicated leader of that division. It is essential that such strong leadership pursue fair treatment for all Americans.

Before leaving the topic of civil rights, I want to address an issue that has been raised in the weeks since President Bush nominated me to this post. Some have suggested that my opposition to the appointment of Judge Ronnie White, an African-American Missouri

Supreme Court judge, to a lifetime term on the Federal bench was based on something other than my own honest assessment of his qualifications for the post.

During my 8 years as Governor, I was the appointing authority for judges. As I have just noted, I exercised the power with special care to promote racial diversity on the Missouri State court bench. Because of my experience as Governor, when I became Senator, I approached the judicial confirmation process with both the appropriate deference due an executive and also a personal commitment to ensuring diversity on the bench. Of the approximately 1,686 Clinton Presidential nominees, both judicial and non-judicial, voted on by the Senate, I voted to confirm all but 15. I voted to approve every Cabinet nomination made by the President of the United States. Of President Clinton's 230 judicial nominees, I voted to confirm 218 of them. Perhaps it is needless to say, but I had philosophic disagreements with many, if not most, of those judicial nominees. But I think the record of votes stands for itself.

On the floor of this body, I voted to confirm 26 out of 27 African-American judicial nominees. My opposition to Judge Ronnie White was well founded. Studying his judicial record, considering the implications of his decisions, and hearing the widespread objections to his appointment from a large body of my constituents, I simply came to the overwhelming conclusion that Judge White should not be given lifetime tenure as a U.S. District Court judge. My legal review revealed a troubling pattern of his willingness to modify settled law in criminal cases. Fifty-three of my colleagues reached the same conclusion. While I will not take time during my brief opening statement to discuss particular matters in Judge White's record that compelled me to my decision, I welcome the opportunity to discuss those matters later.

Another issue merits specific mention in these opening remarks, and that is the issue that we would identify with the case of *Roe v. Wade* which established a woman's constitutional right to an abortion.

As is well known, consistent with Republican United States Attorneys General before me, I believe *Roe v. Wade*, as an original matter, was wrongly decided. I am personally opposed to abortion, but as I have explained this afternoon, I well understand that the role of Attorney General is to enforce the law as it is, not as I would have it. I accept *Roe* and *Casey* as the settled law of the land. If confirmed as Attorney General, I will follow the law in this area and in all other areas. The Supreme Court's decisions on this have been multiple, they have been recent, and they have been emphatic.

I have been entrusted with public service for more than 25 years. It is a responsibility I have honored and a trust that I believe I have kept. During those years, I have not thought of myself as a public servant of some of the people, but a keeper of the public trust for all the people. If I become United States Attorney General, I again commit to enforcing the law, all of the law, for all of the people.

I appear here today as a man of faith, a man of common-sense conservative beliefs, a man resolutely committed to the American

ideal. On occasion, some of you have disagreed with my views. You have done so respectfully, and I thank you.

In turn, I hope that my disagreements with you have reciprocated your respect, but whether we are conservatives or liberals, religious or secular, Republicans or Democrats, what we have in common is far greater and more important than what divides us. As Americans, we live under a Constitution uniting us under a rule of law, a Constitution that allows us to live side by side, in harmony, working for the mutual interest of all Americans and our communities. It is, indeed, adherence to the rule of law that is the basis of our democracy.

Never in the history of the world has any country so thoroughly dedicated itself to respecting laws, for it is in respecting laws that we respect the individual dignity and freedom of people. Nowhere in Government is thorough obedience to the rule of law more powerfully evident and more urgently necessary than at the Department of Justice.

If I am fortunate enough to be confirmed by the U.S. Senate and to become the next United States Attorney General, I pledge to you that strict enforcement of the rule of law will be the cornerstone of justice.

As a man of faith, I take my word and my integrity seriously. So, when I swear to uphold the law, I will keep my oath, so help me God.

[The biographical information of Senator Ashcroft follows:]

1. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).
John David Ashcroft
2. State the position for which you have been nominated.
U.S. Attorney General
3. Address: List current place of residence and office address(es).

- 5603 West Farm Road 54 Willard, MO 65781	22 3 rd Street, NE Washington, DC 20002
1800 G Street, NW Washington, DC 20270	
4. Date and place of birth.
May 9, 1942; Chicago, IL
5. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).
Married to Janet E. Ashcroft (nee Roede)
6. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Yale University: 9/60 - 6/64, A.B. 6/64

The Law School, University of Chicago, 10/64 - 6/67, J.D. 6/67
7. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college (or from age 21, if that is easier.).

KTTS-TV, 1964

N. E. Sommers Construction Company, 1965, 1966

University of Chicago Board of Trustees, 1966-1967

Ashcroft & Ashcroft, 1967-1972

Southwest Missouri State University, 1967-1973

State of Missouri, 1973-1993
 Suelthaus & Kaplan, Missouri, 1993-1994
 United States Senate, 1995-2001

8. Military Service: have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No

9. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Both undergraduate and graduate education funded by a variety of scholarships.

Norman Buck Award, Yale U. 1964

Wyman Award, National Association of Attorneys General, 1983

Honorary Doctor of Humane Letters, Oral Roberts University, 1985

Honorary Doctor of Education, Missouri Western State College, 1986

Honorary Doctor of Humanities, Oklahoma Christian College, 1986

Honorary Doctor of Education, Southwest Baptist College, 1986

"OTHERS" Award, Salvation Army, 1987

Tree of Life Award, Jewish National Fund, 1987

Excellence in Governance Award, Central Missouri State University, 1987

HUD Award, Governor's Conference on Economic Development, 1987

Distinguished Service Award as Education Commission of the States Chairman, 1988

Distinguished Citizen Award, Ozark Council Boy Scouts, 1988

Merit Award, Jewish Center for the Aged, 1988

Honorary Doctor of Humane Letters, Harris-Stowe State College, 1989

The General Superintendent's Medal of Honor, Assemblies of God, 1989

Honorary Doctor of Laws, William Jewell College, 1990

Honorary Doctor of Laws, Westminster College, 1991

Freedom Fighter Award, California Republican Assembly, 1991

Layman of the Year Award, National Association of Evangelicals, 1991

Robert C. Goshorn Award, 1993

Honorary Doctor of Laws, Seattle Pacific University, 1993

Honorary Doctor of Humane Letters, Regent University, 1993

Child Abuse Prevention Award, National Cmte to Prevent Child Abuse, 1995

Taxpayer Superhero Award, Citizens Against Government Waste, 1995-1999

Friend of the Family Award, Christian Coalition, 1995, 1996, 1998

National Sheriffs' Association President's Award, 1996

Guardian of Small Business Award, Nat'l Federation of Independent Business, 1995,

'96, '98

Christian Statesman of the Year, Center for Christian Statesmanship, 1996

Friend of the Farm Bureau Award, American Farm Bureau, 1996, 1998

Spirit of Enterprise Award, US Chamber of Commerce, 1996, 1997

Champion of the Merit Award, Associated Builders and Contractors, 1996

Friend of the Farm Bureau Award, Missouri Farm Bureau, 1997, 1998
 Ronald Reagan Free Enterprise Award, CA Republican Party, 1997
 Friend of the Bowery Mission Transitional Center (NY homeless shelter), 1998
 Honorary Doctor of Humanities, Louisiana Baptist University, 1998
 American Education Preservation Award, American Assn of Christian Schools, 1998
 Taxpayer's Friend Award, National Taxpayers Union, 1998, 1999
 1998 Statesman of the Year, Concerned Women for America
 Friend of the Taxpayer Award, Americans for Tax Reform, 1995-1999
 Guardian of Seniors' Rights Award, 60 Plus Association, 1998
 Home School Freedom Award, Home School Legal Defense Assn, 1998
 Impact America Award from Point Loma University, October 17, 1998
 Manufacturing Legislative Excellence Award, National Assn of Manufacturers, 1998
 Honorary Doctorate, Bob Jones University, 1999
 Ronald Reagan Award, Conservative Political Action Conference, 1999
 Courage and Integrity Award, American Life League, 1999
 Spirit of Wireless Award, Personal Communications Industry Assn, 1999
 Missouri Public Service Award, National Council on Alcoholism and Drug
 Dependence of greater Kansas City, 1999
 1999 Congressional Leadership Award, National Center for Victims of Crime
 Outstanding Service to Agriculture Award, Missouri Farm Bureau, 1999
 Outstanding Children's Advocate Award, Cardinal Glennon Children's Hospital,
 2000
 Golden Plow Award, American Farm Bureau, 2000
 Wheat Champion Award, National Assn of Wheat Growers, 2000
 Distinguished Service Award, Missouri Primary Care Association, 2000
 Super Friend of Seniors Award, 60 Plus Association, 2000
 Hero of the Taxpayer Award, Americans for Tax Reform, 2000

10. Bar Associations: List all bar associations or legal or judicial-related committees or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (March 12, 1970 through September 25, 1995)
 American Bar Association House of Delegates (August 1977 through August 1979)
 Missouri Bar Association (From September 2, 1967 on)
 St. Louis County Bar Association (dates unknown)
 Cole County Bar Association (1975-76)
 National Association of Attorney Generals (1976-1984)
 President of the National Association of Attorney Generals (June 27, 1981 - July 18, 1982)
 Immediate Past-President of the National Association of Attorney Generals (July 18, 1982 - June 25, 1983)

11. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

There may be numerous organizations that may engage in lobbying of which I am technically a member as a result of my long-time public service but in which I am inactive. Some of these include:

National PTA
Aircraft Owners & Pilots Association
National Rifle Association

12. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

- Supreme Court of Missouri (September 2, 1967-present)
- Federal District Court for the Western District of Missouri (September 12, 1975-present)
- Federal District Court for the Western District of Missouri (Holds membership as a result of holding government office, therefore no official date of original admission. Would have been eligible earliest as Assistant Attorney General of Missouri in 1975.)
- U.S. Supreme Court (March 22, 1976 - present)

13. Published Writings: List the titles, publishers, and dates of books, articles, reports or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Books and Pamphlets

Ashcroft, John. Antitrust Enforcement in Missouri. Missouri Attorney General's office. Undated.

Ashcroft, John. "For the People," A Compliance Guide to the Missouri Open Meetings Act. Missouri Attorney General's Office, undated.

Ashcroft, John D., with Gary Thomas. Lessons from a Father to His Son. Nashville: T. Nelson Publishers, 1998.

Ashcroft, John D. and Janet E. Ashcroft. Law for Business. 13th and 14th ed. Cincinnati: West Educational Publishing Co., 1999 and to be published 2002.

- Ashcroft, John D. and Janet E. Ashcroft. Instructor's Manual with Transparency Masters, Law for Business. 13th ed. Cincinnati: West Educational Publishing Co., 1999.
- Ashcroft, John D. and Janet E. Ashcroft. Test Bank, Law for Business. 13th ed. Cincinnati: West Educational Publishing Co., 1999.
- Ashcroft, John D., and Janet E. Ashcroft. Law for Business (formerly College Law for Business). 11th and 12th ed. Cincinnati: South-Western Publishing Co., 1992 and 1996.
- Ashcroft, John D. and Janet E. Ashcroft. Instructor's Manual, Law for Business. 11th and 12th ed. Cincinnati: South-Western Publishing Co., 1992 and 1996.
- Ashcroft, John D. and Janet E. Ashcroft. Test Bank, Law for Business. 11th and 12th ed. Cincinnati: South-Western Publishing co., 1992 and 1996.
- Ashcroft, John D., and Janet E. Ashcroft. College Law for Business. 8th, 9th and 10th ed. Cincinnati: South-Western Publishing Co., 1976, 1981 and 1987.
- Ashcroft, John D. and Janet E. Ashcroft. Study Reports, College Law for Business. 8th, 9th and 10th ed. Cincinnati: South-Western Publishing Co., 1976, 1981, and 1987.
- Ashcroft, John D., and Janet E. Ashcroft. Instructor's Manual, College Law for Business. 8th, 9th and 10th ed. Cincinnati: South-Western Publishing Co., 1976, 1981 and 1987.
- Ashcroft, John D., and A. Aldo Charles. College Law for Business. 7th ed. Cincinnati: South-Western Publishing Co., 1971.
- Ashcroft, John D., and A. Aldo Charles. Instructor's Manual, College Law for Business. 7th ed. Cincinnati: South-Western Publishing Co., 1971.
- Ashcroft, John D., and A. Aldo Charles. Study Reports, College Law for Business. 7th ed. Cincinnati: South-Western Publishing Co., 1971.
- Ashcroft, John D., and Janet E. Ashcroft. It's the Law. 1st, 2nd and 3rd ed. Cincinnati: South-Western Publishing Co., 1979, 1985 and 1991.

Supplemental Materials

- Ashcroft, John D., and Janet E. Ashcroft. Achievement Test, Law for Business. 13th ed. Cincinnati: West Educational Publishing Co., 1999.
- Ashcroft, John D., and Janet E. Ashcroft. Achievement Test, Law for Business. 11th and 12th ed. Cincinnati: South-Western Publishing Co., 1992 and 1996.

Ashcroft, John D., and Janet E. Ashcroft. Achievement Test, College Law for Business. 8th, 9th and 10th ed. Cincinnati: South-Western Publishing Co., 1976, 1981 and 1987.

Ashcroft, John D., and A. Aldo Charles. Achievement Test, College Law for Business. 7th ed. Cincinnati: South-Western Publishing Co., 1971.

Representative Articles

Ashcroft, John D. "The New Millenium." Vital Speeches of the Day, 65 (May 15, 1999), 450-5.

Ashcroft, John D. "Courting Disaster." Vital Speeches of the Day, 63 (May 1, 1997), 421-3.

Ashcroft, John D. "Should the Senate Approve S. 2056, the Employment Non-Discrimination Act?" Congressional Digest, 75 (November 1996), 283+.

Ashcroft, John D. "The Decolonization of Welfare." Vital Speeches of the Day, 61 (July 15, 1995), 600-2.

Ashcroft, John. "A Simple Way Back to Power." The Washington Post, November 17, 1992, A-17.

Ashcroft, John. "The Tenth Amendment: Dual Sovereignty to Dead Letter." Area Development Sites and Facility Planning, May, 1992, 80-82.

Ashcroft, John. Foreword to Quicken Your Pace, by John B. Aker. Wheaton, Ill.: Slavic Gospel Press, 1992.

Ashcroft, John. "I'm Listening." Moody Monthly, May, 1991, 32.

Ashcroft, John. "Redefining the Possible." In Governors on Governing, ed. Robert D. Behn, 66-67, Washington, D.C.: National Governors' Association, 1991.

Ashcroft, John. Editorial on earthquake preparedness for publication by Missouri's major daily newspapers, September, 1990.

Ashcroft, John. Editorial on state rankings for publication by Missouri's major daily newspapers, June, 1990.

Ashcroft, John. Editorial on Earth Day for publication by Missouri's major daily newspapers, April, 1990.

Ashcroft, John. "Thinking About the Earth." Rural Missouri, March, 1990, 3.

Ashcroft, John. Editorial on ethics laws for publication by Missouri's major daily newspapers, February, 1990.

Ashcroft, John. "Missouri Implements Innovations to Address Financial Challenges." Jefferson City News-Tribune, July 3, 1989, sec. "The Statesman," p. 11.

Ashcroft, John. "Missouri: Gateway to the Future." Friendly Exchange, August, 1988, 35.

Ashcroft, John. "Values Provide Guidance to Navigate Uncertain Future." Jefferson City News-Tribune, January 31, 1988, sec. A, p. 4.

Ashcroft, John. "Missouri Construction Prospects Look Bright." Modern Builder, November-December, 1987, 42.

Ashcroft, John. "Governor Ashcroft Chooses Veterans Day to Announce Proposed Veterans Memorial." Missouri Legionnaire, November, 1987, 1 & 2.

Ashcroft, John. "A Message From Our Governor." The Assembly Messenger, July-August, 1987, 2.

Ashcroft, John. "Student Assessment: A Measurement of Achievement." AACJC Journal, June/July, 1987, 5.

Ashcroft, John. "Low Literacy Levels: A Major Barrier to Productive Work." Governors' Weekly Bulletin, February 6, 1987, 1-2.

Ashcroft, John. "Commitment To State's Future Takes Resource Investment Now." Missouri Republican, February, 1987, 4.

Ashcroft, John. "Building Opportunity for Missouri." Jefferson City News-Tribune, January 25, 1987, sec. B, p. 2.

Ashcroft, John D. "Does a Degree Tell Us What a Student Has Learned?" Phi Delta Kappan, 68 (November, 1986), 225-7.

Ashcroft, John. "Does a Degree Tell Us What a College Student Has Learned?" Article for publication by Missouri's major daily newspapers, September, 1986.

Ashcroft, John. "Job Development Remains Top Priority." The Labor Tribune, August 28, 1986, 14, 43.

Ashcroft, John. "Ashcroft: State Has What it Needs to Compete." Springfield Business Journal, January 6, 1986, 13-14.

Ashcroft, John D. "Stand Firm in Integrity." Pentecostal Evangel, November 10, 1985, 8-9.

Ashcroft, John. "Possible Alternatives to Forced Busing." In A Blueprint for Judicial Reform, ed. Patrick B. McGuigan and Randall R. Rader, 209-215. Washington, D.C.: The Free Congress Research and Education Foundation, Inc., 1981.

Ashcroft, John. "A Renewed Commitment to State Antitrust Enforcement and a State Policy of Competition: The Missouri Experience." Missouri Law Review, 46 (Summer, 1981), 469-516.

Ashcroft, John. "The Attorney General on 'Crime Prevention.'" Retail Lines, July, 1980, 4-5.

Ashcroft, John. "The Wisdom of Solomon." Interscholastic Athletic Administration, Spring, 1980, 5-6.

Ashcroft, John, and Daniel P. Card III. "Quo Warranto." The St. Louis Bar Journal, 24 (Winter, 1978), 22-30.

Selected Reports Issued

(Generated during chairmanship of reporting organization)

Families First. Report of the President's National Commission on America's Urban Families, January, 1993.

Redefining the Possible: Achieving the National Education Goals. Report of the National Governors' Association, August, 1992.

The Preservation of Excellence in American Higher Education: The Essential Role of Private Colleges and Universities. Report of the Education Commission of the States Task Force on State Policy and Independent Higher Education, 1990.

Drawing in the Family, Family Involvement in the Schools. Report of the Education Commission of the States, 1988.

"Task Force on Adult Literacy." In Making America Work: Productive People Productive Policies, Bringing Down the Barriers. Report of the National Governors' Association Task Force on Adult Literacy, August, 1987.

Annual State Publications

Executive Budget FY 86 to 93. January, 1985 to January, 1992.

Budget in Brief and Related Policy Proposals

Foundations for the Future: Facing Tomorrow--Educational Foundations for the Future, January, 1992.

Foundations for the Future: Health Care Agenda--Access, January 1992.

Foundations for the Future: Restoring Expectations for Family Responsibility, January 1991.

Medicaid: Meeting the Challenge of Rising Costs, January 1991.

Challenge and Opportunity, January 1991.

Direction for Excellence: Missouri's Education Reforms, January 1990.

Direction for Welfare Reform: Missouri's Learnfare Initiatives, January 1990.

Direction for the Decade, January 1990.

Missouri Tobacco Excise Taxes, January 1989.

The Kansas City Missouri School District: A Special Review, January 1989.

Commitment to Progress, January 1989.

Progress for Missouri's Excellence in Education, January 1989.

Time on Task in Missouri's Public Schools, January 1988.

Progress for Missouri, January 1988.

Learnfare and Welfare to Work, January 1988.

Building Missouri Opportunity, January 1987.

Time on Task in Missouri's Higher Education, December 1987.

Implementing Excellence, January 1986.

Legislative and Budget Program, January 1985.

End of Legislative Reports

Facing Tomorrow: Foundation for the Future, May 1992.

Challenge and Opportunity, May 1991.

Direction for the Decade, May 1990.

Commitment to Progress, May 1989.

Progress for Missouri, April 1988.

Building Missouri Opportunities, June 1987.

Implementing Excellence, April 1986.

A Foundation for the Future, June 1985.

Other Selected State Reports

A Working Missouri: The Ashcroft Years, 1985-1993, 1993.

Measuring Missouri's Student Achievement: Assessment of Key Skills and Core Competencies, October 1991.

Stronger Families for a Strong Missouri: A New Vision for Children's Services, October 1991.

Governor Ashcroft's Drug Control Strategy, Part Three: Making the Right Decisions, December 1989.

Governor Ashcroft's Drug Control Strategy, Part Two: Drug Users Create Drug Pushers, November 1989.

Governor Ashcroft's Drug Control Strategy, Part One: Help and Hope for Those Who Are Addicted to Drugs, November 1989.

Summary Responses to the Recommendations of the Missouri Opportunity 2000 Commission, January 1988.

MO Says NO . . . to Alcohol and Drug Abuse, March 1987.

14. Health: What is the present state of your health? List the date of your last physical examination.

Healthy, 12/2000

15. Public Office: State (chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Missouri State Auditor, 1/73 - 1/75; appointed by Governor Kit Bond

Missouri Attorney General, 12/76 - 1/85; elected

Governor of MO, 1/85 - 1/93; elected

U.S. Senator, 1/95 - 1/01; elected

Unsuccessful candidacies:

U.S. House of Representatives, 1972

Missouri State Auditor, 1974

U.S. Senate, 2000

16. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. Whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

Did not serve as a clerk to a judge.

2. Whether you practiced alone, and if so, the addresses and dates;

Very limited, part-time general practice; 626 W. Norton Rd, Springfield, MO; 9/67-9/68

3. The dates, names and addresses of law firm or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

9/68-1/73, Ashcroft & Ashcroft; Landmark Bldg., McDaniel Bldg., Woodruff Bldg., Springfield, MO; partner

4/72 and 8/72-1/73, Southwest Missouri State University,
Springfield, MO; Coordinator for Judicial Affairs

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

9/67-1/73: General limited, part-time practice
 1/75-approx 4/76: Appellate representation for state of MO Dept. of Revenue and criminal appeal
 12/76-1/85: Attorney General of MO, directed legal representation for state of MO
 2/93-12/94: Counselor to other attorneys and occasionally participated in litigation with them

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

State agencies, small businesses and small business proprietors.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequency of court appearance varied with greatest frequency while Assistant Attorney General, 1/75-4/76.

2. What percentage of these appearances was in:

- (1) federal courts;
Less than 10%
 (2) state courts of record;
Greater than 90%
 (3) other courts.
0

3. What percentage of your litigation was:

- (1) civil;
For cases that I personally litigated, approximately 90%
 (2) criminal.
For cases that I personally litigated, approximately 10%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

5. What percentage of these trials was:

- (1) jury;
- (2) non-jury.

17. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (1) the date of representation;
- (2) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (3) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The most significant matters I litigated were during the time I was Assistant Attorney General (1/1975-4/1976) and represented the state of Missouri and its Department of Revenue. It may be noted that while I did not litigate the case, I argued *Ashcroft v. Planned Parenthood*, U.S. Supreme Court, 1983.

18. **Legal Activities:** In addition to those matter described in response to question 17, describe the most significant legal activities you have pursued. Describe the nature of your participation in this question. Please omit any information protected by the attorney-client privilege unless the privilege has been waived.

As Attorney General of Missouri I issued Missouri AG opinions. As Governor of Missouri I signed bills into law.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

	Starting
Missouri State Employees Retirement System	2000
State of MO Deferred Comp.	2014
Federal Employee Retirement	2004 or 2005
Thrift Savings Plan	2014
Book royalties with Thomson Publishers	Continuing

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I will seek and follow the advice of an agency ethics official if confronted with a conflict of interest in the performance of my duties.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached 1999 U.S. Senate Public Financial Disclosure Report; the current SF 278 is being delivered directly to the Committee by the Office of Government Ethics (OGE).

5. Please complete the attached financial net worth statement in detail. Add schedules as called for.

See attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign,

Campaign	Candidate	Date	My Title & Responsibilities
U.S. House of Representatives, 7 th District of MO	John D. Ashcroft	1972	candidate—campaign
MO State Auditor	John D. Ashcroft	1974	candidate—campaign
MO Attorney General	John D. Ashcroft	1976	candidate—campaign
MO Attorney General	John D. Ashcroft	1980	candidate—campaign
Governor of MO	John D. Ashcroft	1984	candidate—campaign
Governor of MO	John D. Ashcroft	1988	candidate—campaign
U.S. Senator from MO	John D. Ashcroft	1994	candidate—campaign
U.S. Senator from MO	John D. Ashcroft	2000	candidate—campaign

There have been numerous other campaigns for which I have made public appearances, participated in fundraisers, made endorsements and political advertisements and the like. I have no specific record of these activities.

FINANCIAL STATEMENT
NET WORTH

ASSETS		LIABILITIES	
Cash on hand & in banks	522,250	Notes payable to banks-secured	0
U.S. Government securities	1,500	Notes payable to banks-unsec.	0
Listed securities	738,180	Notes payable to relatives	0
Unlisted securities	82,550	Notes payable to others	0
Accounts & notes receivable:		Accounts and bills due	0
Due from relat.'s & frds.	0	Unpaid income tax	0
Due from others	0	Other unpaid tax and interest	0
Doubtful	0	Real est. mtg's payable	158,000
Real estate owned	1,320,000	Chattel mtg's & other liens	0
Real estate mtg's receivable	0	Other debts--itemize:	
Autos & other pers. Property	120,400		
Cash value life insurance	87,460		
Other assets—itemize:			
Thrift Savings Plan	112,520		
Spouse's Retirement	250,970	Total liabilities	158,000
		Net worth	3,077,830
Total assets	3,235,830	Total liabilities & net worth	3,235,830
CONTINGENT LIABIL'S	NONE	GENERAL INFORMATION	
Endorser, comaker or guarator		Are any assets pledged?	NO
On leases or contracts Legal claims		Are you defendand in any suits or legal actions?	NO
Provision for Federal Income Tax		Have you ever taken bankruptcy?	NO
Other special debt			

I thank the nominations investigator for assistance in preparing this statement which he advised should be done on a cash basis, rounded to the nearest \$10 and based on the most recent statements.

Listed Securities for Net Worth Statement

A T & T Corp	\$4,230.
Amer. Cent. 20 th Cent. Ultra	23,370.
Avaya Inc.	120.
AXA Financial, Inc.	1,120.
Duke Energy Corp.	17,050.
EuroPacific Growth Fund	7,500.
Fidelity Equity Income	81,470.
Fidelity Money Mkt. Treas. CI III	1,180.
Fundamental Investors—Class A	4,180.
Icon Asia Region	14,990.
Icon Consumer Discretionary Fund	7,140.
Icon Energy	13,440.
Icon Financial Fund	42,310.
Icon Fund Class I	24,210.
Icon Healthcare	40,270.
Icon Industrials Fund	22,820.
Icon Information Technology Fund	6,090.
Icon Leisure and Consumer Staples Fund	40,790.

Icon Materials Fund	6,050.
Icon North Europe Region	15,640.
Icon Short Term Fixed Income	2,800.
Icon South Europe Region	7,780.
Icon Telecommunications & Utilities	5,860.
John Hancock PPD Fd. II	2,640.
Lucent Technologies Inc.	1,730.
Nationwide Fund	55,910.
Nationwide Money Market Fund	30,140.
NCR Corp New	290.
Nicor Inc.	8,720.
Pilgrim Am. Prime Rt.	7,500.
Pioneer Fund	15,600.
Placer Dome Inc.	1,930.
Provident Institutional Funds	13,060.
Put Investors Fund Cls A	49,020.
Quest Comm. Intl. Inc.	13,570.
Reliant Energy Inc. Texas	17,330.
Scottish Pwr Plc Spn Adr	3,150.
SMALLCAP World Fund	15,430.

The Growth Fund of America—A	18,920.
Vanguard Total Stock Mkt. In. Fund	83,880.
Vodafone Airtouch Spdr	8,950.
	<u>\$738,180.</u>

Real Estate Mortgages Payable
for Net Worth Statement

Mortgage on Washington, DC house	\$158,000.
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Real Estate Owned for Net Worth Statement

Farm	\$450,000.
House in Washington	500,000.
Lake house	250,000.
3 undeveloped lots in Springfield	120,000.
	<u>\$1,320,000.</u>

Values based on estimates.

U.S. Government Securities
for Net Worth Statement

\$1,000 Series HH bond	\$1,000
\$500 Series HH bond	500
	<u>\$1,500</u>

Unlisted Securities for Net Worth Statement

High Equity Partners, Series 85	\$6,500.
Boston Financial Tax Credit Fund Plus	10,000.
Century Pacific Housing Fund-I	10,000.
Diversified Historic Investors 1990	10,000.
Diversified Historic Investors VI	10,000.
Diversified Historic Investors VII	10,000.
Christian Fidelity Life Ins. Co.	20,050.
Aircraft Income Partners L.P.	6,000.
	<u>\$82,550.</u>

UNITED STATES SENATE PUBLIC FINANCIAL DISCLOSURE REPORT FOR ANNUAL AND TERMINATION REPORTS

Last Name ASHCROFT	First Name and Middle Initial JOHN D.	Senate Office / Agency in Which Employed U.S. SENATE	Annual Report Calendar Year Covered by Report 1999
Senate Office Address (Number, Street, City, State, and ZIP Code) 316 HART SENATE OFF BLDG, WASHINGTON, DC 20510		Senate Office Telephone No. (Include Area Code) (302) 844-6154	
Termination Report Termination Date (Mo., Day, Yr.)		Prior Office / Agency in Which Employed	

AFTER READING THE INSTRUCTIONS - ANSWER EACH OF THESE QUESTIONS AND ATTACH THE RELEVANT PART

Did any individual or organization make a donation to charity in lieu of any reportable gift, or article in the reporting period?
If yes, Complete and Attach PART I. YES NO

Did you or your spouse have earned income (e.g., salaries or fees) or non-investment income of more than \$200 from any reportable source in the reporting period?
If yes, Complete and Attach PART II. YES NO

Did you, your spouse, or dependent child receive any reportable gift in the reporting period (i.e., aggregating more than \$200 and not otherwise exempt)?
If yes, Complete and Attach PART III. YES NO

Did you, your spouse, or dependent child purchase, sell, or exchange any reportable asset worth more than \$1,000 in the reporting period?
If yes, Complete and Attach PART IV. YES NO

Did you, your spouse, or dependent child receive any reportable gift in the reporting period (i.e., aggregating more than \$200 and not otherwise exempt)?
If yes, Complete and Attach PART V. YES NO

Did you, your spouse, or dependent child receive any reportable travel or reimbursements in excess of the reporting period (i.e., worth more than \$200 from one source)?
If yes, Complete and Attach PART VI. YES NO

Did you, your spouse, or dependent child have any reportable liability (more than \$10,000) during the reporting period?
If yes, Complete and Attach PART VII. YES NO

Did you hold any reportable positions on or before the date of filing in the current calendar year?
If yes, Complete and Attach PART VIII. YES NO

Do you have any reportable agreement or arrangement with an outside entity?
If yes, Complete and Attach PART IX. YES NO

If this is your FIRST Report, Did you receive compensation of more than \$5,000 from any reportable source in the reporting period?
If yes, Complete and Attach PART X. YES NO

File this report and any amendments with the Secretary of the Senate, Office of Public Records, Room 232, Hart Senate Office Building, U.S. Senate, Washington, D.C. 20510. \$200 Penalty for filing more than 30 days after due date.

This Financial Disclosure Statement is required by the Ethics in Government Act of 1978, as amended. The statement will be made available by the Office of the Secretary of the Senate to any requesting person upon written application and will be reviewed by the Select Committee on Ethics. Any individual who knowingly and willfully falsifies, or who knowingly and willfully fails to file this report may be subject to civil and criminal sanctions. (See 5 U.S.C. app. 6, 104, and 18 U.S.C. 1001.)

Certification I CERTIFY that the statements I have made are true and correct, and that I have completed and attached to this report the schedules for my complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual 
Date (Month, Day, Year) 5-8-2000	
For Official Use Only - Do Not Write Below This Line It is the opinion of the reviewer that the statements made in this form are in compliance with Title 1 of the Ethics in Government Act.	
Signature of Reviewing Official Date (Month, Day, Year)	

Secretary of the Senate
U.S. SENATE
H.D.

For Official Use Only - Do Not Write Below This Line

PART I. PAYMENTS TO CHARITABLE ORGANIZATIONS IN LIEU OF HONORARIA

Date	Name of Source	Address	Speech, Article, or Appearance	Amount
9/22/99	The K-Mart Family Foundation	Troy, MI	Appearance	\$2,000

PART II. EARNED AND NON-INVESTMENT INCOME

Name of Income Source	Address	Type of Income	Amount
Howard University (spouse)	Washington, DC	Salary	

PART IIIA. PUBLICLY TRADED ASSETS AND UNEARNED INCOME SOURCES

BLOCK A Identity of Publicly Traded Assets And Unearned Income Sources	BLOCK B Valuation of Assets	Type of Income	BLOCK C Amount of Income
Merrill Lynch, Inc.	\$15,001 - \$50,000	Interest	\$1,001 - \$2,500
Fidelity Equity Income	\$50,001 - \$100,000		None (or less than \$201)
Nationwide Money Market Fund	\$15,001 - \$50,000		None (or less than \$201)
Nationwide Fund	\$50,001 - \$100,000		None (or less than \$201)
Provident Institutional Funds	\$1,001 - \$15,000		None (or less than \$201)
Pioneer Fund	\$1,001 - \$15,000	Excepted Invest. Fund	\$201 - \$1,000
Amer. Cent. 20 th Cent. Ultra	\$15,001 - \$50,000		None (or less than \$201)
A T & T Corp.	\$1,001 - \$15,000		None (or less than \$201)
Duke Energy Corp.	\$1,001 - \$15,000	Dividends	\$201 - \$1,000
John Hancock PPD Fd. II	\$1,001 - \$15,000	Dividends	\$201 - \$1,000
Vodafone Airtouch Spdadr	\$1,001 - \$15,000		None (or less than \$201)
Lucent Technologies Inc.	\$1,001 - \$15,000		None (or less than \$201)
Nicor Inc.	\$1,001 - \$15,000	Dividends	\$201 - \$1,000

Scottish Pwr Plc Spn. Adr	\$1,001 - \$15,000		None (or less than \$201)
Pacificorp Oregon	None (or less than \$1,000)	Dividends	\$201 - \$1,000
Placer Dome Inc.	\$1,001 - \$15,000		None (or less than \$201)
MediaOne Grp., Inc.	\$1,001 - \$15,000		None (or less than \$201)
U S West, Inc. "New"	\$1,001 - \$15,000	Dividends	\$201 - \$1,000
Pilgrim Am. Prime Rt.	\$1,001 - \$15,000	Dividends	\$201 - \$1,000
Reliant Energy Inc. Texas	\$1,001 - \$15,000	Dividends	\$201 - \$1,000
EuroPacific Growth Fund	\$1,001 - \$15,000	Excepted Invest. Fund	\$201 - \$1,000
SMALLCAP World Fund	\$1,001 - \$15,000		None (or less than \$201)
Thomas Nelson Inc.	None (or less than \$1,000)	Royalty	\$12,071
Washington Mutual Investors Fund	\$1,001 - \$15,000	Excepted Invest. Fund	\$201 - \$1,000
The Growth Fund of America	\$1,001 - \$15,000	Excepted Invest. Fund	\$201 - \$1,000
Put Investors Fund Cls A	\$50,001 - \$100,000		None (or less than \$201)
Icon Basic Materials	\$15,001 - \$50,000		None (or less than \$201)

Icon Asia Region	\$15,001 - \$50,000	None (or less than \$201)
Icon Consumer Cyclical	\$15,001 - \$50,000	None (or less than \$201)
Icon Energy	\$1,001 - \$15,000	None (or less than \$201)
Icon Financial Services	\$1,001 - \$15,000	None (or less than \$201)
Icon Healthcare	\$15,001 - \$50,000	Excepted Invest. Fund
Icon Leisure	\$15,001 - \$50,000	Excepted Invest. Fund
Icon Short Term Fixed Income	\$1,001 - \$15,000	None (or less than \$201)
Icon North Europe Region	\$15,001 - \$50,000	Excepted Invest. Fund
Icon South Europe Region	\$1,001 - \$15,000	None (or less than \$201)
Icon Technology	\$15,001 - \$50,000	Excepted Invest. Fund
Icon Telecommunications & Utilities	\$1,001 - \$15,000	Excepted Invest. Fund
Icon Transportation	\$1,001 - \$15,000	Excepted Invest. Fund
Vanguard Total Stock Mkt. In. Fund	\$15,001 - \$50,000	Excepted Invest. Fund

Assets were omitted because they met the three-part test for exemption described in the instructions.

PART IIIB. NON-PUBLICLY TRADED ASSETS AND UNEARNED INCOME SOURCES

BLOCK A Identity of Non-Publicly Traded Assets And Unearned Income Sources	BLOCK B Valuation of Assets	BLOCK C Type of Income	Amount of Income
Farm property, Willard, MO	\$250,001 - \$500,000	Rent	\$5,001 - \$15,000
High Equity Partners, Series 85, NY, NY (commercial real estate)	\$1,001 - \$15,000		None (or less than \$201)
Boston Financial Tax Credit Fund Plus, Boston, MA (low income housing)	\$1,001 - \$15,000		None (or less than \$201)
American Cable TV Investors 4 Ltd., Denver, Co (cable TV companies)	\$1,001 - \$15,000		None (or less than \$201)
GE Interest Plus, Chicago, IL (financial Services)	\$15,001 - \$50,000	Interest	\$1,001 - \$2,500
Century Pacific Housing Fund-I, Los Angeles, CA (low income housing)	\$1,001 - \$15,000		None (or less than \$201)
Undeveloped lots in Springfield, MO	\$100,000 - \$250,000		None (or less than \$201)
Diversified Historic Investors 1990, Philadelphia, PA (rental real estate)	\$1,001 - \$15,000		None (or less than \$201)
Diversified Historic Investors VI, Philadelphia, PA (rental real estate)	\$1,001 - \$15,000		None (or less than \$201)

Diversified Historic Investors VII, Philadelphia, PA (rental real estate)	\$1,001 - \$15,000		None (or less than \$201)
Thomson Learning, Cincinnati, OH (book publishing)	None (or less than \$1,001)	Royalty	\$64,162
Jackson National Life, Lansing, MI (insurance)	\$15,001 - \$50,000		None (or less than \$201)
Greenwood Trust Co., Greenwood, DE	\$250,001 - \$500,000	Interest	\$15,001 - \$50,000
Christian Fidelity Life Ins. Co. (life insurance)	\$1,001 - \$15,000	Dividends	\$201 - \$1,000
Aircraft Income Partners L.P., NY, NY (aircraft leasing)	\$1,001 - \$15,000		None (or less than \$201)

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I am a residuary legatee of the estate of J. Rbt. Ashcroft. A person has come forward to report a debt owing to the estate by reason of a cash loan the history of which is unknown. The estate has no evidence of the existence of this potential debt which has been brought to the attention of the personal representative of the estate.

No asset was omitted because it met the three-part test for exemption described in the instructions.

PART IV. TRANSACTIONS

Identification of Assets	Transaction Type	Date	Amount of Transaction
Pacificorp Oregon Scottish Pwr Plc Spn Adr	Exchange	12/03/99	\$1,001 - \$15,000
Icon Financial Services	Sale	2/8/99	\$1,001 - \$15,000
Icon Healthcare	Purchase	2/8/99	\$1,001 - \$15,000
Icon Consumer Cyclical	Purchase	4/8/99	\$1,001 - \$15,000
Icon Energy	Purchase	4/8/99	\$1,001 - \$15,000
Icon Technology	Sale	4/8/99	\$1,001 - \$15,000
Icon Basic Materials	Purchase	6/1/99	\$1,001 - \$15,000
Icon Technology	Sale	6/1/99	\$1,001 - \$15,000
Vanguard Total Stock Market Index Fund	Purchase	8/4/99	\$15,001 - \$50,000
Icon Leisure	Purchase	12/16/99	\$1,001 - \$15,000
Icon Technology	Purchase	12/16/99	\$1,001 - \$15,000
Airtouch Communications Del Vodafone Airtouch Spdadr	Exchange	6/30/99	\$1,001 - \$15,000

MFS Growth Opp—Class A Put Investors Fund Cls A	Exchange	12/15/99	\$50,001 - \$100,000
EuroPacific Growth Fund	Purchase	11/12/99	\$1,001 - \$15,000
The Growth Fund of America	Purchase	11/12/99	\$1,001 - \$15,000
Capital Income Builder	Sale	11/12/99	\$1,001 - \$15,000
Icon Construction Cyclical	Purchase	10/7/99	\$1,001 - \$15,000
Icon Technology	Sale	10/7/99	\$1,001 - \$15,000
Undeveloped land in Grand Co., CO Undeveloped lots in Springfield, MO	Exchange	8/99	\$100,001 - \$250,000
Vanguard Total Stock Market Index Fund	Purchase	9/27/99	\$1,001 - \$15,000
Houston Industries Reliant Energy Inc. Tex.	Exchange	2/11/99	\$1,001 - \$15,000

PART IX. AGREEMENTS OR ARRANGEMENTS

Status and Terms of any Agreement or Arrangement	Parties	Date
Terminated, vested member of the Missouri State Employees Retirement System	The State of Missouri	Vested 12/86 Terminated 1/11/93

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year) Reporting Status (Check Appropriate)		Calendar Year Covered by Report		Termination Date (Month, Day, Year)		Fee for Late Filing Any individual who is required to file this report after the time 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 fee.	
Reporting Individual's Name Last Name: Ashcroft First Name and Middle Initial: John D		New Ethics Nominee or Candidate <input checked="" type="checkbox"/>		Termination Date (Month, Day, Year)		Reporting Periods Incumbent: <input type="checkbox"/>	
Position for Which Filing Title of Position: Attorney General Department or Agency (If Applicable): Department of Justice		Telephone No. (Include Area Code) (202) 513-7639		Do You Intend to Create a Qualified Diversified Trust? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Reporting Periods Incumbent: The reporting period is the preceding calendar year except Part II of Schedule D, which is the reporting period from the date you file Part II of Schedule D up to the date you file Part II of Schedule D.	
Location of Present Office 1800 G Street, NW Washington, D.C.		Title of Position(s) and Date(s) Held United States Senator representing the State of Missouri (1985 - 1991)		Name of Congressional Committee Considering Nomination Judiciary Committee		Termination Date (Month, Day, Year) 1-22-2001	
Presidential Nominee Subject to Senate Confirmation		Signature of Reporting Individual John D. Ashcroft		Date (Month, Day, Year) 1/22/01		Schedule A -- The reporting period is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of date of filing.	
Other Review (If Required by Agency)		Signature of Designated Agency Ethics Official/ Reviewing Official Stephen B. Coyne		Date (Month, Day, Year) 1/22/2001		Schedule B -- Not applicable.	
Agency Ethics Official's Opinion On the basis of information contained in this report, I conclude that the filer is in compliance with the requirements of 5 C.F.R. 2634.101 through 2634.104 (including any agreements in the box below).		Signature of Reporting Individual Stephen B. Coyne		Date (Month, Day, Year) 1/22/2001		Schedule C, Part I (Liabilities) - The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.	
Office of Government Ethics Use Only		Signature of Designated Agency Ethics Official/ Reviewing Official Stephen B. Coyne		Date (Month, Day, Year) 1/22/2001		Schedule C, Part II (Agreements or Arrangements) - Show any agreements or arrangements as of the date of filing.	
Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)		Signature of Reporting Individual Stephen B. Coyne		Date (Month, Day, Year) 1/22/2001		Schedule D -- The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.	

SCHEDULE A continued
(Use only if needed)

Page Number: 3 / 13

Reporting Individual's Name: Abbott, John D.

Assets and Income BLOCK A	Valuation of Assets at close of reporting period. BLOCK B												Income: type and amount. If "None (or less than \$20)" is checked, no other entry is needed in Block C for that item. BLOCK C													
	BLOCK B												BLOCK C													
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000 *	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	None (or less than \$20)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000 #	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria	
Type	Type												Type													
1 MERRILL LYNCH, INC. CASH MANAGEMENT ACCOUNT (Checking/money mkt. dep. acct.)																										
2 PROVIDENT INSTITUTIONAL FUNDS - TEMPORARY CASH FUND																										
3 PIONEER FUND																										
4 MIDLAND LIFE INS. CO. (Level premium term policy)																										
5 AM. CENT. 20TH CENT. ULTRA FUND**																										
6 VANGUARD TOTAL STOCK MKT. INDEX FUND																										
7 EURO PACIFIC GROWTH FUND																										
8 THE GROWTH FUND OF AMERICA																										
9 AMERICAN FUNDS GROUP SMALLCAP WORLD FUND-CLASS A																										

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Price Sensitive Content Disc: ~~*** PART OF FILER'S PARTICIPATION IN STATE OF MISSOURI EMPLOYEE'S COMPENSATION PLAN. TRADING INT. DERIVATIVES ACQUIRED THROUGH THE DERIVATIVES PLAN.~~

OFFICE OF THE COMPTROLLER
 U.S. OFFICE OF GOVERNMENT ETHICS

Reporting Individual's Name
 Ashcroft, John D.

SCHEDULE A continued
 (Use only if needed)

Page Number
 4 / 13

BLOCK A Assets and Income	BLOCK B Valuation of Assets at close of reporting period.												BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.										Date (Mo., Day, Yr.) Only if Honorary
	BLOCK B												BLOCK C										
	Valuation of Assets at close of reporting period.												Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.										
BLOCK A	BLOCK B												BLOCK C										Date (Mo., Day, Yr.) Only if Honorary
	Valuation of Assets at close of reporting period.												Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.										
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000 *	None (or less than \$201)	\$201 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000 *	Over \$5,000,000	Other Income (Specify Type & Actual Amount)					
16 FUNDAMENTAL INVESTORS-CLA	<input checked="" type="checkbox"/>								<input checked="" type="checkbox"/>														
17 AT & T CORP.	<input checked="" type="checkbox"/>																						
18 DUKE ENERGY CORP.																							
19 PUTNAM INVESTORS FUND CLA**																							
20 PILGRIM AM. PRIME RT.																							
21 JOHN HANCOCK PATRIOT PREMIUM DIVIDEND FUND 11 SBI (Utility sector)																							
22 LUCENT TECHNOLOGIES INC.																							
23 NICOR INC.																							
24 PLACER DOME INC.																							

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Participation in State of Missouri Employees' Compensation
 Part of group

SCHEDULE D

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OF 1/15/2009 (04/09)
 3 C.F.R. Part 1204
 Job: Office of Government Ethics

Reporting Individual's Name: Ashcraft, John D.

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature. None

1	Organization (Name and Address)	Type of Organization	Position Held	From (date, yr.)		To (date, yr.)	
				Non-profit education, Law firm	President, Farmer	6/92	7/82
1	Ball Assn. of Rock Collectors, NY, NY Doe Jones & Smith, Hometown, State						
2							
3							
4							
5							
6							

Part II: Compensation in Excess of \$5,000 Paid by One Source

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other source. (Name and Address)

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate. None

1	Source (Name and Address)	Brief Description of Duties
1	Doe Jones & Smith, Hometown, State Metro University (Client of Doe Jones & Smith), Moneytown, State	
2		
3		
4		
5		
6		

Prior Edition(s) Cancelled. Use latest.

III. GENERAL (PUBLIC)

1. Describe legal services that you have provided to disadvantaged persons or on a pro bono basis, and list specific instances and the amount of time devoted to each.

While in private practice as an attorney I was an appointed attorney for disadvantaged persons. My wife and I also did pro bono and reduced fee work for charitable entities. Because this work was largely done about 30 years ago, I cannot give any particulars.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, color, religion, sex, disability or national origin – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

Boy Scouts and Cub Scouts of America (as a child, exact dates unknown)
 Christian Cadets (as a child, dates unknown)
 Rotary International, 1970-?
 Key Club, 1957-1960
 Branford College football, baseball and basketball teams, 1960-1964
 Missouri Athletic Club (dates unknown)
 Noonday Club (dates unknown)
 Missouri Jaycees, The Gideon Society, early 1970s
 University of Chicago Rugby Club, 1964-1967
 University of Chicago Law School Basketball team, 1964-1967
 Hillcrest High School sports teams, 1958-1960
 Various other athletic teams, dates unknown

NOTE: By virtue of my public service, I may have had various honorary memberships in numerous other organizations. There is no way I can recall the specifics on such organizations.

Chairman LEAHY. Thank you, Senator.

What we will do now, we will have in the first round of questioning—

[Audience disturbance.]

Chairman LEAHY. The Committee will be in order. The Committee will stand in recess until the police can restore order. Officer, restore order. The police will restore order.

[Pause.]

Senator THURMOND. Put them out and keep them out.

Chairman LEAHY. The Committee will also stay in order.

It will be the policy of the Chairman to not allow any demonstrations for or against the nominee. You are all guests of the U.S. Senate. The hundred Senators have a duty to vote for or against this nominee. We will make up our mind based on the testimony within this room, and the testimony of the nominee. We will not allow demonstrations of any sort. Everybody has a chance to write or call their individual Senators for or against Senator Ashcroft.

I thank the Capitol Police for restoring order.

Now, as I said before, it will be the intent of the Committee to have 15-minute rounds for each Senator, doing the usual alternating on the first round. If there are further questions, we will have shorter rounds after that.

I have told the nominee that if at any time he wants a break, of course, we will take one, again, following normal time.

So I will start the questioning, and then we will turn to Senator Hatch.

Senator HATCH. Senator Ashcroft, while you served in the Senate, you did not have an opportunity to vote on a nomination for Attorney General, and, in fact, this is your first hearing that you have attended in any capacity in the Senate for Attorney General. But from 1995 to last year, as you pointed out, you voted for a number of President Clinton's nominees. You also chose to oppose and vote against a number of President Clinton's nominees to the executive branch, in both cases exercising the right any Senator has.

But I wanted to explore with you what appears to be, for want of a better term, the Ashcroft standard that you used when you reviewed Presidential nominations. I will start with that of Bill Lann Lee. You opposed the nomination of Bill Lann Lee to head the Civil Rights Division of the Department of Justice. In November 1997, you said, "This is what I have been sent to Washington to do, to evaluate whether or not an individual be the kind of administrator in an agency that people are entitled to have." You opposed Mr. Lee because, as a civil rights lawyer, you thought, and I quote you again, "His pursuit of specific objectives that are important to him limit his capacity to have the balanced view of making the judgments that would be necessary for the person who runs that division." You also said, "We don't need an individual who is trying to go against the Constitution as recently interpreted by the Supreme Court. We need someone who is going to say, 'I am here to provide the administration'"—and that is an actual quote—"I am not here to amend the Constitution. I am here to defend the Constitution. That is what we need."

Now, Senator, using this Ashcroft standard, do you adhere to those views as setting the proper standard by which Senators should evaluate Presidential nominations?

Senator ASHCROFT. Well, I am pleased, first of all, Mr. Chairman, to thank you for the question. It is an important question. I thank you also for the way you are conducting this hearing. I appreciate your willingness to make sure that we have an opportunity to make these discussions in a setting which is conducive to understanding.

I think the ability to enforce the law as it is written and as it has been defined by the United States Supreme Court is very important, and when I have evaluated individuals, that is a very important criterion, especially for someone in an administrative or enforcement role and not in an enactment role. Obviously, in the Senate, we take a variety of positions because we—I say advisedly “we.” I am no longer a Senator, and I don’t mean to be presumptive, but because in the debate and in the exchange, we arrive at what the law will be.

I joined with eight other Republicans on the Senate Judiciary Committee in opposing Bill Lee’s nomination to be Assistant Attorney General because I had serious concerns about his willingness to enforce the *Adarand* decision which was a recent decision of the United States Supreme Court. He was an excellent litigant, but I had concerns that he viewed the *Adarand* decision as an obstacle, rather than as a way in which the law was defined.

Adarand held that Government programs that established racial preferences based on race are subject to strict scrutiny. That is the highest level of scrutiny under the Supreme Court’s Equal Protection Clause. *Adarand* was a landmark decision. It was substantial. It was important.

Chairman LEAHY. But, Senator—

Senator ASHCROFT. Mr. Lee did not indicate a clear willingness to enforce the law based on that decision, in my judgment.

Chairman LEAHY. Well, Senator Ashcroft, if I could disagree with you on that. Mr. Lee testified on a number of occasions; in fact, testified under oath, including, incidently directly in answer to your questions that he would enforce the law as declared in *Adarand*. He also said in direct answer to questions of this Committee that he considered the *Adarand* decision of the Supreme Court as the controlling legal authority of the land, that he would seek to enforce it, he would give it full effect, but you say that he would not accept that decision and apply it fairly. Was Bill Lann Lee lying under oath to this Committee?

Senator ASHCROFT. I certainly don’t want to say that. I would simply want to say that when asked what the standard was, he did not repeat the strict scrutiny standard of narrowly tailored and directly related. He—

Chairman LEAHY. But how could he be more strict—

Senator ASHCROFT [continuing]. Stated another standard, and when asked whether the standard which he applied would affect programs, he basically said wouldn’t have any effect on the programs of the Federal Government. Now, in my judgment—

Chairman LEAHY. But he said he would uphold it. I mean, what more could he say?

Senator ASHCROFT. He said he would—well, frankly, he could have said that when applying a test, he would use the same test that the Supreme Court of the United States said should be used in strict scrutiny cases, but—and if he had, I believe that people would have been more likely to give credence when Chairman Hatch—of course, he made an eloquent floor statement about this in speaking on this matter, but when Chairman Hatch delivered his remarks on this matter, I think he made clear what the rest of us felt, that while he said he considered the *Adarand* decision the law of the land, when he discussed the way in which it was implemented, it was clear that it would not be applied in the way that the Supreme Court would require its application.

Chairman LEAHY. OK. Then I understand, as I said, the Ashcroft standard on that, but let's go, then, further. Let's take another step.

Like Bill Lann Lee, you have a long history of pursuing specific objectives that are important to you, but I would assume, like he, within the law. Throughout your public life as Attorney General and Governor of Missouri and as a U.S. Senator, you have opposed a woman's constitutionally protected right to reproductive freedom and choice, even in cases of rape and incest. You have fought voluntary school desegregation, affirmative action, and gay rights.

When you were running for President in 1998, you were quoted as saying, "There are voices in the Republican Party today who preach pragmatism, who champion conciliation who counsel compromise. I stand here today to reject those deceptions," again, your words.

Now, given that history—and you can understand why some might be troubled by it—what assurances can you give us that you would serve as the chief enforcement officer of this country with the kind of balanced view that you acknowledge is necessary for top officials in the Department of Justice, the balanced view that you said others must have before you would vote for their confirmation?

Senator ASHCROFT. Mr. Chairman, with all due respect, I would like to just have a chance to go back to that list, the litany of things—

Chairman LEAHY. Of course.

Senator ASHCROFT [continuing]. And positions you attributed to me. You said I opposed voluntary desegregation of the schools. Nothing could be farther from the truth. I don't oppose desegregation. I repudiate segregation. I am in favor of integration.

When the State of Missouri was asked to fund with hundreds of billions of dollars a program imposed by a Federal court—

Chairman LEAHY. Hundreds of billions?

Senator ASHCROFT. Hundreds of millions of dollars. Pardon me. I thank you for correcting me. I have been in Washington so long, I forgot how to say "millions." I have just started saying "billions."

[Laughter.]

Chairman LEAHY. I am more interested—I am more interested in what you said at the time of the desegregation orders in Missouri.

Senator ASHCROFT. I opposed a mandate by the Federal Government that the State, which had done nothing wrong, found guilty of no wrong, that they should be asked to pay this very substantial

sum of money over a long course of years, and that is what I opposed.

I have always opposed segregation. I have never opposed integration. I believe that segregation is inconsistent with the 14th Amendment's guaranteeing of equal protection. I supported integrating the schools.

Now, while I was the Missouri Attorney General, I inherited a desegregation lawsuit in St. Louis from my predecessor in office, Jack Danforth. The State had been sued. I argued on behalf of the State of Missouri that it could not be found legally liable for segregation in St. Louis schools because the State had never been a party to the litigation.

Now, one of the responsibilities of an Attorney General, in my judgment, is that when the entity which you represent legally is attacked or sued, you should defend it. Here, the court sought to make the State responsible and liable for the payment of these very substantial sums of money, and the State not only had—had not been found really guilty of anything.

I also took the position on behalf of the State that the court's inter-district remedy in that case was inappropriate because there was never any finding of an inter-district violation.

Now, to me, I just want to try to make it clear. It has been mentioned on several occasions, and I just think I want to have the opportunity to say with clarity that I do not support segregation. I support integration.

I happen to have been a young person in school when *Brown v. Board of Education* was announced. The schools in my town had been segregated. They were immediately integrated, and I support that, and so I would be very pleased—there was a list of things that were similarly—

Chairman LEAHY. And we will go back to them, and I will make absolutely sure, I can assure you, that you will have the time to speak about them.

I would point out, though, that in the case you speak about—the Federal District Court threatened to hold the State in contempt if it didn't submit a specific desegregation plan within 60 days and said, "The Court can draw only one conclusion. The State has as a matter of deliberate policy decided to defy the authority of this Court." What I am driving at—

Senator ASHCROFT. Mr. Chairman, I would be glad to respond to that, if you would like to have me do so.

Chairman LEAHY. I would. Hold on one moment and then—

Senator ASHCROFT. Thank you. I take these very seriously.

Chairman LEAHY. Go ahead. Respond to that. Respond to that.

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

Chairman LEAHY. So did you—

Senator ASHCROFT. If a person swears to uphold the law of the State and to become the Attorney General when the State is attacked, I think it is important to expect the Attorney General of the State to defend the State.

Now, over time, it might be that if there had been a different structure, something different would have happened.

Chairman LEAHY. Did you consider—and this, you actually can answer yes or no—did you consider the District Court was fair in suggesting that you on behalf of the State of Missouri was—that you were basically dragging your feet? Do you feel that was fair?

Senator ASHCROFT. I think it is unfair to characterize a person as being uncooperative if they are asked to indemnify a situation when there was no opportunity for them to originally be a party to the lawsuit—

Chairman LEAHY. So you have found—

Senator ASHCROFT [continuing]. And if they weren't in a position to defend themselves. That would be unfair.

Chairman LEAHY. So you found the criticism of you by the court to be unfair.

Senator ASHCROFT. Frankly, I thought the ruling by the court that the State would have to pay when there was no showing of a State violation to be unfair.

Chairman LEAHY. But—thank you, but now my question is, do you feel that the Court's criticism of you in your role as Attorney General was unfair?

Senator ASHCROFT. Well, would you mind—this is 20-some years ago.

Chairman LEAHY. “The court can draw only one conclusion: the State has as a matter of deliberate policy decided to defy the authority of this court.” Would you consider that unfair?

Senator ASHCROFT. Yes.

Chairman LEAHY. Thank you.

Now, on Dr. David Satcher, you opposed his nomination to be our Surgeon General, even though the Senate eventually approved him. In your speech, you said Dr. Satcher says he has a mainstream approach, he is going to pursue consensus, but then you went on to say that you didn't believe that. You told the Senate that he was a person of incredibly strong medical credentials in terms of his expertise and his capacity, but you said the United States has participated in confirming nominations and ratifying proposals without looking carefully at the ethics involved or the guise of being challenged. So your opposition to Dr. Satcher by your own statement was not based on his professional qualifications. Indeed, it is fair to say that applying an Ashcroft standard, you were articulating as a U.S. Senator that you were going to oppose a nominee whom you believed to be “out of step with the mainstream of America,” to use the words you used in your speech.

Senator ASHCROFT. Mr. Chairman, I am pleased to have the answer to—the opportunity to express my concerns here.

Dr. David Satcher supported a number of activities that I thought were inconsistent with the ethical obligations of a medical doctor and physician, particularly the Surgeon General, because I think the Surgeon General is an individual to whom America must look for guidance in terms of not just technical expertise, but the kind of ethics that ought to accompany people who have life-and-death decisionmaking in their hands. We all know how important the medical profession is.

Chairman LEAHY. And you disagreed with those, his ethics and values in that?

Senator ASHCROFT. For example, he supported an AIDS study on pregnant women in Africa where some patients were given placebos, even though a treatment existed to limit transmission of AIDS from the mother to the child.

This would not be—in my understanding, this would not be an acceptable—this would not be an acceptable strategy for a study in the United States, but he was willing to support the study under those terms in Africa.

Chairman LEAHY. So—

Senator ASHCROFT. That was a matter of deep concern to me.

Let me, with all—if I might.

Chairman LEAHY. Sure.

Senator ASHCROFT. He lobbied Congress to continue an anonymous study testing newborn infants' blood for the AIDS virus without informing the mother if the test was positive.

Now, I have real problems with a situation where someone wants to be the Surgeon General of the United States, wants to learn about whether or not there is AIDS present in a medical situation and not tell the people involved about the AIDS virus. This is a matter of deep concern to me.

The idea of sending fatally infected babies home with their unwitting mothers, even after a treatment had been identified for AIDS, to me was an idea that was unacceptable for an individual who wanted to be the leader in terms of the medical community and a role model in the United States. It was on those grounds that I made the decision.

Now, it's my decision, and I am not trying to duck responsibility for the decision, but those are the facts as I understood them and that is the reason I made the decision.

Chairman LEAHY. So it would be fair to say you disagreed with his ethical choices and his values, and you thought you should vote against him because of that.

Senator ASHCROFT. I think it is fair to say that I believed he violated the ethical values that are characteristic—

Chairman LEAHY. I am not trying to parse words. I just want to make sure I understand—

Senator ASHCROFT. It was a shortfall in his—

Chairman LEAHY [continuing]. Particularly the Ashcroft standard.

Senator ASHCROFT [continuing]. Adherence to ethical values of the American medical community that I think were—

Chairman LEAHY. And because you disagreed with what you saw as his ethics and values, you voted against him. I am not trying to place words in your mouth. I want to make sure I understand.

Senator ASHCROFT. Well, then maybe—

Chairman LEAHY. I am trying to give you the fairest—

Senator ASHCROFT. Well, maybe if you would let me state my words, then you don't have to worry—

Chairman LEAHY. Right.

Senator ASHCROFT [continuing]. About placing words in my mouth. I believe that his willingness to accept a standard for medical research in Africa on African women that would not be accept-

able in the United States was an ethical lapse that was very important.

I second believed his willingness to send AIDS-infected babies home with their mothers without telling their mothers about the infection of the children was another ethical problem that was very serious.

Based on both standards, which I believe are less than acceptable standards in the medical community in this country, I voted against him.

Chairman LEAHY. That is what I was trying to get you to say. Thank you.

Senator ASHCROFT. I'm sorry.

Chairman LEAHY. Maybe we were speaking past each other, but thank you.

Senator Hatch?

Senator HATCH. Well, thank you.

Senator Ashcroft, the principal argument raised against your nomination by some people is because of your firmly held personal beliefs which happen not to be consistent with the views of the abortion rights groups, the People for the American Way, and other similar interest groups, that you will not enforce the laws of the land as Attorney General. That seems to be the argument.

Now, your record, however, which the special interest groups seem to ignore, seems to provide clear evidence to the contrary. For example, as Attorney General of the State of Missouri, you repeatedly issued legal opinions regarding how a particular statute should be interpreted and enforced. Time and again, Senator, your record reflects your dedication to enforcing the law regardless of your particular views in areas like the environment, abortion, guns, religion, and race.

Let me give just a couple of examples, and you gave some other examples in your opening remarks.

You issued an opinion in 1981 that the Missouri Division of Health could not release information to the public on the number of abortions performed by particular hospitals. You determined that the State legislature made clear its intent that such reports remain confidential and be used only for statistical purposes.

You also determined that in order to protect the patient client privilege, access to health data maintained by the Division of Health could only be subject to review by public health officers, something that people in the right-to-life community disagreed with you on. That is correct, isn't it?

Senator ASHCROFT. It is correct.

Senator HATCH. You also, in Attorney General Opinion No. 50—I am just going to mention two. There are all kinds of these.

Senator ASHCROFT. Well, don't ask me to quote them.

Senator HATCH. I won't ask you to quote them.

Senator ASHCROFT. We had about 800 or more.

Senator HATCH. Let me see what I can do. In Attorney General Opinion No. 50, dated March 2, 1977, Attorney General Ashcroft issued an opinion which interpreted State law to prohibit prosecuting attorneys from carrying concealed weapons even while engaged in the discharge of their official duties. Attorney General Ashcroft reached this opinion despite the fact that some prosecuting attor-

neys conducted their own investigations and as a result faced dangerous situations. That is true, too, isn't it?

Senator ASHCROFT. Yes, sir, it is true. And it may not have been my personal judgment that their safety was best regarded by that, but the law was—

Senator HATCH. That is what the law said, and so you enforced it. I have to admit I don't agree with that law either. They ought to be able to protect themselves.

I could go on and on with further examples, but I want to hear from you. The special interest groups who have sharply attacked you seem to ignore these instances where you have interpreted the laws as written despite your personal beliefs.

Now, if confirmed as Attorney General of the United States, will you enforce the laws of this land irrespective of your personal beliefs?

Senator ASHCROFT. I will. And I think I should clarify that just a little bit. My personal belief, my primary personal belief is that the law is supreme, that I don't place myself above the law, and I shouldn't place myself above the law. So it would violate my beliefs to do it.

So I spent 24 years in elective public offices as—the auditor's office in Missouri is really a compliance office. We audit not only for financial integrity, but for compliance with legal mandates to the agencies. I spent 2 years there as State auditor and then the 8 years as Attorney General and 8 years as Governor, and there are other things you do as Governor, but you also are a law enforcement individual. The executive branch does that. And most of my time in government has been in enforcement. And I'm pleased to say that I have enforced the law faithfully to the best of my ability in those settings.

Senator HATCH. With regard to Mr. Bill Lann Lee, I happen to like Mr. Lee, but I voted against him, not because I wouldn't have supported him for any number of other positions—I would have because he is a sincerely dedicated, decent, honorable man. But when he appeared before the Committee, I have to say that one of the problems that I had at that particular time was that I was concerned that, because of his prior background, he would use consent decrees to force consent decrees on local municipalities, cities, counties, and other governments by bringing very expensive lawsuits that would cost millions of dollars to defend where they would have to cave in to consent decrees that would require quotas that were really wrong under the *Adarand* and other decisions by the Supreme Court.

I can remember that while I have the highest personal regard for Mr. Lee's accomplishments when he was in the private sector, I was extremely concerned about his interpretation of civil rights laws. His lifetime work was devoted to preserving constitutionally suspect, race-conscious public policies that sort and divide citizens by race.

For instance, when Mr. Lee appeared before the Committee, he interpreted the *Adarand v. Pena* case to mean that racial preferences are permitted if “conducted in a limited and measured manner.”

Now, as I noted on the floor of the Senate, his statement misstated the Court's fundamental holding in such programs that are presumptively unconstitutional. And, unfortunately, I have to say that his recent record indicates that is what he has been doing to a large degree, or at least to a significant degree in his position in the Justice Department.

So there was a legitimate reason to vote against Bill Lann Lee, even though I think all of us would admit he is a nice person and probably could fill any number of other positions in government.

I suspect that that is the reason you voted against him.

Senator ASHCROFT. Well—

Senator HATCH. And I can see why others might have voted for him. But the fact is I had to do what I thought was the law. What about you?

Senator ASHCROFT. Well, frankly, I struggled to say that perhaps earlier, not as effectively as you have just said it or as you said it on the floor. When he indicated that the test of whether a program would survive strict scrutiny was that it be limited and measured, he really basically was expanding the test substantially.

The district court on remand in that case said, and I quote, "It is difficult to envisage a race-based classification that is narrowly tailored." But Mr. Lee, when asked if he could identify a single racial preference program that was constitutionally suspect, could only identify one out of all the programs. I think the key, though, is the material that you presented at the time, which I found persuasive, and his statement of a test for programs, which was just monumentally different than the test provided for by the Court in the *Adarand* case.

Senator HATCH. Well, it has been mentioned that you oppose certain aspects of the Federal court decrees surrounding the desegregation of schools in Kansas City. Well, Senator Ashcroft, isn't it true that in *Missouri v. Jenkins*, which is the poster child case for what many think is judicial activism, that the Supreme Court found that the district court had exceeded its authority by ordering remedies beyond its power? Was your position not vindicated by the Supreme Court after some 18 years of litigation?

Senator ASHCROFT. Well, very frankly, the *Jenkins* case was a 5-4 case.

Senator HATCH. Right.

Senator ASHCROFT. And it was a case in which the judge imposing a tax was upheld in imposing the tax.

Senator HATCH. It wasn't the Congress that imposed the tax. It was the judge.

Senator ASHCROFT. Nor was it the State legislature or the city council.

Senator HATCH. That is right. So it was a legitimate argument.

Senator ASHCROFT. Obviously it's a legitimate argument, and I hope these hearings will allow me to clarify the fact that a State Attorney General has a responsibility to defend the State when it is asked by other parties to open its treasury to fund one thing or another. The situation in Kansas City, at the order of the Federal district court judge, was tragic in terms of the amount of money spent, and really, frankly, this hadn't become—this really wasn't that much of a partisan issue. It became clear that this was not

helping children, but it was a very, very serious diversion of the State's resources in a way which made difficult the achievement of other objectives.

For example, busing had strong opponents in Missouri, Democrat and Republican, black and white. Freeman Bosley, St. Louis' first African-American mayor, opposed forced busing, as did Democrat State Attorney General Jay Nixon. This forced busing that was opposed was not, on their part or on my part, an opposition to integration. It was an opposition to a counter-productive, inappropriate effort to impose on the State transportation of students to and from at great expense and at little benefit educationally to the students.

Senator HATCH. Well, I have heard some arguments against you because of your firmly held religious beliefs. In fact, I have seen it over and over in the press in this country. When Vice President Gore selected our esteemed colleague, Joseph Lieberman, to be his running mate, many individuals and organizations supported that choice and applauded Senator Lieberman for his strong religious beliefs. I have to say I felt the same way.

Unfortunately, many left-wing groups have not been as supportive of your religious beliefs and convictions, almost like it is OK for a liberal but it is not OK for somebody who is conservative.

Personally, I as a Christian am very unsettled by the different treatment accorded you and Senator Lieberman. I think it is wrong.

Now, the job of the Attorney General of the United States is an extremely important job, and it is to enforce the laws enacted by Congress. The only issue for me is the manner in which you execute the job or will execute the job. It doesn't matter to me whether you are a Christian, Muslim, Buddhist, whatever, or an atheist or agnostic. I am sure that goes—I hope I am sure that goes to the rest of our fellow Senators. In fact, the Constitution of the United States specifically forbids religious qualifications for office.

Now, having gone through that type of, I think, offensive criticism, which is continuing right up to today, is there anything in your religious beliefs that would impair you from faithfully and fully fulfilling your responsibilities as Attorney General of the United States?

Senator ASHCROFT. Well, I don't believe it's appropriate to have a test based on one's religion for a job. I think Article V of the Constitution makes that clear.

In examining my understanding and my commitment and my faith heritage, I'd have to say that my faith heritage compels me to enforce the law and abide by the law rather than to violate the law. And if in some measure somehow I were to encounter a situation where the two came into conflict so that I could not respond to this faith heritage which requires me to enforce the law, then I would have to resign. I do not believe that to be the case.

May I just say a word about this? America has struggled in this respect for quite some time, and people who come from different religious and faith perspectives have emerged at one time and another, and when they have, there have been questions about this. This is not new.

Before I was old enough to vote, but when I was old enough to be very active in watching elections in 1960, the first person be-

came President of the United States from a Catholic perspective. In my part of the country, there were people who thought he will not be free, he will have to do whatever the Pope tells him to do, he will be a client of a foreign individual. You know, I heard that talk.

But America got by that talk, and I think it's good that we did. And my own view is that, yes, people won't understand different kinds of individuals from time to time. Some people—most people hailed, as I did, the elevation to national candidate status of my college classmate and former colleague here in the U.S. Senate, Joe Lieberman. We need more people like Joe Lieberman in public office, not fewer people like Joe Lieberman in public office.

But I was the first person from my faith denomination to be elected to a statewide public office as Attorney General, and I was the first Governor ever from my denomination. I was the first Senator from my denomination. I understand these things, and I think this is something we work our way through as Americans, and we're going to come to an understanding that well-intentioned people of good faith, when they raise their hand and take an oath to support the Constitution and enforce the law, they do it.

And as I look back across America and this heritage—and it's been focused on different kinds of people at different times—I frankly don't see that we've been—our faith has been misplaced. As I look across, when the President, we had our first Catholic President, we didn't suffer.

You know, so I think this is something we're going to work—we will work our way through.

Senator HATCH. My time is just about up. Let me just ask you one last question. You have publicly stated your agreement with the law of *Adarand* which states that all racial classifications made by the government must be able to withstand strict scrutiny. You were also a sponsor of the Civil Rights Act of 1997. This Civil Rights Act basically seeks to implement the Supreme Court's holding in *Adarand* with respect to Federal racial classifications. The Civil Rights Act of 1997 does state that affirmative action such as encouraging qualified women and minorities to apply for government contracts and employment would not be affected.

Now, what sort of affirmative action programs would you support if confirmed? And what would be your plans for the Civil Rights Division? My time is up.

Senator ASHCROFT. Very frankly, there are lots of ways that are acceptable, and some have been working their way through the courts and I think will be sustained. The President-elect of the United States has identified a series of things that he calls affirmative access. I think those are good ideas. They have been in place now in Texas and in California and in Florida and are making their way in the educational system where access is so very important.

We can expand the invitation for people to participate aggressively so that no one is denied the capacity to participate simply because they didn't know about the opportunities. We can work on education, which is the best way for people to have access to achievement, a wide variety of things. We can size government opportunities so that people can bid who don't have the mega

strength of the big old-time contractors but some new entrants into the marketplace. These are all policy decisions that I believe this next administration, President-elect Bush is eager to consider. And certainly the affirmative access that he's described is something that I think the entire country would be well served to work on.

Senator HATCH. Thank you, Senator Ashcroft.

Chairman LEAHY. I just would not want to leave one of the questions of my friend from Utah give the wrong impression to the people here. I just want to make it very clear. Have you heard any Senator, Republican or Democrat, suggest that there should be a religious test on your confirmation?

Senator ASHCROFT. No Senator has said I will test you, but a number of Senators have said, Will your religion keep you from being able to perform your duties in office?

Chairman LEAHY. I'm amazed at that.

Senator ASHCROFT. Pardon?

Chairman LEAHY. I said I'm amazed at that.

Senator ASHCROFT. Well, I don't—I understand. And I accept the opportunity to say with clarity that not only will I represent that I will enforce the law, but there is some record here of my 2 years as auditor, 8 years as Attorney General, 8 years in the Governor's office, that when the law is clear and decided, that I enforce the law.

Chairman LEAHY. Senator Kennedy?

Senator KENNEDY. Thank you very much, Mr. Chairman.

If we could, Senator Ashcroft, come back to the St. Louis situation, let me just spell out very briefly, as you remember, but just so that we have the common understanding. In the 1970's, more than 20 years after the *Brown v. Board of Education*, St. Louis still maintained a segregated school system. The Court stepped in and ruled that the State of Missouri and the St. Louis School Board were jointly responsible for violating the Constitution by creating and maintaining segregated and grossly unequal schools. The Court ruled that the State had maintained an elaborate set of laws to enforce segregation. The State law even forced black children who lived in the suburbs and in white city neighborhoods to be bused to all-black inner-city schools. According to the Court, the State had completely abdicated its constitutional duty to desegregate the schools.

You disagreed with that finding, but despite your repeated appeals, requests for injunctions, and three denials of review by the Supreme Court over a 4-year period, the final ruling of the courts was not changed. So you had your chance in the courts to make the case that you've just made here and the courts rejected it each time.

Now, let me just continue, and others will get—

Senator ASHCROFT. It's your hearing, Senator.

Senator KENNEDY. Now, the city of St. Louis, its schools, and surrounding 23 county districts all accepted the ruling. They negotiated a model desegregation plan relying on voluntary public school choice. Black students from city schools could volunteer to transfer to white suburban schools. White suburban students would have the opportunity to transfer to magnet schools run by the city. In fact, the plan has been a lifeline for tens of thousands

of students with graduation rates that are consistently twice as high for the transfer students, more of them going on to college and other 11,000 students are still using it today—including about 900 suburban students in the city magnet schools.

Now, given the voluntary nature of the desegregation plan and the fact that the city and county school districts all agreed to it, how do you justify your relentless opposition to voluntary school desegregation and sort your scorched-earth legal strategy to try to block it?

Senator ASHCROFT. Senator Kennedy, first of all, the litany of charges that were made about the State's activities included a rather loose definition of things that the State had done prior to *Brown v. Board of Education*. Virtually none of the offensive activities described in what you charged happened in the State after *Brown v. Board of Education*. And as a matter of fact, most of them had been eliminated far before *Brown v. Board of Education*.

Second, in saying that the city maintained a segregated school system into the 1970's is simply a way of saying that after *Brown v. Board of Education*, when citizens started to flee the city and move to the county—and you'll know that St. Louis for a number of decades now has been a place that has lost more population than virtually any other city as people moved into the county—the schools, as people changed their location, began to be more intensely segregated. That was after the rules of segregation had been lifted, and it was not a consequence of any State activity.

Then I would just simply say that I think it's unfair to call the program totally voluntary and to suggest that we opposed a voluntary program, when the thing was that the State was going to have to pay for everything people volunteered to do.

Now, the situation was basically this: The county school districts agreed with the city school districts that they could confess judgment and get a lot of money from the State of Missouri by saying if we'll just say that we'll do this voluntary plan, the State will have to pay for the situation. So you had a situation something like this, and I don't have all the material that you all have, but let me try and re-create it from my memory.

Senator KENNEDY. I want to try and—I want to give you a fair chance, but we—

Senator ASHCROFT. Well, you—

Senator KENNEDY. Go ahead.

Senator ASHCROFT. Thank you for your fairness, because when the machine gun of charges comes out, I want to try and respond to all of the lead.

Senator KENNEDY. Earlier, you said the State wasn't involved. Well, now let me just read to you, in 1980, in *Adams v. United States*, the city board and the State were held jointly responsible for maintaining a segregated school system. My question is: At what point, Senator Ashcroft, were you going to say or do something about the fact that those kids were going to lousy schools? You were there as Attorney General, you were there as Governor, and you did virtually nothing about it. And a new Governor came in, Mel Carnahan, and resolved that issue. You used every kind of device to oppose it. The Economist magazine, which is not a liberal magazine, said, "The campaign"—which you were involved in

“quickly degenerated in 1984”—at a time when this issue was still before you—“into a contest over who was most opposed to the plan for voluntary racial desegregation of St. Louis’ Schools. Mr. McNary claimed that Mr. Ashcroft had not done enough to defeat the plan in court. Mr. Ashcroft countered that Mr. McNary was a closet supporter of racial integration. Both ran openly bigoted advertisements on television.”

Professor Gary Orfield, a consultant for the court in the St. Louis case and a leading expert on desegregation who frequently testifies against desegregation plans described you as being “an unrelenting opponent of doing anything in St. Louis.” He said that you “had no positive vision, constantly stirred up racial divisions over this question.”

Finally, rather than provide the conciliatory leadership, once you were governor, a 1990 judicial order described the recent State’s filings as “extremely antagonistic” and said the State was “ignoring the real objectives of this case—a better education for city students—to personally embark on a litigious pursuit of righteousness.

Now, that’s a pretty tough record. Where in your list of priorities were the rights and the interests of those black students who were trying to get a decent education? We’ve just heard from you about the cost, and how you had a responsibility as an Attorney General to protect the taxpayer. What about the interests of those black students and the fact that those courts repeatedly, time and time again, said that you failed to even offer an alternative? Did you offer an alternative?

Senator ASHCROFT. Now may I respond?

Senator KENNEDY. Sure.

Senator ASHCROFT. Thank you. In all of the cases where the court made an order, I followed the order, both as Attorney General and as Governor. It was my judgment that when the law settled and spoken that the law should be obeyed.

At one point I had to detail the Deputy Attorney General of the State of Missouri to the State treasurer’s office in order to urge the State treasurer to write the check, and the treasurer wrote the check. His name has been used in this hearing, but I won’t use it. But it was because I explained to him that when the court spoke, the State had to respond and obey the law.

Now, the framework for the system was that the State was to pay the city for the students who left and the State was to pay again in the county for the students who had left and gone out there. It was not a way to integrate the city schools. The facts which you specify show that the brightest students left the city, leaving the students in those schools behind with fewer people aspiring to college graduation and going on further for education, not improving those schools.

I’m pleased to respond to your question about my priority for education. During my time as Governor, funding for education in the State of Missouri went up about 70 percent. The vast majority of all State resources that were new and available went to education because I believe in education.

In *Missouri v. Jenkins*, the case in Kansas City—

Senator KENNEDY. Could we get on—I don’t think we’ve got—

Senator HATCH. Let him answer the question.

Senator KENNEDY. The question wasn't about Kansas City. I asked about St. Louis.

Senator ASHCROFT. Fine.

Senator KENNEDY. But if he wants to talk about Kansas City—

Senator ASHCROFT. I would like to talk about Kansas City, but it's not—I'd rather answer your question than talk about Kansas City.

Senator KENNEDY. That isn't the question, but if you want to talk about it—

Senator ASHCROFT. Well, I'll just give you an idea—

Senator SESSIONS. You characterized his interest in education, Senator Kennedy—

Senator KENNEDY. Well, that isn't the—

Senator SESSIONS. You suggested he didn't care—

Senator HATCH. You're accusing him of not—

Chairman LEAHY. Gentlemen, gentlemen.

Senator HATCH. Let him answer the question.

Chairman LEAHY. First I would note that whatever questions are asked, if the witness feels that he's not given time to answer all the questions, he will be given time, as will Senators be given time to do follow-up questions.

Senator KENNEDY. Well, I had one other area to cover, but whatever you want to do, John.

Senator ASHCROFT. Well, you're the Senator.

Senator KENNEDY. Well, you're the—

Senator ASHCROFT. You know, I look forward to working with this Committee upon confirmation. I do. And I don't know when there was last an Attorney General that had previously served as a member of this Committee. And, frankly, I think we can work together, and I want to, and I don't want any rancor to characterize our relationship. And I'm very pleased to defer.

Senator KENNEDY. Let me just go on to the questions of voter registration and your vetoes on voter registration. We talked about this. You know, obviously we have learned in this Presidential campaign every vote does count, and obviously the procedures in Florida and across the Nation were plagued by inequities that often resulted in disenfranchisement of poor minorities. The Justice Department is conducting an investigation into whether there were any voting irregularities that occurred in Florida violating the Federal Voting Rights Act. So, if confirmed, you will have a responsibility for completing the investigation and bringing suit if any violations are found.

Now, considering your actions as Governor of Missouri, I'm concerned about where you might go with this. Now, let me mention this. As Governor, you appointed the election boards in both St. Louis County and St. Louis City. The County, which surrounds much of the city is relatively affluent, 86 percent white, and votes heavily Republican. The city is poorer and 48 percent black, and votes heavily Democratic.

Like other communities across the State, the county election board had a standard procedure for training volunteers from non-partisan groups like the League of Women Voters to assist in voter registration. And according to press reports, the county trained as many as 1,500 volunteers. But the number of trained volunteers in

the city was zero, because your appointed city board refused to follow the standard practice used in the county and throughout the rest of the State. As a result the county had a voter registration rate higher than the State average and considerably higher than the city.

Concerned about this obvious disparity, the State legislature passed bills in 1988 and 1989 to require the city to use the same training procedures as the county and the rest of the State. On both occasions, you vetoed these bills. In 1988, you claimed it was unfair to impose this procedure just on the city of St. Louis. In 1989, the legislature responded by passing a bill applying the procedure to the entire State. But you vetoed it again. And you cited concerns about voter fraud, even though the Republican director of elections in the county was quoted as saying, "It's worked well here. . . I don't know why it wouldn't also work well in the city."

That makes sense. The only difference between the county and city is that the city is poorer, more heavily African-American and votes Democratic.

Rather than working to expand the right to vote, you and your appointed election board in the city did all you could to block increased voter registration in the city. The results of your stonewalling tactics are clear. By the time you left the Governor's mansion, the city of St. Louis had the lowest voting registration rate in the State, 15 percent lower than the rate in St. Louis County. Eight years later, thanks to the passage of the Federal Motor voter law and the efforts of the late Governor Carnahan, the voter registration rate in St. Louis city has increased dramatically.

Why did you feel that you didn't have to provide the same kind of registrars in the city as you did in the county and as they did in the rest of the State, particularly when groups indicated their willingness to provide those services?

Senator ASHCROFT. Well, thank you for the question, Senator Kennedy, and let me just say that I am concerned that all Americans have the opportunity to vote. I'm committed to the integrity of the ballot box. I know what it means to individuals who are deprived of the opportunity to vote, and I know what it means to candidates who have been the subject of elections where the integrity of the ballot box has been violated. I have personal experience in that respect.

I voted and vetoed—pardon me, I voted a number of bills as Governor, and, frankly, I don't say that I can remember all the details of all of them. Accordingly, I reviewed my veto message and recalled that I was urged to veto these bills by the responsible local election officials. I also appeared to anticipate the Supreme Court's recent decision as I expressed a concern that voting procedures be unified statewide. I would like to read my relatively short veto statements from the two relevant bills, and these are statements which I made when I was Governor, and it's quite some time—

Senator KENNEDY. And if you could elaborate on the local officials who urged you to veto them and the reason why they did that. If you could add that, I would appreciate it.

Senator ASHCROFT. Conference Committee substitute for House bill 1333, I believe it is, is vetoed and not approved for the following reasons: The Comprehensive Election Act of 1977 was intended

to simplify, clarify, and harmonize the laws governing elections. Section 115.003 Revised Statutes of Missouri 1988, the General Assembly has directed that the Act be construed and applied so as to accomplish this purpose: The few amendments to this law since 1977 have been enacted only as necessary to further statewide policy goals. Election bills approved by the General Assembly this year continue this trend by standardizing voter registration and other election procedures.

Conference Committee substitute for House bill 1333 stands in marked contrast to the overall trend of our election laws. It would single out one election authority and mandate for that one authority that certain procedures be followed. I see no compelling reason to impose this special requirement on the St. Louis Election Board. There are more than 150 permanent registration sites spread throughout the city of St. Louis. Each of these sites is manned by bipartisan, board-appointed registrars, and is in a public facility. Before every election, the board opens an additional 84 special registration sites manned by bipartisan registration teams at places such as shopping centers, churches, and union halls. The success of the St. Louis Election Board in promoting voter registration is evidenced by the fact that the city has a registration rate of 73 percent compared to the national average of 69 percent.

I join with the proponents of this bill in encouraging the St. Louis Board of Election Commissioners to review its present policy and to work to ensure that every resident has a clear opportunity to register to vote. But even as we work to increase voter registration, we must preserve the right of the voters to participate in fair elections.

The bipartisan St. Louis County Board of Election Commissioners, St. Louis Board of Aldermen President Tom Villa, and St. Louis Circuit Attorney George Peach have expressed concerns about the impact of this bill on the democratic process and urged me to veto it.

I might add that Tom Villa was a noted Democratic leader in the State of Missouri from the city of St. Louis. The Villa family had a historic sort of reputation. I don't know whether some of you close to St. Louis will remember that. St. Louis Circuit Attorney George Peach was a Democrat who was the prosecutor in the St. Louis area. So we had—a bipartisan county election board said this is not good, this is not right. You had the Democrat circuit attorney saying: I have reservations about this, this shouldn't be done. You have the St. Louis Board of Aldermen President, an almost totally Democrat organization—the Board of Aldermen, city of St. Louis, is about as a Democrat as the Democratic National Committee. They all urged me to veto this bill.

Now, I do think that when you look at the recent Supreme Court rulings requiring—pushing us more toward uniformity, that it's important to understand that creating and carving out special responsibilities in a variety of settings is something we shouldn't do. The people of St. Louis, I went on to say, have an absolute and fundamental right to open, fair, and non-partisan elections. My veto of this bill today will protect that right. For the above and foregoing reasons, Conference Committee substitute for House bill 1333 is returned and not approved.

The second veto message—I'd be happy to read another one.

Senator KENNEDY. Mr. Chairman, it's not necessary.

Senator ASHCROFT. This is—

Senator KENNEDY. Senator, if I could just add and get your response. You vetoed it because it was special legislation for St. Louis. Then the next year the legislature said, OK, because you haven't done anything in St. Louis, we'll apply it statewide. And then you vetoed that as well. That's what I can't understand. I can see you vetoing, it saying that it was special legislation, so we won't do it for St. Louis because it's special. Now you've just mentioned the Supreme Court wants uniformity, the State legislature said, OK, let's get uniformity, and you vetoed that as well. If you could address that.

Senator ASHCROFT. Yes. Thank you very much. It just takes a lot longer to answer these charges than it does to make them, and I apologize for that.

[Laughter.]

Chairman LEAHY. Gentlemen, just a moment. I want him to answer that, but I also point out the witness said that sometimes the questions come in a machine-gun fashion, I think was his expression. I can assure you the Chair will make sure that you are given time to answer all the questions, and when you review the transcript, if there's further answers you want, you will be given the time to respond to that. And, of course, the Senator asking the question will get follow-up. But I don't want any implication being given that you would not have a chance to answer all the questions asked.

Senator ASHCROFT. I appreciate that very much, Mr. Chairman, and I apologize if any of my remarks would indicate that you wouldn't fairly give me the opportunity to respond.

This is the veto message from the next year: House Committee substitute for House bill 200 is vetoed and not approved for the following reasons: The bill would require election authorities to permit, quote, any recognized non-partisan civic organization, political, fraternal, religious, or service organization interested in voter registration and education to conduct registration at any reasonable place selected by the organization. The election authority is required to have a deputy registration official present at the place. The bill provides that these deputies may be volunteers. I encourage these deputies may be volunteers. I encourage all qualified Missourians to register and vote in elections. I also encourage election authorities to improve voter registration efforts by keeping registration offices open for longer hours and by conducting registration drives at special registrationsites.

As I noted last year in St. Louis, the success of the St. Louis election board is apparent from the fact that the city has a registration rate of 73 percent compared to the national average of 69 percent. Efforts to promote voter registration must be balanced with the need to ensure that the voters participate in fair elections. This bill would tie the hands of election authorities and give private organizations a virtually unbridled right to add names to State voter registration roles.

As noted in a St. Louis Post Dispatch editorial, there is no overwhelming reason to allow an individual group of any political per-

suasion to register people. With the numerous instances of voter fraud that the city has experienced in recent years, election officials should be cautious about their procedures.

The registration apparatus must be available to everyone, but it also must be protected jealously to prevent its abuse.

St. Louis Post Dispatch, "Keeping Registration Fair." Election authorities are free to participate. August 28th. This was an editorial. I don't believe this editorial was about this specific measure. I don't want to create that impression. If it is about it, it would be fine.

Election authorities are free to participate with private organizations now to conduct voter registration. Given the overriding need to promote honesty and integrity in the process, I see no compelling reason to require that they do so in every instance in which a request is made. For the above and foregoing reasons, House Committee substitute for House bill 200 is returned and not approved. Respectfully submitted, signed, John Ashcroft, Governor.

Chairman LEAHY. Senator Thurmond, your turn.

Senator THURMOND. When outgoing Attorney General Janet Reno appeared before this Committee for confirmation, I expressed concerns about her opposition to the death penalty, but I still supported her. Those views did not prevent her from being confirmed.

Do you think most Attorneys General have had to enforce some law that they did not personally support?

Senator ASHCROFT. Senator, I am virtually sure that everyone who has served in the Attorney General's office has had to impose or enforce laws that he or she would not personally support. The definition of "personal support" is almost inconsistent with laws because laws are compromises of what people decide to do in the legislative process where we have a give-and-take in terms of what is finally achieved. So very seldom is there any law that is identical to the way any of us would write it completely.

Law enforcement officers uniformly, not just those in uniform, but those uniformly across the board, I think always have to enforce laws that they wouldn't personally have written.

Senator THURMOND. During much of the Clinton administration, a number of gun prosecutions declined. For example, Project Trigger Lock prosecutions for using a gun to commit a felony dropped 46 percent from 1992 to 1998. As Attorney General, will you expand successful gun prosecution initiatives like Project Exile and make enforcing gun laws a priority?

Senator ASHCROFT. I would hope that we would be able to more effectively enforce the laws relating to guns.

From the data that I have seen out of Project Exile and other efforts around the country, we have a far greater and more dramatic impact on violent crime by enforcing gun laws than we do in many other efforts that we make to try and improve the personal security and safety of our citizens.

As a matter of fact, in the last couple of years, I have sought additional appropriations when a member of the Senate to fund a similar program in St. Louis, a program which I think is entitled Project Cease Fire, but it is similarly a focus on saying to those who use guns in the commission of a crime, you can't do that with

impunity, and we will make sure that if you use a gun in the commission of a crime, you will regret it.

In Project Exile, the remediation in the rates of crime was very, very dramatic, and it seems to be a promising program that ought to be explored further. I think enforcement of gun laws holds great promise.

And incidentally, I might add that as the Attorney General of the United States, obviously I would be interested in advancing the agenda of the President, when possible, and he has stated clearly his intention to have more vigorous and energetic prosecution of gun crime.

Senator THURMOND. As a Senator, you were very dedicated to the war on drugs. For example, you successfully led the fight to pass major drug legislation to combat the methamphetamine epidemic.

As Attorney General, will you continue that commitment to fighting illegal drugs?

Senator ASHCROFT. Well, Senator, I think the illegal drugs are a mark and a stain on America, but they are a mark against the young people of this country that makes very difficult their success in the future, and I would hope that I would have an opportunity to have an energetic enforcement of the drug laws in this country in a way which would curtail drug use, and I would hope we would be able to lead in such a way as to make it possible for young people to look to national officials and to the kind of atmosphere we create as one that rejects drug use.

In the methamphetamine laws, which I had the privilege of working closely with members of this Committee on, including Senator Biden and Senator Feinstein, we did a couple of things that were important. We took methamphetamine which people had not taken seriously, and we put very serious penalties into the law. I think it was important that we put penalties in the law that were on a parity with the penalties for cocaine because too often people had thought that methamphetamine was not an important or challenging thing and we needed to have an opportunity to make sure that we signaled our disapproval and the danger that these dangerous drugs really present to our young people.

Senator THURMOND. A great deal of attention is focussed on the lives of criminals, but we do not hear as much about the rights of victims. Nevertheless, you have been a leader for victims' rights. Should crime victims be a top concern for the Justice Department?

Senator ASHCROFT. Indeed, they should.

I had the privilege of being involved in signing victims' rights legislation in the State of Missouri, and I was eager to find a way to have a national program for victims' rights legislation because too often technical problems relating to minor conflicts between the Federal system and the State system made impossible an effective use of the States' victims' rights legislation to protect the interests of individuals who have been victims of crime.

Senator THURMOND. You have been endorsed by numerous law enforcement organizations, including the Fraternal Order of Police, the National Association of Chiefs of Police and the National Sheriffs' Association. Is it important for the Attorney General to work closely with State and local law enforcement, and including rural law enforcement?

Senator ASHCROFT. Well, it certainly is important. One of the things about methamphetamine that struck me in the State of Missouri is that it tended to be a rural drug. It wasn't as focussed at our city centers where drugs like cocaine were prevalent, but in the out-state portions of Missouri, the methamphetamine production in a variety of labs—and I am sorry to say that Missouri is second only to California in terms of meth labs that were taken down—exploded on our State. There were two meth labs taken down in 1992. There were about a thousand taken down last year in the State, and many more.

I talked to one county sheriff who was in what we call a collar county, around St. Louis, where he said that his sheriffs department would take down 200 meth labs in that one county during the year, and at the same time I met with that sheriff, there were five or six small city police chiefs from that same county, and they said they would break down another 100. So there you have one county with 300 meth labs in a single year. It is a very serious problem and it is in rural America, and our ability to provide assistance through HIDTAs and other programs in the Justice Department can help curtail this very serious threat.

Chairman LEAHY. I have put in the record a number of statements of others so that we could have a chance—or so the witness can have a chance if he wishes to add to his answers to do so in the transcript, so those who asked a question would have also a chance to see that.

We will recess now. We will reconvene in the Senate Caucus Room in the Russell Building, the third floor of the Russell Building tomorrow morning at 10.

Senator SESSIONS. Mr. Chairman, we have leave to file a written statement? May I have leave to file a written statement?

Chairman LEAHY. Oh, of course. Of course. All Senators will.

We are adjourned.

[Whereupon, at 5:15 p.m., the Committee was recessed, to reconvene at 10 a.m., Wednesday, January 17, 2001.]

**NOMINATION OF JOHN ASHCROFT TO BE
ATTORNEY GENERAL OF THE UNITED STATES**

WEDNESDAY, JANUARY 17, 2001

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:08 a.m., in room SR-325, Russell Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kennedy, Biden, Kohl, Feinstein, Feingold, Schumer, Durbin, Cantwell, Hatch, Thurmond, Grassley, Specter, Kyl, DeWine, Sessions, Smith, and Brownback.

Chairman LEAHY. As those who have spent time in the Senate know, it is sort of the luck of the draw where you end up for hearings. Today we are in the historic Senate Caucus Room, the site of so many important Senate hearings. Hearings into the sinking of the Titanic were held here. If you look around this room, you will probably never see another public room anywhere in the country made like this. The McCarthy hearings, a number of hearings of Supreme Court nominations, and others were held here.

Yesterday, we began the hearings with opening statements from nine Republican Senators and seven Democratic Senators. We heard from both Senators from Missouri who introduced Senator Ashcroft and an additional Republican Senator who testified in support of his nomination. We heard the nominee's opening statement and his responses to the beginning round of questions.

Today when we resume, we will begin with Senator Kohl, then go to the distinguished Senator from Iowa. We will try to conclude these opening rounds of questions for the nominee by some time this evening.

Now, I know that a number of Senators have a number of questions and concerns. I want to give the nominee the opportunity to respond to each of these, and we are willing to stay as late tonight as necessary. But it is going to take some cooperation.

I would like to conclude official witnesses today if we can. There are a lot of shifting demands going on, some from the other side. But I also want to make sure—there was a suggestion yesterday by the nominee that sometimes questions come very rapidly. As I said during the hearing yesterday, if he feels he did not have a chance to fully answer a question, he can answer that for us, and, of course, the Senator asking the question can do a follow-up.

He has also, as any nominee does, an opportunity to correct any answer if he chooses to do so. For example, yesterday Senator Ashcroft testified that the State of Missouri was not a party to the

school desegregation litigation in St. Louis and the State had done nothing wrong and there was no showing of a State violation. However, the State had been a party defendant in that litigation since at least 1977, and the courts repeatedly held that the State was legally liable. The Eighth Circuit Court of Appeals noted in 1981, "The State of Missouri vigorously contends that it should have no part in paying for the costs of integration because its action did not violate the Constitution. This contention is wholly without merit. We specifically recognize the causal relationship between the actions of the State of Missouri and the segregation existing in the St. Louis school system."

The next year, in another appeal in that case, the Eighth Circuit wrote that the State had substantially contributed to the segregation of public schools in St. Louis. And in yet another opinion, in another appeal in that case, the Eighth Circuit termed the State "a primary constitutional violator" and noted that the State's constitution and statutes "mandated discrimination against black St. Louis students on the broadest possible basis."

Now, that is my understanding, and I would ask if there is any disagreement with that understanding.

Senator ASHCROFT. I appreciate the opportunity to clarify the situation, which involved the discussion of both the case in St. Louis and some of the case in Kansas City, which outlined and sort of defined the State's involvement in some orders regarding the funding of desegregation plans in both of those communities. And when the State was initially ordered to do things, I argued on behalf of the State that it could not be found legally liable for its segregation in St. Louis because the State had not been made a party to the litigation.

Subsequent to that time, the State was drawn into the litigation, and, obviously, by the time we had the case of *Missouri v. Jenkins*, which was what happened eventually in the Kansas City situation, the State was fully a party and obviously one of the named parties in the Supreme Court lawsuit. And I thank the Chairman for making it possible to clarify that there was a time at which the State became a party, but that the State was originally—

Chairman LEAHY. And you were Attorney General at that time. Is that correct?

Senator ASHCROFT. I believe that's correct.

Senator HATCH. I wonder if we could go to the regular order, Mr. Chairman.

Chairman LEAHY. I just wanted to—well, the answer—

Senator HATCH. That is the answer he gave yesterday as well.

Chairman LEAHY. Yes, but I think as he pointed out, it needed a correction, and I was trying to be fair to the nominee because the answer was not—

Senator HATCH. I don't think it needed a correction. I mean, it was the answer he gave yesterday.

Chairman LEAHY. The nominee—

Senator HATCH. Well, let's just have regular order.

Chairman LEAHY. The nominee has just said he thanks me for the chance to correct it, but go ahead, Senator Kohl.

Senator ASHCROFT. Sir, in all due respect, I thank you for the opportunity to clarify.

Chairman LEAHY. Thank you.

Senator KOHL?

Senator KOHL. Thank you, Senator Leahy.

Senator Ashcroft, I believe that we fail the Senate and our constituents when we put politics above policy and bitterness above compromise. In an evenly divided Senate, we have a terrific opportunity to give the public faith in democratic institutions. It is not clear whether or not you fully agree.

Yesterday, Senator Leahy read a 1998 quotation of yours, "There are voices in the Republican Party today who preach pragmatism, who champion conciliation, and who counsel compromise. I stand here today to reject those deceptions. If ever there was a time to unfurl the banner of unabashed conservatism, it is now."

In that year, you were also quoted as saying, "There are two things you find in the middle of the road, and moderate and a dead skunk, and I don't want to be either one of those."

[Laughter.]

Senator KOHL. As someone who works the middle of the road myself, I find these statements troubling. Tell us why we should believe that, as Attorney General, you will accept those voices in your own party who counsel compromise.

Senator ASHCROFT. Well, I thank the Senator for that question. I'm still getting adjusted to this, to hearing myself. It's like talking in the shower in this room. It's a little bit different, but I thank you.

The first quotation was a quotation about whether in my judgment a party should set forth a clear agenda, and I think it's important for the party to be in a position to debate. And I would expect the Republican Party to be stating a clear conservative position, and I generally expect people on the other side to state a more predominantly liberal position.

In the process, in the collision of those ideas is what I appreciated as the process in which we were able to work together in many instances to get legislation. When different ideas come from different quarters, those differences enhance the ultimate quality of what we do, and pardon me for lapsing back into my "we do." I'm no longer a Member of the Senate, and I understand that. But at the time I was a Member of the Senate. And I think that when there are people who state a strong position on one side and a strong position on the other representing their parties, and then they come together in the process to reach a conclusion, it's valuable.

Another way of putting it would be that if we were all right there in the middle together, we wouldn't need the legislative process. The legislative process is the process of disagreement. It's the process of debate. It's the process of stating these and examining the various positions from one end to the other and then harmonizing those differences by working together.

So I expect the Republican Party generally to state a pretty strong conservative view and to start the negotiations from that view with the understanding that by the time you finish, we're going to have something that's going to be an enactment that results in something that people can generally support and that will

have good values expressed from a variety of significant perspectives.

I have to say this, that I mean no injury or disrespect to those individuals who don't have my views in that respect. I just wanted to encourage people not to think they always had to think what other people thought, they were free to have a position at one end of the spectrum or another, and that in the collision of those views, we hope that out of that collision the truth emerges and good policy and legislation emerges.

The joke about what you find in the middle of the road, I really regret it if anyone's offended by it. I had one of the individuals who intends to testify against me tomorrow come up to me this morning and say: You know, I agree with you about the middle of the road. I'm on the other side of the road, and I don't—I tell the same story.

I don't know whether she'll want to confess that when she is testifying tomorrow, but she said: I understand the joke, I'm from Texas, and we didn't say dead skunk, we said armadillo.

Frankly, I would be the first to say that I do not intend to impugn people for their political positions, and I'm sorry if that is to be taken in that respect. It was meant as a humorous sort of aside to say that I generally have been characterized fairly as a common-sense conservative and I haven't been right in the middle of the road.

Senator KOHL. Well, you are likely to be confirmed, as we all know, as the next Attorney General of the United States. How will you be—or will you be a different kind of an advocate as Attorney General than you have been as a Senator in the sense that we in the Senate have seen you consistently very much on the right on virtually every issue? And that is fine. I mean, you know, you campaigned as that kind of a Senator-to-be, you were elected, and you have been that kind of a Senator, and a very respectable Senator, obviously.

Is there a different kind of a person within your obviously strong philosophical background and views, but is there a different kind of a person who we might well expect to see as the Attorney General of the United States?

Senator ASHCROFT. Well, I thank you for that question because these are vastly different roles. I mean, if a person's playing at the power forward position, he has one approach to the basket. If he's playing as the distributor of the ball, as the playmaker, he has another approach.

When I was in leadership responsibilities with the National Association of Attorneys General, I understood that it wasn't my position to be—I had to sacrifice some of my advocacy roles and some of my—what otherwise would have been my approach to be responsible in those positions; similarly, when I was Chairman of the National Governors' Conference or when I was elected to be the Chairman of the Education Commission of the States, which was an education organization that involved not only all the Governors but members of all the State legislatures and all the State school organizations that dealt with education.

And there's another important difference with the Attorney General in that as it relates to policy matters. As it relates to policy matters, he is referenced to the President of the United States. And

it would be my responsibility to carry forward on things that the President of the United States would expect me to advance.

Now, that's not inconsistent with what an attorney does, because an attorney represents individuals all the time. That's part of what we're trained to do. But I would say to you that I would expect in the role of Attorney General to enforce all the laws vigorously and, as it related to policy matters, to reflect the administration's policy and effort to achieve the kinds of things that this administration was elected to achieve by the American people.

So I understand the distinction. I think my past indicates that I've been capable on a number of occasions in making the difference and in adjusting the way that I approach things to fit my responsibilities in the role that I'm expected to play. And I can pledge to you that I will work to work with all people at the Attorney General's office, and I will welcome the participation and conversation and involvement of all kinds of individuals.

In that respect, it may not be totally different from what I've done here in the U.S. Senate because I've had the privilege of cosponsoring legislation with a lot of individuals, the Chairman in particular, and obviously we're not what you would call inseparable twins on policy. But there are areas respecting privacy and—

Chairman LEAHY. Separated at birth.

Senator ASHCROFT. Separated at birth, OK. That have made it possible for us to work together, and I would expect to work with a broad range of individuals, especially be honored to do so with members of this Committee.

Senator KOHL. OK. Thank you.

In 1979, as Attorney General of Missouri, you brought an antitrust case against the National Organization for Women for sponsoring a boycott of States that had not yet ratified the equal rights amendment. You lost the case all the way up to the Supreme Court.

It is a basic principle of antitrust law that when boycotts involve non-commercial concerns, the Sherman Act does not apply. And yet even after you lost the case, you still disputed the ruling. In 1981, you wrote a Law Review article that said, "The decision created a potentially disastrous exemption from the antitrust laws," and that "parts of the decision severely strained antitrust laws."

You seem to have pursued a highly unusual use of the antitrust laws. Some have argued that you chose to further your political views above the equal rights amendment by using your office as State Attorney General. Furthermore, you kept appealing the case despite well-established Supreme Court precedent against you.

Can you explain to us why you chose to pursue that case so vigorously?

Senator ASHCROFT. Thank you for the question, and it's a valid one. In response to the fact that the elected representatives in the legislature of Missouri chose not to ratify the equal rights amendment, a boycott was organized of the State of Missouri which would have curtailed the State's ability to attract conventions and provide employment to individuals who populate the convention industry. This lawsuit took place over 20 years ago, and I'm not sure I can recall all the details. We filed the lawsuit, in the best of my recol-

lection, because the boycott was hurting the people of Missouri and we believed it to be in violation of the antitrust laws.

The lawsuit had nothing to do with the ERA—we didn't sue the ERA—or with the political differences that it might have had with NOW. It simply was with the practice of saying that we're not going to—we're going to curtail convention business, and for individuals in my State who relied on that industry, they were to be hurt.

Now, I litigated that matter thoroughly, and, frankly, other States attempted it—one other State attempted a similar lawsuit, and not too long thereafter, I think a similar lawsuit was launched by an organization that questioned whether or not commercially directed boycotts were susceptible for achieving political ends.

I think the law is well-settled and clear. After our case was resolved, and in the Eighth Circuit Court of Appeals, one of the judges found in our favor, and two of the judges found against us. So that it was a matter which had some acceptance in the courts, but obviously I didn't carry the day.

I think the law is clear now and has been clear in the aftermath of that decision, and from that perspective, I don't think it's an issue and can't be an issue. And there is and has been a well-established subsequent set of circumstances that have demonstrated that commercial boycotts targeting individuals or industries to force third parties to vote or to conduct themselves in some way politically are acceptable. And since that's the case, that's the situation and the rule of law at this time, having lost the case 2-1 in the Eighth Circuit Court of Appeals and the Supreme Court having denied cert and other cases having been resolved, I accept that fully and have not recently alleged that there ought to be any change in the law in that respect. It's a part of the way I have come to believe America resolves these issues.

Senator KOHL. Antitrust, Senator Ashcroft. Last week, American Airlines announced that it will buy TWA and enter a joint agreement to run D.C. Air and operate the Washington-New York shuttle. Meanwhile, the U.S. Airways-United merger is under scrutiny at Justice. By mid-spring we might see four airlines turn into two, and these two merged airlines will control a tremendous share of airline travel in the United States.

The combined U.S. Airways-United and American-TWA share will be nearly one-half of the domestic airline market. These two airlines will collectively dominate no fewer than 13 hubs, including many of our major, major airports.

This fast-moving consolidation in the airline industry doesn't leave the head of the Justice Department with much time. Before we know it, we could have a domino effect in the airline industry take place. There's a real chance that transition paralysis could result in a merger wave that won't stop until there are only three or four airlines nationwide.

How concerned should we be about this pending airline consolidation? When confirmed, if confirmed, how quickly do you intend to act? Is it something that is on your radar screen in a very major way? What can we expect from you by way of some action? Do you have something beyond the comment that it is a serious matter,

you will have to consider it? Can you tell us the direction in which you might very well go?

Senator ASHCROFT. I consider it serious. I will study the issue very carefully. I do not know all the facts and circumstances. I think it would be inappropriate for me, not fully aware of this, to be announcing a position or a direction.

I can tell you that I believe that competition is very important and the absence of competition I have witnessed, and it's a serious problem. In the absence of competition, I think you have very serious problems with rates. We've all seen what happens when there's only one way out of town, and we've watched how in those settings rates go way up. We've watched when Herb Keller comes to town with Southwest Airlines, and we've watched what happens to rates in those situations. And my view is that it's very therapeutic when you get competition.

I will do what I can to make sure that we maintain the right competition, and I will—but I'll have to base what I do on the responsibilities of the Justice Department, and it has to be based on facts and a thorough investigation of the situation.

Senator KOHL. Thank you, Mr. Chairman.

Chairman LEAHY. The Senator from Iowa, Mr. Grassley, I am told by Senator Hatch is in another confirmation hearing where he is questioning the witness, and so we will turn to the Senator from Pennsylvania, Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Senator ASHCROFT, I didn't realize how important this hearing was until it was scheduled here in the Senate Caucus Room. We haven't been here since Justice Thomas and Judge Bork. This is a very famous room for major matters. It is the room where President Kennedy announced for President back in 1960. So it is a commentary on the importance of the hearing.

Permit me to go to a key issue on the choice issue, a woman's right to choose, and concerns which have been expressed about your enforcing the law, which I thought you stated very positively yesterday, and move to the area of prosecutorial discretion where there is substantial leeway for an Attorney General or even a district attorney, as I was for many years, dealing with the prosecutor's discretion on what cases to prosecute and how to handle them. And what I think many Americans are looking for beyond your assurance that you will enforce the law is your commitment to exercise your discretion to carry out the intent of the law on a woman's right to choose within the confines of existing law which you have promised to support.

One of the votes that you cast that I thought was particularly significant was the one in the bankruptcy context. It is interesting that it should have an application to a woman's right to choose. But when protesters blocked abortion clinics, there have been some very substantial verdicts handed down, one in excess of \$100 million. And when that issue came before the Senate, you voted that those individuals who had those verdicts against them would not be permitted to have a discharge in bankruptcy.

What assurances can you give, Senator Ashcroft, that your discretionary calls as Attorney General will be to enforce the intent behind existing law on a woman's right to choose?

Senator ASHCROFT. Well, any constitutionally protected right is an important right, and I think people who interfere with the exercise of constitutionally protected rights should be the focus of attention by prosecutorial authorities. It's my understanding that there are anticipated several dozen cases a year in terms of the violence or obstruction or coercion around abortion facilities or other health, reproductive health facilities. And I would think that it should be the responsibility of the Attorney General to be able to respond aggressively in every one of those situations.

Senator SPECTER. Well, if you say aggressively, that is a good assurance. Aggressive has a well-accepted meaning. I like aggressive prosecutors.

Let me pinpoint the issue on constitutionality of the statute, the Freedom of Access to Clinic Entrances. There have been some 24 cases which have challenged the constitutionality of the Act under the First Amendment in the Commerce Clause, and all 24 of these cases have been decided favorably to the constitutionality of the Act.

The job of the Attorney General, just like the job of the district attorney, the State Attorney General, is to uphold the constitutionality of the Act, and I note you nodding in the affirmative. Would you commit to the Attorney General's generalized responsibility to support the constitutionality of existing legislation like the Freedom of Access to Clinic Entrances?

Senator ASHCROFT. Let me just say that I would support the constitutionality of the Act. I don't believe there is a First Amendment right to coercion and intimidation. I think that's the clearest thing I can say. When people say that this Act interferes with their First Amendment right, I don't think that's what the First Amendment provides. The First Amendment does not mean that you have the right to intimidate a person who is exercising their constitutional rights. The First Amendment—

Senator SPECTER. So you would—

Senator ASHCROFT.—Doesn't provide you with the right to violate the person and safety and security of an individual in that respect. So I will vigorously enforce and defend the constitutionality of—of course, that's my responsibility. When this Senate acts and makes a determination through an act and it's signed by the President that something should be the law, that places a very high level of responsibility on the Attorney General to carry that out.

Senator SPECTER. Let me move to freedom of religion, Senator Ashcroft, an area again where substantial concern has been expressed.

There have been many quotations of your speech at Bob Jones University on "we have no king but Jesus," and I view that as a personal comment which you have made. We all have our own views on religion, and the question is not what John Ashcroft or Arlen Specter hold as religious views, but whether the sacrosanct provisions of the First Amendment on freedom of religion will be maintained and enforced and the Attorney General has a very vital role there.

Political speeches frequently contain a lot of references to religion. This happens on both sides of the political aisle, and some of us may not do it and some of us may, but political speeches are

one thing and personal views are another. But the most important factor is the enforcement of the law.

Now, I note that Attorney General of Missouri, you had acted to prohibit the distribution of religious material on a campus, and what I would like to know is your determination, putting aside your own views, your resoluteness to enforce the sacrosanct provisions for freedom of religion of the First Amendment, and perhaps if there are other instances that you could show in addition to that one where you stop the distribution of religious material on a campus.

Senator ASHCROFT. Well, first of all, I am committed to the right of individuals to worship freely in accordance with the dictates of their own conscience or not to worship at all, and I will work acidulously to defend that right for all Americans.

The phrase, "we have no king but Jesus," was a representation of what colonists were saying at the time of the American Revolution in a number of instances, and it became a bit of a rallying cry when people came to collect taxes on behalf of the King of England and the American colonists would respond with that phrase.

I was putting in that speech in context the idea that the ultimate authority or the ultimate idea of freedom in America is not governmentally derived. It basically went to something that was reflected when Thomas Jefferson wrote the Declaration of Independence. He didn't write, "We hold these truths to be self-evident that all men get from government equality."

Senator SPECTER. Senator Ashcroft, because of limited time—

Senator ASHCROFT. Sure.

Senator SPECTER.—Would you pinpoint what you did specifically as Attorney General of Missouri in not permitting religious matters to be handed out on campus?

Senator ASHCROFT. Well, the question was raised about whether Christian groups could distribute Bibles on school grounds, and Missouri constitution happens to be even more adamant about church and State and requiring separation far more clearly even than does the U.S. Constitution. And I looked at the constitution of these groups, obviously were groups that I had some favor for, but obviously the law has to be followed. I simply—

Senator SPECTER. Did you stop the distribution of those—

Senator ASHCROFT. I issued the opinion that indicated that distribution was unlawful.

Senator SPECTER. And what did you do?

Senator ASHCROFT. Distribution ceased based on that.

Senator SPECTER. Let me move to Supreme Court nominations, Senator Ashcroft. President-elect Bush has already said that he would not employ a litmus test on pro-choice, pro-life on Supreme Court nominees on this panel, and many of us who are pro-choice have supported candidates for the Supreme Court who were known to be pro-life and many Senators who vote pro-life have supported nominations for nominees who have been known to be pro-choice.

To the extent that you have any role in the selection of Supreme Court nominees, would you make a commitment not to employ a litmus test on the pro-choice/pro-life distinction?

Senator ASHCROFT. I have not had a substantial discussion with the President-elect of the United States about my role in terms of

judicial selection. I know the Constitution allocates clearly the appointment authority to the President.

I know that he has indicated that he would not have a litmus test, and I believe that in my service to him, it would be important that I reflect that clear indication of his that no litmus test would exist.

Senator SPECTER. So you would make a personal commitment not to apply a litmus test to Supreme Court selections to the extent that you may be involved in that?

Senator ASHCROFT. To the extent that I have the authority, I am going to do—I am going to work with the President and his framework for developing Supreme Court justices. The answer is clear, no litmus test. I think he stated that clearly, and that would be my position.

Senator SPECTER. Your position as well. OK.

The issue on antitrust has been broached by Senator Kohl, and I would like to pursue that a little further. I share Senator Kohl's concerns about the airline mergers. I am concerned about what OPEC is doing.

Just this morning, there is an announcement of raised prices by OPEC curtailing production, and I would like to make available to you a letter signed by six members of this Committee to the President in April of last year setting forth a basis for litigating with OPEC antitrust violations and ask you to take a look at that and give us a view of it a little later.

Staying with the antitrust issue for another moment or two, without expressing any view on the Microsoft case, because it is a very complex issue, it has been decided in the District Court. It is on appeal to the Court of Appeals for the District of Columbia Circuit. The question which I would like your response to is to what extent you would honor the Court process.

It would be one thing if the matter was considered *ab initio* by Attorney General Ashcroft, if confirmed, contrasted with an action which is already underway.

Here you have a District Court judgment and you have the matter on appeal. To what extent—and here, again, I emphasize, I am not commenting on the merits. That is something different. I am only on the process as to the extent of recognition that as Attorney General, if confirmed, you would give to the existing legal status of the case.

Senator ASHCROFT. Well, I am very pleased to answer the question. The Microsoft case is a very important case, and the maintenance of competition in our culture is a very important aspect of what we need to make sure that we get the right output.

I would first say that I will have to confer with the people in the Antitrust Division. I don't know the facts of the Microsoft case. It is a very complex case from what I have heard about the case. It relates to tying arrangements and the integration of various aspects of software. The judgment of the District Court obviously would have substantial consequences.

I would look very carefully at this case, relying on the expertise of the Department in deciding strategy for the case, and I am not in a position to assure you that I would do anything other than that at this time.

Senator SPECTER. My yellow light is on. So I have less than a minute.

I would conclude this round, Senator Ashcroft, by noting your sense of humor, noting your membership among Singing Senators. In a senatorial role on official responsibilities, there is very little opportunity for a Senator to display any sense of humor when you are talking about the death penalty or you are talking about the weighty legal issues that come before the Congress of the United States, but I think it is something that ought to be noted.

I have some concern, only slight, not about the fact that you don't drink or smoke, but that you don't dance, and had some sense of wonderment as to how that fit in with your being so extraordinarily capable as a Singing Senator.

I would come back only for a moment to the middle-of-the-road question, and there are a lot of moderates who have asked me—I talk to some from time to time—about the only people in the middle of the road being dead skunks and moderates. I have seen your sense of humor in the hearing room which I think is exemplary, and I have noticed it a lot when you were on this side of the bench where you might have been a little more comfortable. Sometimes your quips may get you into a little trouble.

I think you have already explained it, but I have some explaining on that particular one with some of the people in the so-called moderate group.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Specter.

I would note for the record the Chairman, current Chairman of this Committee, does dance, but that is probably disputed by my wife of 38 years.

I turn to the distinguished senior Senator from California, Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Senator Ashcroft, I must tell you, I am deeply puzzled by what I heard yesterday and what I hear today. I am one that believes that in political life of which you have been part for 25 years, it is very hard to change your stripes or change your spots, and I see a kind of metamorphosis going on, a mutation, if you will, that somebody that has been really on the far right of many of the issues about which Senators have spoken today or yesterday, civil rights, a woman's right to choice, certainly guns, is now making a change, and quite frankly, I don't know what to believe.

I would like to confine my questions to choice and to guns. You have a long history of vigorously criticizing the pro-choice position. In 1998, you wrote, "If I had the opportunity to pass but a single law, I would ban every abortion except those medically necessary to save the life of a mother."

In 1983, while you were Attorney General, you told the Missouri Citizens for Life Annual Convention that you would not stop until an amendment outlawing abortion is added to the United States Constitution. When you spoke at the National Right to Life Committee Annual Convention, you said, and I quote, "The *Roe* decision is simply a miserable failure, and I hope that the Supreme Court announces it is overturning the *Roe* decision and giving back to the States the right to make public policy."

While Governor in 1989, you declared the sixteenth anniversary of *Roe v. Wade* a day in memoriam for aborted fetuses. So you have, in fact, been an implacable foe of a woman's right to choose for a quarter of a century.

You have supported legislation and even a constitutional amendment that would define life at the beginning of fertilization which would not only criminalize all abortions and take away a woman's right to reproductive freedom and choice, but would also outlaw and criminalize many forms of the most common birth control options. I frankly don't know what to believe.

You said of Bill Lann Lee in one of the reasons you voted against him was because he had the kind of intensity, and I quote, "that belongs to advocacy, but not with the kind of balance that belongs to administration," and I might respectfully say the same thing about you and your record.

I want to ask you some specific questions. We talked in my office about a rape exception, and let me ask this question. Each year, more than 32,000 women become pregnant as a result of rape, and approximately 50 percent of these end in abortion. Given the circumstances surrounding any rape and certainly a resulting pregnancy, can you tell us why you feel there is no need for a rape exception to a ban on abortion?

Senator ASHCROFT. Thank you for your question. I understand these are deeply held views of yours, and my opposition to the abortion of unborn children has been a deeply held position of mine.

I have sought in a number of ways through the years to reduce and to curtail the abortion of unborn children, and I understand that reasonable people do differ on these things and that has been not only my understanding, but it has been a basis for my seeking to act in concert with people to cooperate to move toward a variety of different ways to reduce the level of aborting unborn children in our culture and in our society.

I have voted on numerous occasions for rape and incest exceptions, and have voted for much broader exceptions than that. One time when I was Governor, I proposed that we only ban second abortions or abortions for second or third times, we ban abortions for racially mixed children because people were wanting to abort a child for being racially mixed or we banned abortion for sex selection. So I think it is fair to say that over the course of my time in office and with the prerogatives I have had as a public servant, I have adopted a variety of positions to try and reduce the number of children being aborted.

I think it is also fair to say that I know the difference between an enactment role and an enforcement role, and during my time as a public official, I have followed the law and my following of the law has been clear. When I was the Attorney General of the State and pro-life groups wanted to insist on the publication of abortion statistics for particular hospitals and they asked that those abortion statistics be published, I went to the law, in a fair reading of the law didn't allow for the publication of those statistics which could have made those hospitals the target for pro-life forces. I followed the law in saying that I would not force the State or rule that the State had to publish those statistics when I think the law

was clear that it should. So I have a record of being able to say I know the difference between enacting the law, the debate about the law. My involvement in legislation has, very frankly, in recognition of the law centered in real terms on trying to do things like get parental consent and other things like that. Those are the kinds of things which I have focussed on, the ban of partial-birth abortion, but I will enforce the law fairly and aggressively, firmly.

I know the difference between the debate over enacting the law and the responsibility of enforcing the law, and that has been clear in my record as a public servant.

Senator FEINSTEIN. Will you maintain the Department of Justice's Task Force on Violence Against Health Care Providers and give it the resources it needs to continue?

Senator ASHCROFT. I will—the—there have been, I think, three different task forces in this respect. I will maintain such task forces and provide them with the kind of resources that they need in order to make sure that we don't impair the constitutional right of women to access reproductive health services.

Senator FEINSTEIN. Will you, 100 percent, investigate and prosecute activities that block the entrances to facilities where abortions are performed even if the conduct is non-violent?

Senator ASHCROFT. If the conduct of anyone violates the law regarding the access of women to reproductive health services, I will enforce the law vigorously. I will investigate the alleged violations thoroughly. I will direct U.S. Attorneys to devote resources to that on a priority basis.

Senator FEINSTEIN. When you said yesterday that *Roe* was a settled question, does that indicate that you accept this adjudication and that you will use all of the elements of your offices to support it?

Senator ASHCROFT. I believe that both *Roe* and *Casey* and I guess—is it *Stenberg*? Is that the most recent case that related to the Nebraska statute? —are settled law. In the application for certiorari, I think on the *Stenberg* case, there was a request for—by one of the parties that *Roe* be considered, reconsidered. The Supreme Court has signaled very clearly it doesn't want to deal with that issue again.

I would say that I do not want to devalue the currency of the Solicitor General of the United States by taking matters to the Supreme Court on a basis which the Supreme Court has already signalled we don't want to deal with and we are unwilling to deal with.

I think, you know, the Solicitor General of the United States has some standing and prestige in the United States Supreme Court, and to consistently go back to the Court insisting that the Court do what the Court has indicated it doesn't want to do devalues the ability of the Solicitor General in other matters.

It not only is, thus, a losing proposition, but it is counter-productive as it relates to the ability to succeed on other issues in the Justice Department, and, therefore, accepting *Roe* and *Casey* as settled law is important not just to this arena, but important in terms of the credibility of the Department.

Senator FEINSTEIN. Let me change to guns for a moment. In this body, I was the main author of the assault weapons legislation in

1993. I feel very strongly and very passionately that assault weapons have no role in this society on the streets of our communities. That law is supported by virtually every Federal and local and State law enforcement agency across our land, and I think law enforcement recognizes that there is no legitimate reason for civilians to have military-style weapons that are useless for hunting or really for self-defense.

Now, the National Rifle Association, on the other hand, opposed and continues to oppose the Federal assault weapons ban in court in suits in which the Justice Department took the other side defending the statute.

You called this ban wrong-headed in a response letter to Sarah Brady in 1998. If you become Attorney General, will you maintain the Justice Department position in support of the assault weapons ban?

Senator ASHCROFT. Yes.

Senator FEINSTEIN. Will you support its reauthorization when it sunsets in 2004?

Senator ASHCROFT. It is my understanding that the President-elect of the United States has indicated his clear support for extending the assault weapon ban, and I will be pleased to move forward with that position and to support that as a policy of this President and as a policy of the Justice Department.

I might add that I had the—I don't believe the Second Amendment to be one that has—forbids any regulation of guns. In some of the hearings that I conducted when I had the privilege of serving on this Committee and was the Chairman of the Constitution Subcommittee, we discussed those issues, and, for instance, in the Juvenile Justice bill, I sought to amend the Juvenile Justice bill so as to make semiautomatic assault weapons illegal for children just as handguns were illegal for children.

And there are a number of enactments which I would not prefer as policy, but which I believe would be constitutional. As a policymaker, I may not think that a particular weapons ban would be appropriate, but as whether—I could have voted against a number of things which I thought constitutional, but which I might have thought bad judgment.

What I am trying to clarify here is that I believe that there are constitutional inhibitions on the rights of citizens to bear certain kinds of arms, and some of those I would think good judgment, some of those I would think bad judgment, but as Attorney General, it is not my judgment to make that kind of call. My judgment, my responsibility is to uphold the acts of the legislative branch of this government in that arena, and I would do so and continue to do so in regard to the cases that now exist and further enactments of the Congress.

Senator FEINSTEIN. Now, let me ask you another question on guns. I was co-sponsor of the Juvenile Justice bill with Senator Hatch as the main author. We wrote the gang abatement section of the bill because I am deeply troubled by gangs that have moved across State lines. Some of the gangs that originated in California are now all over the United States, and in that bill, we use the RICO laws to set some predicates. And some of the crimes I was interested in adding were trafficking in guns with obliterated serial

numbers, possession of machine guns, knowingly transferring a smuggled gun to be used in a drug or violent crime, importing guns with intent to commit a drug or violent crime, stealing guns, transportation of bombs, machine guns, or sawed-off shotguns by an unlicensed person, transporting stolen guns, possession of illegal assault weapons—possession of illegal assault weapons, and stealing firearms from a licensed dealer, importer, manufacturer, or collector.

The point of adding these crimes as RICO predicates was to give law enforcement the ability to seize the assets of violent gangs and increase penalties for gangs conspiring to commit these and other crimes.

Now, it is my understanding that you work to strip the bill of these predicates. My question is why.

Senator ASHCROFT. Well, first of all, let me say that in the event the bill passes with those predicates, I will defend the bill and instruct the Department to defend the bill and its constitutionality.

There were a number of individuals that expressed to me serious reservations about the RICO applications in the bill. RICO has been a controversial matter that has been questioned by members of this Committee on both sides in terms of potential abuses, even gaining the attention of the ACLU which has challenged the application of RICO in these settings.

Those were the reasons that I had challenged the wisdom of including those in the bill and the effect of its inclusion on the ultimate passage of the bill. As Attorney General, I would provide instruction to the Solicitor General in defense—and others in the Department in the defense of actions to support the bill. It is clearly within the range of items that it would be the responsibility of the Attorney General to support.

Senator FEINSTEIN. I believe my time is up.

Chairman LEAHY. It is. Thank you.

Senator FEINSTEIN. Thank you very much, Senator. I appreciate that.

Chairman LEAHY. Senator Grassley, who is the ranking member and incoming Chairman of the Finance Committee, is still tied up at the Secretary of the Treasury hearings. So we will go to the distinguished Senator from Arizona, Senator Kyl.

Incidentally, I would note before Senator Kyl starts, when Senator Grassley is able to be here—we all understand he has to be gone—and I have discussed this with Senator Hatch, he would then become the next Republican to ask questions.

Senator KYL. Thank you very much, Mr. Chairman.

Mr. Chairman, I would like to cover three things if I could in this round of questioning.

First of all, I would like to make a comment about some statements that Senator Kennedy made, and if Senator Ashcroft wishes to respond, to afford him the opportunity; second, to ask a question about nomination standard; and, third, if there is time to get into the issue of victims' rights.

First of all, Mr. Chairman, Senator Kennedy in his opening statement launched a litany of attacks against Senator Ashcroft, some of which Senator Ashcroft had an opportunity to address.

In my opinion, most of these attacks had the effect of distorting Senator Ashcroft's record, and I think that they were unfair.

First of all, Senator Kennedy said that Senator Ashcroft—and I am quoting now, these are direct quotations from the transcript—“strongly opposed school desegregation.” Now, that’s not true from what I understand, and Senator Ashcroft did have the opportunity briefly to testify that he strongly supports desegregation, believes in integration, and protecting everyone’s civil rights.

Secondly, Senator Kennedy said that Senator Ashcroft—and, again, I am quoting—“strongly opposed voter registration in St. Louis.” Now, apart from being obviously incorrect on its face, Senator Ashcroft also had some opportunity to explain that he does not oppose voter registration in St. Louis. In fact, the etiology of that charge was legislation that he vetoed having to do with voter registration policies in the State, one of the bills being strongly recommended for veto by predominantly Democratic public officials.

Third, Senator Kennedy charged that Senator Ashcroft did not support our laws concerning access to contraception and a woman’s right to choose. Here, I simply note that while I don’t think that Senator Kennedy was inaccurate in the way he described Senator Ashcroft’s positions necessarily, there is an implication that is left that is inaccurate.

While it is true that Senator Ashcroft as a legislator sought to change some of the law, he said that and has had further opportunity to amplify in response to Senator Feinstein’s question that in his very different role as the lawyer for the American people that he would fully enforce the law as it exists.

Fourth, Senator Kennedy said that Senator Ashcroft—and, again, I am quoting—“is so far out of the mainstream that he has said that citizens need to be armed in order to protect themselves against a tyrannical government,” end of quotation.

Now, the way that that charge was made, made it sound very irresponsible for anyone to take such a position, and it made it sound like this was something that Senator Ashcroft was very concerned about and, therefore, very much distorted his views.

The charge was obviously out of context. The correct context—and this is something that Senator Ashcroft did not have an opportunity to respond to. If my characterization is inaccurate, I ask him to please add to what I say, but the remarks that he is referring to, I believe are those that occurred before a hearing of the Constitution Subcommittee of this Committee, which Senator Ashcroft chaired and during which he observed that the Second Amendment conferred individual rights upon citizens, and here is his quotation, the full quotation from that hearing.

It was a recitation of the views of James Madison, the Father of our Constitution, and here is what Senator Ashcroft remarked, “In Federalist No. 46, James Madison, who later drafted the Second Amendment, argued that the advantage of being armed, which the Americans possessed over the people of almost every other nation, would deter the new central government from tyranny,” end of quotation. As we know, James Madison was the primary author of much of the Constitution, and I frankly think it is a stretch to consider the Founders and James Madison out of the mainstream, but don’t take it from me.

Senator Feingold during his questioning, among other things, said this—and this is a quotation from the transcript—“I listened

carefully to every word you,” meaning Senator Ashcroft, “said, and I reserve the right to change my mind after reading the transcript, but I believe I agree with every single word you have just said.” Continuing the quotation, “The purposes of the Second Amendment include self-defense, hunting sport, and some certainly would say, as would I, the protection of individual rights against a potentially despotic central government. The Second Amendment was clearly intended to counter-balance a distrust of and to protect the right to defend against an oppressive government.”

Mr. Chairman, while there is certainly room for us to debate Second Amendment gun control issues—and we have had robust debates about that—I think it goes too far to characterize a position that was held by President Madison, Senator Ashcroft, Senator Feingold, and a lot of other scholars on the issue as outside the mainstream, and, in fact, I suggest it may say more about Senator Kennedy’s locus in the spectrum of American public opinion.

Fifth, Senator Kennedy said that Senator Ashcroft “opposes virtually all gun control laws,” and he had some opportunity yesterday to explain his view that that is not true and to further expand in his answer to Senator Feinstein just a moment ago. He supports the Brady law, voted to require mandatory background checks for all gun purchases at gun shows, to prohibit firearms in a school zone, to prohibit those convicted of domestic violence from possession a firearm, drafted the juvenile assault weapon ban that passed the Senate in 92 to 2, and supports President-elect Bush’s policies to aggressively prosecute those who buy guns illegally, sell them illegally, or commit crimes with guns.

And finally, Senator Kennedy said that Senator Ashcroft—and I am quoting here again—doesn’t “respect the right to free speech under the First Amendment,” and, Mr. Chairman, you can differ with Senator Ashcroft on some issues, but I think it is not responsible to charge that he doesn’t respect the right to free speech under the First Amendment. I think he has made it very clear that he will enforce the law and that he has been an outspoken defender of the First Amendment for many years.

Senator Ashcroft, I hope that I have correctly characterized your views. Would you—have I done so, and is there anything you would like to add?

Senator ASHCROFT. Well, first of all, I am grateful to you for having been so careful in your approach to these matters, and I appreciate the opportunity for the clarification.

Senator KENNEDY. Mr. Chairman, I would hope that after Mr. Kyl’s time has been allocated that I would have a chance to respond in terms of fairness.

Chairman LEAHY. Under the normal practice, when there is such direct reference by one Senator to another Senator on the panel, the Senator from Massachusetts will be given time to respond. That time will not come out of either Senator Kyl’s or Senator Kennedy’s time.

Senator KYL. Mr. Chairman, I would hope that we could establish a process here where, however, it is not appropriate to throw out charges, and when there is a response to those charges by a Senator rather than Senator Ashcroft that that would unbalance

the time that each of us on the Committee have to present our questions and our statements.

Chairman LEAHY. We are trying to find our process, and neither Senator will lose on their time as a result of that.

Senator KYL. Senator Ashcroft, let me ask you—there were attempts yesterday to define by Senators here on the dais an Ashcroft standard for confirmation of Cabinet nominees. Perhaps rather than defining that standard for you, it would be appropriate for you to define the Ashcroft standard. Could you tell the Committee what you believe is the appropriate standard for the confirmation of Cabinet or sub-Cabinet nominees?

Senator ASHCROFT. Well, thank you, Senator. I think it is one of the solemn responsibilities of Members of the Senate to make judgments and to participate with the President of the United States in providing the staffing of the Cabinet-level positions and a variety of other positions.

In my 6 years in the U.S. Senate, approximately almost 1,700—I think it is 1,686—Presidential nominees have come before the Senate, both judicial and non-judicial, of course. Of that 1,686, I opposed 15 of them.

Of President Clinton's 230 judicial nominees, I voted to confirm 218. In fact, I never opposed a President's Cabinet nominee. Larry Summers, Alexis Herman, Bill Richardson, clearly there were policy differences in that respect, but I never opposed a nominee. The President is entitled, in my judgment, to assemble a Cabinet that reflects his policy views.

Notwithstanding these facts, Chairman Leahy suggested that my opposition to these nominees reflected an inappropriate standard of review, and the suggestion seems to be that any nominee with whom I differed failed to garner my support. I just want to make it clear that differing with a nominee did not mean they didn't get my support.

Consider the case of Bill Richardson. In 1996, he was nominated by the President to be the United States Ambassador to the United Nations. As Senator Biden and others will recall, he came before the Senate Foreign Relations Committee on which I sat. I had real policy concerns. We differed on important issues such as international family planning, U.N. peacekeeping operations, and the U.S. funding of a rapidly expanding U.N. bureaucracy.

When asked about administration plans to help retire the U.S. debt, Richardson asked the Committee to keep an open mind, and I did. I supported his nomination despite a significant lobbying effort by some groups. Richardson was not an exception. He was part of a larger role; in Chairman Leahy's words, "a standard." I examined the candidate's record in light of the position for which they were nominated. Then I made an objective determination based on the facts.

For Federal judicial nominations seeking lifetime tenure, I looked for individuals that understood the difference between interpreting the law and legislating from the bench. For the position of Surgeon General, I looked for someone whose career reflected high ethical standards of the profession. Finally, in the case of William Lan Lee, I considered carefully whether the nominee would enforce the Supreme Court's most recent ruling on racial quotas.

Although my review contemplated the nature of the job and the varied responsibilities, the standard consistently ensured that the candidates understood the requirements of the job. I simply wanted to ensure that a judicial candidate understood the judicial role, that law enforcement candidates understood the responsibility to enforce the law of the land, and this was not an overly demanding standard in my judgment. It led me to approve 1,672 of the President's nominees and every one of his Cabinet nominees.

Senator KYL. So, Senator Ashcroft, would it be fair to say—and I do not mean to put words in your mouth—that simply differing on ideological grounds with a nominee was not, in your view, a reason to vote against a nominee?

Senator ASHCROFT. I think it would be a real stretch for members of this Committee to think that I agreed completely with 218 judicial nominees of the President which I voted for. I obviously—I doubt of the Clinton administration would be doing the kind of job it wanted to do had that been the case, but I believed that it was appropriate to have differences in opinion with those individuals and differences in philosophy and differences in understanding and to recognize and respect them and to vote for their confirmation.

Senator KYL. Thank you.

I would like to conclude with the matter of victims' rights, something that both Senator Feinstein and I have worked on very hard, and I must say with your strong support which I appreciate very, very much and I know Senator Feinstein does as well.

Let me go back. You actually worked to gain support of the Missouri constitutional amendment on crime victims' rights. Is that correct?

Senator ASHCROFT. That's correct. Missouri has a very substantial victims' rights framework which I think would be enhanced by a Federal victim rights amendment, and that is the reason why I had worked to try and find a way to get that kind of thing in place federally.

Senator KYL. And just so members of the Committee will know, I came to you. You chaired the Constitution Subcommittee. I had to talk to you about our amendment, and you were very willing to conduct a hearing and to—so that we could get our amendment to the full Committee and to the floor of the Senate for it to be considered. I—again, I thank you very, very much for your cooperation in that regard.

Senator ASHCROFT. Well, I hope I was very accommodating to you.

Senator KYL. Well, you were, but also you were able to—you helped us to do that in a very timely fashion. I appreciate that.

My time is just about up, but perhaps you could just make a conclusory statement. There is a long list of things that you have done to assist us in the development of the constitutional amendment and to gain funding for victims' rights, to add to the law other protections for victims' rights, a whole litany of things that we could talk about here, but perhaps just a short commitment on your commitment to supporting victims' rights would be appropriate here.

Senator ASHCROFT. Well, if the Justice Department is to be focussed on justice for all Americans, there is a need for justice for

those who have been offended as well as those who are the offenders, and the victims' rights amendment and the victims' rights movement is designed to help us have balance in this respect, and as you well know, one of my clear efforts was to make sure that we have a recognition that people can be victimized even if they are not physically abused or assaulted, particularly older Americans who are victimized by fraud and other scam situations. They need to be protected in victims' rights legislation, and that was part of one of the things I sought to do. I commend both you and Senator Feinstein for your effort in this respect.

Leaving the enactment arena was not a matter of my choice, and so I will no longer have the ability to sort of advocate in the way for issues like that, that I did previously, but I commend you for your efforts.

Senator KYL. Thank you very much.

Senator KENNEDY. Mr. Chairman, I would like to have time to respond to the Senator without the time being charged to either side, please, since there was a direct assault in terms of the representations that I had made.

Chairman LEAHY. Following the normal procedure, you can.

Senator KENNEDY. Mr. Chairman, this is the condemnation of the messenger. My good friend from Arizona does not like the message, but the message is out there, and that is what the message is that we have to have that is before this Committee.

And let's just come back for a minute. I know that the Senator has asked about State involvement in the desegregation cases and the voluntary cases in St. Louis, and he has responded yesterday and he responded today and he is wrong, plain, simple wrong.

Now, this is what the *Adams* case in 1980 says. Senator Ashcroft says that he—the State was not involved in that case. This is the *Adams v. United States* 1980. The city and the State were jointly responsible for maintaining a segregated school system. In reaching this decision, we note the Missouri State constitution had mandated separate schools for white and colored children through 1976, and the State of which he was Attorney General had not taken prompt and effective steps to desegregate the city schools

In *Brown*, 1982, the State again protests liability for this. We, again, note that the State and the city board already adjudged violators to the Constitution, could be required to fund the measures, including measures involving a voluntary participation of the schools. The State was involved.

The fact is Senator Ashcroft didn't listen to the judges saying that the State was involved. That is the facts, Senator, and I don't retreat on that. I said it yesterday and I will say it again today, and I would hope that he would have a more complete answer because it is clear. And any fair-minded person reading those cases will find that to be so.

Secondly, I don't retreat in his opposition to failing to meet his responsibilities to register voters in St. Louis. He vetoed one bill, and the Senator listed various Democratic officials saying, "Well, we are glad we vetoed it because it was only targeted on St. Louis."

Then, the next year, did Senator Ashcroft do anything to try and include registration? No. What happened? The legislature in the State said if he is going to veto it because it just applies to St.

Louis, we will apply one that goes to the whole State. What did Governor Ashcroft do then? Veto it again. What has been the bottom line on it? The fact that tens of thousands of blacks were not able to participate in the voting. That happens to be relevant, Senator, because we have just gone through a national debate and discussion and focussed on the question of whether minorities are going to be able to vote, and there are current investigations on that issue. That might not be important to you, Senator, but I think it is important to the quality of the person that is going to be at the head of the Justice Department, and I don't retreat one step on it.

Now the Senator comes back to the questions on guns, and the question on guns, fine. We talked about the question on the guns. Now Senator Ashcroft voted against closing the gun show loophole and said he would have voted to oppose the assault weapons ban. He will have an opportunity to give this President, whether they want to reauthorize the assault weapons ban. I wish, in response to an earlier question to show how interested he is in enforcing it, he had said, "I would be glad to recommend to the President when it expires, we are going to recommend that he extend that the next time." I would have given him an opportunity to say that. He has voted twice against child safety locks. He has voted against the ban on the importation of high ammunition magazines, voted twice to weaken existing laws by removing background checks, and he led the campaign for concealable weapons that even child molesters who have been convicted in Missouri would be able to acquire. That was defeated by the people of Missouri, and you wonder why we bring up the issue?

Senator, he used those words that I quoted yesterday. Senator Ashcroft used those words, besides calling James Brady who was shot in the assassination attempt of President Reagan a loyal Republican, a distinguished citizen whose life has been battling those wounds, and you call him the leading enemy of responsible gun owners.

Then he went on, and I said Senator Ashcroft is so far out of the mainstream. He has said citizens need to be armed in order to protect themselves against a tyrannical government and our government. Our government tyrannical? If the Senator from Arizona doesn't know the difference between the British and insurrection, the American Revolution and this government that has been formed under James Madison and the Constitution, there is a significant one.

Now, listen to this. Listen to what he said, and this is a quote. This is Senator Ashcroft, "Indeed, the Second Amendment like the First, an important individual liberty that in turn promotes good government. A citizenry armed with the right both to possess firearms and to speak freely is less likely to fall victim to a tyrannical central government than a citizenry that is disarmed from criticizing government or defending themselves."

Listen to what Gary Wills who has the Pulitzer Prize, wrote about that. Gary Wills, a Pulitzer Prize winner, has written, "Listen, only a mad man, one would think can suppose that militias have a constitutional right to levy war against the United States which is treason by constitutional definition under this."

I think this nominee owes an apology to the people of the United States for that insinuation, talking about our government now being the source of a tyrannical oppression. That is what I think, Senator. I don't retreat. I don't retreat on any one of those matters.

I could take other time, Mr. Chairman, but I will halt at this time.

Senator KYL. Mr. Chairman, I will be brief, if I could as a matter of personal privilege.

Senator KENNEDY. Well, then I will reserve time, too, then, Senator. I thought we were here to consider the nominee.

Chairman LEAHY. Following our procedure, the Senator from Arizona has a chance to respond.

Senator KYL. Thank you.

Simply because Senator Kennedy made some comments directly to me about matters not being important to you, Senator, meaning to me, I respond that all of these matters are important. It is totally appropriate to raise the issues. What I objected to was what I considered to be the mischaracterization of Senator Ashcroft's positions, and every one of my references to Senator Kennedy were direct quotations taken from the transcript. Nothing was misquoted at all.

Without getting into each of the different substantive issues which Senator Ashcroft ought to have the opportunity to do, I simply would note here that it is important for us to raise the issues, as Senator Kennedy and others have done, to have a calm and rational discussion of all of the import of those issues with respect to Senator Ashcroft's nomination, and to carefully examine how he will apply and follow the law as Attorney General. But I think primarily because most of us are lawyers here, I think it is very important for us to be careful about the language that we use. And, therefore, Senator Kennedy, when you say, well, that may not be important to you, Senator, of course, it is important to me. And when you talk about—you wonder why we bring up these issues, of course, it is appropriate to bring up the issues.

I am concerned here about mischaracterization, and I would assert that when you just now suggest that Senator Ashcroft was asserting that the U.S. Government is a tyrannical government, that is not an accurate representation of his views under any reading of what he has said or listening to what he has said.

So I will conclude—

Senator KENNEDY. Well, 30 seconds. These issues are perhaps painful to be examined. Perhaps they are. But they should be. They should be. Each and every one of those issues ought to be examined, Senator, and with all respect, I reject—if you don't appreciate the way that I present it, I can understand, I will accept that. But I want to make it very clear that I don't—I would restate those, and I would be glad—I won't take the chance at this time. I will on the floor of the U.S. Senate take as much time as necessary, and it may take some time to debate those particular issues.

Chairman LEAHY. The Chair is about to take a 5-minute break unless the nominee wishes to respond to any of the colloquy that has been going on between the distinguished Senator from Massachusetts and the distinguished Senator from Arizona.

Senator ASHCROFT. I side with the Chair.

Chairman LEAHY. We will take a 5-minute recess.

[Recess from 11:31 a.m. to 11:44 a.m.]

Chairman LEAHY. Let us be back in order. The distinguished Senator from Wisconsin, Senator Feingold, is recognized for his round of questions.

Senator FEINGOLD. Thank you, Mr. Chairman.

Senator Ashcroft, we worked together well and cooperatively on the Constitution Subcommittee of this Committee, and I can't help but say, after the exchange earlier—

Chairman LEAHY. Would the Senator pull the microphone just a little bit closer?

Senator FEINGOLD. I can't help but say, after the earlier exchange, that I will miss working with you on that Subcommittee, but I am relieved that you will not have a vote on those constitutional amendments anymore, because we had a very strong disagreement on that, but it was a very polite disagreement.

I would like to spend my time in this round talking primarily about judicial nominations and civil rights. First, on judicial nominations—and I have said this to you before—I think the actions of this Committee with respect to the judicial nominations of President Clinton were inappropriate. I believe the Committee acted inappropriately in allowing nominations to languish for months and years without even a hearing. And it seemed, as I have said before, that some didn't even accept the results of the 1996 Presidential election. I think a terrible wrong was done to qualified judges and lawyers, like Bonnie Campbell and Helene White and Kathleen McCree Lewis.

Senator Ashcroft, one person whose nomination was never acted upon in the last Congress is Roger Gregory, a lawyer from Richmond, Virginia. President Clinton nominated Mr. Gregory for the Fourth Circuit Court of Appeals, and I know that you are familiar with that because we did discuss it in our meeting.

Last month, President Clinton appointed Mr. Gregory to fill that Fourth Circuit position during the Congressional recess, and under this recess appointment, Judge Gregory will serve until the end of this Congressional session unless he is confirmed by the Senate, in which case, of course, he would be on the bench for life. He has, therefore, become the first African-American to serve on the Fourth Circuit in history. And, Senator Ashcroft, recess appointments have been used in the past to integrate the Federal bench. A. Leon Higginbotham and Spottswood Robinson, the first African-Americans to sit on the Third and D.C. Circuits, respectively, were both recess appointments by President Johnson in 1964, and President Kennedy used the recess appointment power to make Thurgood Marshall the first African-American judge on the Second Circuit in 1961. All of these appointments were ultimately confirmed to full life terms.

Senator Ashcroft, do you see a problem with the circumstances that in the year 2001 there is not a single African-American who has ever been confirmed for a lifetime appointment to the U.S. Court of Appeals for the Fourth Circuit?

Senator ASHCROFT. Senator Feingold, I believe that we should try to get the best qualified individuals available for judicial positions and that we should try to make sure that our judiciary re-

flects the kind of population that we have in the country. It's important to do.

When I was the Governor of the State of Missouri, I took special care to try and make sure that we appointed individuals who hadn't previously had access to judicial positions. That's why I appointed the first two women to the Court of Appeals benches in Missouri, the first black to the Western District Court of Appeals, the first woman to the Supreme Court, and why I set a record in appointments during my time as Governor for appointing African-Americans to the bench.

I think it is important that we have individuals—and I think there are high-quality individuals representing every quadrant of our culture, and I want to make my understanding and firm belief in that clear. And I would hope that we would have a capacity to see in virtually every aspect of our judicial, in every aspect—scratch the word “virtually”—the kind of racial diversity which makes up America.

So I don't see any problem in—maybe I've forgotten the question. I would welcome, I would like to see greater diversity in settings like that.

Senator FEINGOLD. Given your record as you have described it, surely the fact that there has never been an African-American in the Fourth Circuit, which I understand is the largest percentage of any circuit in the country, would trouble you. So I would specifically ask you, to the extent you will be involved, will you support Roger Gregory's nomination and press for confirmation by the Senate so he can serve for life, as do the other judges on the circuit? And, therefore, would you recommend that President-elect Bush not withdraw the nomination?

Senator ASHCROFT. When the President of the United States announced his designation of me as the next Attorney General, he indicated to me he expected me to give him legal advice in private and to give it to him. I owe him that respect and that honor.

I think I can say to you that the kind of advice I will give him is reflected in, is likely to be reflected in the kind of effort that I've made when I've had appointing authority. And if the President of the United States chooses to send that name forward for nomination, I will enthusiastically work to make sure that confirmation is achieved.

Senator FEINGOLD. Thank you, Senator. I have high hopes for that one. Now I would like to turn to the Federal death penalty and the broader subject of the death penalty.

President-elect Bush supports the use of capital punishment, as I understand you do. While a majority of Americans continue to support the death penalty, a majority of Americans are also increasingly alarmed by the lack of fairness and reliability in the administration of this ultimate punishment. The system is prone to errors.

For example, since the 1970's, our Nation has sent, at last count, 93 people to death row who are later found to be innocent.

Senator, do you acknowledge that our justice system has made mistakes and that innocent people have been convicted and even sentenced to death?

Senator ASHCROFT. I acknowledge that individuals have been sentenced to death and have been convicted whose convictions have been overturned, and their convictions and sentences were inappropriate when made.

Senator FEINGOLD. Thank you. And then let me follow that by indicating that, as you well know, on December 22, 2000, at the press conference announcing your nomination to be Attorney General, you and President-elect Bush were asked a question about the Federal death penalty system and whether a moratorium on executions is warranted at the Federal level. And I was relatively pleased with President-elect Bush's measured response. He said he supports the death penalty when it is administered fairly, justly, and surely.

And in that regard, I would ask if you agree with President Clinton that the gravity and finality of the death penalty demand that we be certain that, when it is imposed, it is imposed fairly.

Senator ASHCROFT. I think it is a very serious responsibility and it should be only after a very reliable process of integrity has been undertaken.

When I served as Governor of the State of Missouri, I had the rather awesome responsibility, when the death penalty was re-instituted in my State, of being the last evaluator of the fairness and integrity of the system. Having sat in that setting and having felt that responsibility, I take very seriously doing what we can to make sure that we have thorough integrity and validity in the judgments we reach.

Senator FEINGOLD. Well, in light of that answer, I would ask if you will support the effort of the National Institute of Justice that is already underway to undertake the study of racial and geographic disparities in the administration of the Federal death penalty that President Clinton deemed necessary?

Senator ASHCROFT. Yes.

Senator FEINGOLD. Thank you for that. Will you continue and support all efforts initiated by Attorney General Reno's Justice Department to undertake a thorough review and analysis of the Federal death penalty system?

Senator ASHCROFT. I thought that's what you were referring to in the first instance, but the studies that are underway, I'm grateful for them. When the material from those studies comes, I will examine them carefully and eagerly to see if there are ways for us to improve the administration of justice. I have absolutely no reason in any respect to think that we want to turn our backs on the capacity to elevate the integrity of our judicial system, especially in criminal matters and, most importantly, in matters that are capital in nature.

Senator FEINGOLD. So those studies will not be terminated?

Senator ASHCROFT. I have no intention of terminating those studies.

Senator FEINGOLD. Thank you, Senator. Now, let me turn to a third area that you and I have discussed on a number of occasions, the issue of racial profiling.

At the hearing on this bill last year, I was very pleased to hear you say that you believe the practice of racial profiling is unconstitutional, and I believe you repeated that several times this week.

You also said that we need to find out how big the issue is and that this bill, the one that I sponsored with Senator Lautenberg, represented a good start. You said that with some suggested changes you could support the bill, and we had some discussions following that hearing in which we talked about your changes, and, frankly, we agreed to your changes. But in the end, you never joined as a cosponsor of the bill. But here we are today.

If confirmed as Attorney General, would you support this bill and encourage its passage in the House and Senate?

Senator ASHCROFT. First of all, I want to commend you for your work in this respect. The hearing which you assembled—it wasn't my hearing. I was the Chairman and you came to me and asked me if I wanted to address this serious issue, and I said, please, you move forward to do it, you know the territory.

It was the first hearing, I believe, in the U.S. Senate on this practice, and not only were you there but Senator Kennedy participated; Senator Torricelli was present.

I stated at the hearing that I think racial profiling is wrong. I think it's unconstitutional. I think it violates the 14th Amendment. I think most of the men and women in our law enforcement are good people trying to enforce the law, and I think we all share that view. But we owe it to provide them with guidance to ensure that racial profiling does not happen, and I look forward to working together with you to try and find a way to do that. The President-elect of the United States, unless I heard him incorrectly in one of the debates that I was watching, said very clearly that he rejected the idea that people would be dealt with on the basis of their race. And in my current position, I can't endorse any specific legislation, but I worked with you and you know that I felt good about what you were doing and that, frankly, I talked to you about specific items. I believe that I suggested some ways that the bill could be improved, clarifying that the study is compiled from materials voluntarily collected, which I understand is the intent of the bill.

Senator FEINGOLD. Absolutely.

Senator ASHCROFT. Expanding the kind of data that the Attorney General reviews and clarifying that nothing in the bill changes any burdens of proof of parties in litigation.

Senator FEINGOLD. Senator, in light of those points, which we certainly agreed to, would you support this legislation?

Senator ASHCROFT. Those were the kinds of things that I personally thought were appropriate and would have made the bill, and did, if, in fact, they finally got done. My recollection is not clear. I don't know how I can more clearly say to you that this is a matter that troubles me. There was an indelible moment in the hearing, as a matter of fact, and it wasn't the sergeant that came. It was the videotape of his son. You had the sergeant who was taking his son across one of our States stopped twice.

Senator FEINGOLD. I certainly agree with that. Let me just repeat, though, because I think you are going as far as you can to say you will support this bill. Senator Kennedy said at the hearing this bill couldn't possibly be more modest. All it is about is collecting data. If there is any seriousness on your part or the part of the President-elect about racial profiling, this is a very easy bill to support, and I, again, have high hopes.

As Attorney General, what other steps would you take to eliminate racial profiling?

Senator ASHCROFT. Well, as it relates to enforcement by the Department of Justice, I would do my best never to allow a person to suffer solely on the basis of a person's race. As you well know, there are responsibilities for enforcement that are attendant to the Justice Department, and while we have talked about responsibilities of State and local law enforcement officials, it is important that the Federal Government be leading when it comes to respecting the rights of individuals and the Constitution. And I will do everything I can to make sure that we lead properly in that respect.

Senator FEINGOLD. Will you make racial profiling a priority of yours?

Senator ASHCROFT. I will make racial profiling a priority of mine.

Senator FEINGOLD. Switching to another area, should a law called the McCain-Feingold law pass and come to the President's desk and he signs it, will you vigorously support that law in your role as Attorney General in terms of its constitutionality, your role in advising the Solicitor General?

Senator ASHCROFT. Well, there are lots of things that I disagree with that I believe it would be the responsibility of the Attorney General to defend vigorously in court. I have to look at specific legislation with that in mind. I disagreed in policy on that bill, but I believe it's most—it would be hard for me to imagine that the bill does not survive the kind of scrutiny which would provide an instruction to the Solicitor General to defend the bill in every respect.

I failed to support the bill because of policy reasons and reservations about the Constitution, but I had not concluded that it couldn't survive muster. And I would expect, depending on the bill, how it comes out, it's my responsibility to defend the enactments of the U.S. Senate.

There is another little caveat on that. If the enactment of the U.S. Senate seriously impairs the prerogative of the Executive, that presumption in favor of the Senate and the House action abates somewhat, and that was true as it related to this Justice Department, which had a different view of the line-item veto, as did many Members of the Senate and House. Pardon me. I've misspoken again. I was thinking of my time as a Senator, and I correct myself. I'm sorry to have done that.

But I would expect to defend the laws enacted by the Congress vigorously, and I wouldn't see any reason to expect that McCain-Feingold—or Feingold-McCain, pardon me, sir—would be any different.

Senator FEINGOLD. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator.

As I announced earlier, the distinguished Senator from Iowa is wearing his hat as incoming Chairman of the Finance Committee. He has been at the hearing for the Secretary of the Treasury this morning, and he has come back with us. I understand there is no objection for him to ask his questions at this point.

Senator GRASSLEY. First of all, to the Chairman and to my colleagues allowing me this special privilege to probably go out a turn, I appreciate very much the opportunity and want to congratulate the Attorney General designee on the forthrightness with which

you have answered questions thus far. I have only heard more on television than I have heard in person, but I think you are doing what needs to be done and that is to show your ethical and moral uprightness, and that is to do what the oath of office requires. You are trying to quell the concerns of the members of this Committee, as you should, and I think that you are doing it adequately. I hope as time goes on, more members will feel your sincerity.

First of all, there have already been some questions on antitrust asked. One was on airlines, mergers, and the enforcement of the antitrust laws in regard to that. So I am not going to get into that area, but I do want to associate myself with them. I think it was Mr. Kohl, my staff told me, that had asked those questions. I want to associate myself with those concerns. I am sure that those are concerns, being from small-town Missouri as you are, that you understand the same concerns that we have in Iowa.

I would like to start with the issue of agricultural antitrust, agribusiness antitrust. Here again, I think serving with you in the U.S. Senate and knowing a large part of Missouri's economy is agriculture, I am sure you have sympathy toward some of the things I am going to ask, but at the same time, I know that we have antitrust laws that are 110 years old. To some extent, I think that they need to be amended. That is not really so much the issue I am going to discuss with you, but how you look at the existing law.

I am extremely concerned about increased agribusiness concentration, reduced market opportunities, obviously fewer competitors in the marketplace, and then, consequently, the inability of farmers and producers to obtain fair prices for their products.

I have also been concerned about the possibility of increased, collusive, and anticompetitive activity, and I know that the farmers from Missouri are also worried about these issues and that you share the farmers' concerns about competition in agriculture.

The Antitrust Division of the Justice Department enforces Federal antitrust laws. The current administration, while it has paid lip service to farmers, really hasn't dedicated time and resources to agriculture competition issues.

So I would like to get a commitment from you as much as you can give me, understanding you work for the President of the United States, that the Antitrust Division under your watch will pay heightened attention to any possible negative, horizontal, and vertical integration implications of agribusiness mergers and acquisitions that come up for review before your Department.

I would also like a commitment from you that the Antitrust Division will aggressively investigate allegations of anticompetitive activity in agriculture, and that would include agribusiness, a step above the producer of agriculture.

Could you give me an assurance that the agricultural antitrust issues then—this would just be one question—would be a priority for this Department of Justice, your Department of Justice?

Senator ASHCROFT. Well, I thank you for your leadership in this area. You rightly mentioned that as a neighbor when I had the privilege of serving in the Senate some of the difficult times that producers have faced because of consolidations and mergers which have limited the sources or the places into which they can sell their

products have been a real challenge, and my record is pretty clear on this.

I sponsored legislation to try and elevate the understanding of the Antitrust Division in the Justice Department about agricultural issues, legislation that would have placed people solely responsible for focussing on agriculture in that position.

I also would indicate that I am aware of the fact that there are other agencies that act in this respect. The Packers and Stockyards Act needs enforcement, and we need the right personnel, I think, and at least that has been my position legislatively when I had the privilege of being in the Congress.

I thank you for framing your question and with the understanding that I will be part of an administration, and when it comes to policy issues, I will be guided by the administration, but this is a law enforcement issue and I think it is fair for me to say that I will enforce to the best of my ability and with a perspective that understands some of these challenges that I don't think have been thoroughly understood previously in the antitrust evaluations, merger evaluations. At least I will want to make sure they are understood. Whether or not they have been previously is a matter for debate.

I want people to—who are assessing proposed mergers and consolidations to not only look at the consumer for impact, but to look at the producer for impact because I think competition has to be viewed on a pretty broad scale. It is with that in mind that I will try to work with the antitrust laws to make sure that we continue to have a competitive marketplace for agriculture.

Senator GRASSLEY. I have already written to the present Attorney General and the Antitrust Division about my concern about the Tyson's-IBP merger, and I know that you aren't there yet, you can't do anything about it, and all I can do is urge adequate enforcement of the laws. So I would ask you to take a special look at and, as best you can today, assure me that the Antitrust Division under your watch will carefully scrutinize this specific transaction so that farmers and consumers can be confident that competition will not be harmed.

Senator ASHCROFT. I am pleased to say to you that I will welcome your letters when I am—if I am confirmed and if I have the privilege of serving as Attorney General, and that I will give attention to the enforcement of these laws.

I don't want to make a statement in this hearing today which would affect the value of these entities in any way—

Senator GRASSLEY. I know you can't.

Senator ASHCROFT.—Positive or negatively as they are significant enterprises, but my intention is to enforce the law relating to antitrust effectively and appropriately, and can assure you that if you call upon me for status reports or advising me to give matters complete and thorough attention, I will welcome those communications.

Senator GRASSLEY. You referred to some special attention that you would give agriculture the extent to which it is appropriate in the table of organization. Right now, there happens to be a position in the Antitrust Division that focusses specifically on agricultural antitrust issues. This position was created by the former Assistant

Attorney General, Joel Klein, last year. Would you retain that position?

Senator ASHCROFT. You know, I'll be very eager when I get to the Department to assess the way the resources are allocated, and I don't want to start to redraw or reinforce the organization chart as it now exists. It would be presumptuous on my part. I have not been confirmed.

I can assure you that I will devote the kind of resources that are necessary to address merger and consolidation issues in the agribusiness community.

Senator GRASSLEY. Some time ago, I requested the General Accounting Office to review the Packers and Stockyards Act enforcement efforts to the Agriculture Department's Grain Inspection Packers and Stockyards program. That is referred to by the acronym, GIPSA.

The General Accounting Office found that the Clinton administration, despite official warnings and internal recommendations made both in 1991 and then again in 1997, had not made critical changes to GIPSA's administrative structure and staff as recommended in these two previous reports, one, a previous General Accounting Office report, a second one, a report by the Inspector General within the Department of Agriculture. So then we have a General Accounting Office report as much as 8 years later saying you didn't do what we told you to do way back then.

As a consequence, we find the U.S. Department of Agriculture being very ineffective in carrying out its statutory responsibilities to prevent anticompetitive practice in the livestock industry. You happen to have joined me in introducing a bill which mandated implementation of the General Accounting Office's report's recommendations to strengthen the U.S. Department of Agriculture's Packers and Stockyards program within a 1-year timeframe. So that is law.

One of the legislation's provisions requires that what hopefully will be your Department, the Justice Department, is to assist the U.S. Department of Agriculture in investigating livestock competition violations and enforcing the Packers and Stockyards Act during the timeframe of implementing those recommendations. Would you be sure that your Justice Department carries out the requirements of that law?

Senator ASHCROFT. Yes.

Senator GRASSLEY. In addition, could you assure me that the Department of Justice will consult with the Packers and Stockyards Division as it formulates effective competition policies and procedures to enforce the Packers and Stockyards Act?

Senator ASHCROFT. Yes.

Senator GRASSLEY. Now I would like to move on to another interest of mine because I got legislation passed in this area, maybe 15 years ago, and this law called the False Claims Act is always under attack. This is not something to answer, but I want you to be aware of people in the health care industry, people in the defense industry who will be trying to, through your Department, get you interested in amending this Act, and if they follow the procedures of the last 7 or 8 years that they have been trying to do this, as

simple as it might sound, the end result is gutting the impact of this legislation.

This legislation, for instance, in the last month or so produced an \$843-million recovery of fraudulent use of taxpayers' money that went back to the Treasury. Well, I had talked to you privately about this in my office, and so I said I would ask some questions for the record. This Act is under constant attack.

Now, the Justice Department can file its own suits or you can join *qui tam*-type suits under this legislation. Thus, you as Attorney General would be in charge of a good bit of legislation involving the False Claims Act, in fact, all that you want to be involved in. What you don't want to be involved in, a private citizen can bring, and they can do that even if the Justice Department does not intervene and then, consequently, they are entitled to a share of any judgment or settlement as an encouragement for them to bring forth information about the taxpayers' money being wasted.

I would ask one question. I am concerned that the key people that you will include on your team, meaning the political appointees of the Department, have a positive attitude toward the False Claims Act. I am referring to the Deputy Attorney General, the Associate Attorney General, the Solicitor General, and most importantly, the Assistant Attorney General for the Civil Division.

Before I ask the question, at times during the last 8 years that I asked these very same people who were being appointed by President Clinton, the constitutionality of the Act had not been tested by the Supreme Court. It has been tested, and the constitutionality upheld. So, previously when I asked questions, I was asking them if they would defend the constitutionality of it. Soon, the message got through, and I got the message that they would defend it and they did defend it. Consequently, thank God, the courts backed it up.

So I am asking you, now that we have the constitutionality of the False Claims Act in place, that you will simply see that your people don't do any destructive action to what is already constitutional.

Senator ASHCROFT. Senator, I believe that the laws in place, the constitutionality has been affirmed, and we would treat the law with respect.

Senator GRASSLEY. Thank you.

On bankruptcy, President Clinton vetoed a very important bankruptcy reform bill at the end of the last Congress. Senator Torricelli and I introduced that in a bipartisan way. It passed with a veto-proof margin, but it was pocket-vetoed. So we didn't have a chance to override it.

I hope to reintroduce that legislation in the next few weeks. I anticipate that bankruptcy reform will continue to enjoy broad support in the Congress. Could I count on you to be an ally in getting the executive branch to support this bill and to work with us in Congress to finally get it enacted?

Senator ASHCROFT. Senator, as you well know that during my time as a U.S. Senator, when I had an enactment responsibility, not just an enforcement responsibility, I supported the legislation and worked to achieve its passage.

In terms of determining an agenda, I will work closely with the President of the United States, but I will advise him privately to

the best of my ability to help him achieve the agenda that he pursues, and if the President were to agree to pursue this course of action, I would have no difficulty whatever in advancing and supporting this measure.

Senator GRASSLEY. Could I please ask one question—

Chairman LEAHY. Of course.

Senator GRASSLEY.—And it will just be a short answer? Because it is on bankruptcy, but—

Chairman LEAHY. The Chair will give extra time. Go ahead.

Senator GRASSLEY. Well, just a little while.

Now, without the reform bill, the Justice Department, through the Executive Office of the U.S. Trustees, has the power to dismiss bankruptcies that are abusive under Section 707(b) of the Bankruptcy Code. This administration hasn't made this a priority. Would you direct the Executive Office of the U.S. Trustees to make enforcement of Section 707(b) of the Bankruptcy Code a priority?

Senator ASHCROFT. Senator, this is not an area of expertise for me, and I would have to study this and confer with you and ask for advice from people in the Department before I could make a determination about it. I simply have not studied this, and this is an "I don't know" answer.

Senator GRASSLEY. OK. What I will do is I will follow up with you because you will study it, I know, and then we will be able to discuss it.

Senator ASHCROFT. If you ask me to study it, Senator, I can assure you that I will study it.

Senator GRASSLEY. Would you please study it, and would you discuss it with me again?

Senator ASHCROFT. I would be delighted to discuss it.

Senator GRASSLEY. It doesn't necessarily have to be before I vote for you for Attorney General.

Senator ASHCROFT. Well, that's—that is good to know.

Chairman LEAHY. In case the nominee is keeping count.

I thank the Senator from Iowa. I know he has tried to juggle two important things, and I appreciate it.

I will go to one more Democrat and one more Republican, and we have one former colleague and one current colleague here. We will have the two members do their questioning. It will be Senator Schumer and Senator DeWine, and then we will hear from Senator—

Senator SESSIONS. You got two of them down here.

Chairman LEAHY. What?

Senator SESSIONS. Two of us on this end.

Chairman LEAHY. No, I understand that, but I am just trying for our schedule—

Senator SESSIONS. I can't hear very good. I'm sorry.

Chairman LEAHY. I'm sorry. My plan is, so everybody here can understand and plan accordingly, we will have Senator Schumer, Senator DeWine, then we will hear from Senator Collins and former Senator Danforth.

Senator Schumer, you are recognized, and then we will break for lunch.

Senator SESSIONS. When do I get to talk?

Chairman LEAHY. Well, we want you to be special. So we thought probably as soon as we come back from lunch. We still have Senators to go. I mean, we have Senator Durbin hidden down here at the end, too. You have two more down there, and Senator Cantwell and Senator Brownback. Trust me, you all are going to get a chance. This is not going to be an early evening, I would suggest to everybody here, but when we do break, we will take a 1-hour break.

Go ahead, Senator Schumer.

Senator SCHUMER. Well, thank you, Mr. Chairman, and thank you, Senator Ashcroft.

You know, Senator, I sit here and listen to the hearing, and my jaw almost drops. Senator Ashcroft believes *Roe v. Wade* is the settled law of the land. Senator Ashcroft believes that the assault weapons ban should be continued.

You know, Senator, we fought a lot of these battles in the Senate over the last 2 years. Where were you when we needed you?

Anyway, let me ask a few more of these specifics to flesh out some of these because they are very important. The first question is, when did the law become settled, I guess, in your mind? I guess in 1998, you introduced, along with Senators Helms and Smith, a resolution calling for an amendment to the U.S. Constitution to ban abortion even in the cases of rape and incest, and the amendment would also outlaw several of the most common contraceptive methods.

In that same year, you said, “As a legal matter, the absence of any textual foundation”—this is a quote—“for the trimester framework established in *Roe* has resulted in an abortion jurisprudence that is marked by confusion and instability. It demonstrates the dangers of building a legal framework on the quicksand of judicial imagination rather than the certainty of constitutional text.”

So I guess the first question that gnaws at me some is in your testimony, you said it was settled law, and yet, fairly recently, you were fighting hard to change it, to overturn a position I disagree with strongly, but respect your view on it. Can you explain the evolution in the belief?

Senator ASHCROFT. Thank you for the question, and we do disagree on this. Obviously, this is one of those questions upon which I believe reasonable people can disagree.

Frankly, if the law weren't settled, one wouldn't need a constitutional amendment to change it if one were wanting to change it, and so the fact that I proposed a constitutional amendment indicated to me that it is not something that is going to be adjusted in another way.

In so doing, that was part of a role that I had as a member of the Senate as an enactor of the law rather than an enforcer of the law. There are lots of settled laws, and our constitutional amendments are designed for the specific purpose of overturning settled laws.

I think the Court has been signalling an increasing—and this makes reference to—I am forgetting which of the members of the panel asked me earlier, but in its most recent case, the Court signaled—it denied certiorari for a reconsideration, and I think the Supreme Court has said—that is the *Stenberg* case.

Senator SCHUMER. Right. That is what I think, too.

Senator ASHCROFT. That it said we don't want to be bothered with this. Frankly, I think it is not wise to devalue the credibility of the Solicitor General in taking things to the Court which the Court considers settled, and that is why I explained my other answers the way I did.

Senator SCHUMER. I appreciate the answer.

Senator ASHCROFT. I just want to indicate that if you think I have changed to believe that aborting unborn children is a good thing, I don't, but I know what it means to enforce the law, and I know what I believe the law is here and so—and I believe it is settled.

Senator SCHUMER. So let me ask you this, just to follow up. So, if the Solicitor General came to you when you were Attorney General and said I would like to argue a case to overturn *Roe*, for instance, in the Nebraska case, in the *Stenberg* case, I think it was Justices Thomas and Scalia who in dissent—it was just a 5-to-4 case—said encouraged more cases to overturn the law. Would you urge the Solicitor General, or would you now allow the Solicitor General who would be under your jurisdiction to bring such a case?

Senator ASHCROFT. I don't think it is the agenda of the President-elect of the United States to seek an opportunity to overturn *Roe*, and as his Attorney General, I don't think it could be my agenda to seek an opportunity to overturn *Roe*.

Senator SCHUMER. And would that apply if, let us say—because that was a 5-to-4 decision, the Nebraska case, the *Stenberg* case, but let us say one of our Supreme Court justices stepped down and a new appointment was made and it was at least speculated or viewed that that new justice had a different—and one of the justices who stepped down would be one of those in the 5 majority—that this new justice would have a different view, would have sided with the dissent. Would you still urge the Solicitor General to not bring the case?

Senator ASHCROFT. Well, as I said before, I don't think it is the agenda of this administration to do that, and as Attorney General, it wouldn't be my job to try and alter the position of this administration.

Senator SCHUMER. Let me ask you a second one related. Let us say that Governor Thompson becomes the Secretary of HHS, and he seeks your legal advice on banning stem cell research, research where we have had great divisions about, but research extremely important to hundreds of thousands of people and their families with Parkinson's disease and other diseases. Would you urge Secretary—Governor Thompson, but then-Secretary Thompson, given that *Roe v. Wade* is settled, to keep, to continue to allow stem cell research to continue?

Senator ASHCROFT. I will provide him the best assessment and instruct the Department of Justice to provide him with the best assessment of the law as it exists upon which he can base a decision within the parameters of the statutory framework guiding his activity.

Senator SCHUMER. But pursuing that a little, sir, if I might, if you believe that *Roe* is settled and certainly stem cell research would fall within the confines of the first trimester, then wouldn't

your advice have to be to continue stem cell research, and why couldn't you tell us that here today? If not, then I would like to know what *Roe* being settled means.

Senator ASHCROFT. The way I answered the question a moment ago is the way I want to answer it again, but I will answer it in these words. I will be law-oriented and not results-oriented. I will—that is my pledge as I move toward the Attorney General's office, and, of course, I can't make good on—I don't want to be presumptuous. I understand that there is a confirmation process, but I will provide my best advice regarding the law, including the law as expressed by the Supreme Court in *Roe v. Wade*.

Senator SCHUMER. So, just to pursue it a little bit further—I am just trying to flesh things out here. I am not trying to put you on the spot. These are issues of great importance to so many of us. If the legal opinion, the predominant legal opinion was that stem cell research was allowed, was part of the settled law of *Roe*, that would be your guiding—that would be your guiding light here, not an ideological belief that we shouldn't allow it?

Senator ASHCROFT. I will give them my best judgment of the law, and if the law provides something that is contrary to my ideological belief, I will provide them with that same best judgment of the law.

Senator SCHUMER. OK. I don't think I can push you any further, although I wish the answer would be a little clearer, but—

Senator ASHCROFT. I am just not going to issue an opinion here.

Senator SCHUMER. I understand.

Senator ASHCROFT. I will with all deference—

Senator SCHUMER. No, I made it hypothetical that if the law would agree.

Let me go to another one. The President asks you advice whether rape victims should be allowed the right to choose. It comes up in some—in some context that we probably—you know, I don't want to—I don't think it is necessary for the purposes of this question to outline the context. Would you advise him that rape victims should be continued to be allowed their right of choice, even though ideologically you would be opposed because, again, *Roe* is the settled law of the land?

Senator ASHCROFT. If he is asking me for legal advice, I will provide him with my best judgment. It will not be results-oriented. It will be law-oriented. And I will also answer the President in private, as he has requested me to do.

Senator SCHUMER. Right.

Senator ASHCROFT. I don't want to be less than cooperative, but I don't want to try and go through a list of all the potential questions the President might ask me and try and tell in advance someone other than the President what answer he is going to get.

Senator SCHUMER. Right, but the reason—and I understand that and appreciate your desire to do that. Of course, though, when you say *Roe* is the settled law of the land, that has lots of different implications that would be quite contrary to the advocacy views that you had while you were U.S. Senator. We would agree to that, right?

Senator ASHCROFT. Well, it's very clear to me that the settled law of the land protects rape victims. I mean, it is clear that the settled law of the land gives virtually anyone—

Senator SCHUMER. That's all I need to hear.

Senator ASHCROFT.—Any opportunity they want to, to have an abortion. I mean, it is an unrestricted right.

Senator SCHUMER. OK.

Senator ASHCROFT. And I would advise him in that respect as to what the law is.

Let me ask you a series now similarly on gun control. I was very glad to hear that you would support the continuation of the assault weapons ban, which Senator Feinstein carried in the Senate and I carried in the House, so it is obviously important to me.

I would just like to ask, in terms of the Second Amendment—and while some might not believe it, I believe in the Second Amendment. I do not agree with those who think the Second Amendment should be interpreted almost in a non-existent way just for militias, and then we should broadly interpret all the others. But just like you can't scream "Fire" in a crowded theater—that is a limitation on our First Amendment rights—there are limitations on the Second Amendment as well. And some of my friends believe there should be no limitations, and that is where I disagree with them.

But let me ask you this, these four issues, do you think any of them violate the Second Amendment? The Brady law?

Senator ASHCROFT. No.

Senator SCHUMER. The assault weapons ban?

Senator ASHCROFT. No.

Senator SCHUMER. I think you have answered that.

Licensing and registration, which many States obviously have now.

Senator ASHCROFT. I don't—I don't believe that—if the Senate were to pass it, I would defend it in court and argue its constitutionality.

Senator SCHUMER. Argue for its constitutionality?

Senator ASHCROFT. Yes, sir.

Senator SCHUMER. Thank you. Now, how about just your own personal view, in a different—you know, on closing the gun show loophole, the Lautenberg amendment. I know you supported a 24-hour closing, but many of us supported a 72-hour because we thought at gun shows 24 hours wasn't enough to do an adequate check, particularly since most of them occur on the weekends. Would you support a 72-hour closing of the gun show loophole?

Senator ASHCROFT. You know, I believe in closing the gun show loophole. What I would like to see us is to improve our capacity to respond to inquiries a lot more rapidly. I think it's pretty clear that at least my personal view has been for the past several years that we need to fully implement our ability to provide instant checking. And I think that's the best way of handling that, and I think doing that is something that's achievable.

So my approach to this would be to have the Department exercise as much of its energy as it can to close the loophole by virtue of improving our capacity to have instant checks that are reliable, valid, and workable.

Senator SCHUMER. And I agree with you. I have no problem with insta-check when it is available and when it is working. But in the past, some, at least, have used the lack of insta-check availability in many States—some have used—

Senator ASHCROFT. I think when—well, pardon me.

Senator SCHUMER. Let me just finish and flesh out and then we will go to the next one. But many have used or some have used the lack of availability of insta-check in many States to stand in the way of a law, a 72-hour law, longer waiting period, because you just couldn't get the checks out on the computer that quickly because State records were not up to date.

So, again, let me repeat, if we found that in a good number of States—and that is the case—that the insta-check system were not yet available, would you support a 72-hour wait for closing the gun show loophole, which most of us regard as a rather modest step?

Senator ASHCROFT. Well, the problem with the 72-hour wait is that gun shows frequently last about 72 hours, and that's been a problem in terms of saying that if you're going to provide no one can buy a gun, that tension I think is one that I'd want to respect, and I'd try and accommodate that. It's not my desire to shut down this setting.

If I'm not mistaken—and I might stand correction here—I think when the juvenile justice bill came back, it had the Lautenberg amendment in it, and I think I voted for the juvenile justice bill in that setting. And that may be an answer to that question.

Senator SCHUMER. I think, Senator—and, obviously, we don't want to hold you to every little bit, but I think it never got back from conference. Maybe Senator Leahy—

Senator ASHCROFT. Pardon me. I didn't mean get back. I think I meant—they're telling me I meant final passage. And on final passage, I did vote for it and it had Lautenberg in it.

I think what—may I just add this little bit—

Senator SCHUMER. I think what—

Senator ASHCROFT. What's clear—I voted for it, I think, in that setting. What is—and I'm not sure about that. But what I am sure about is that if it's passed, I'll defend it. And I'll not only defend it, but I'll enforce it. And I'll enforce it vigorously.

Senator SCHUMER. But in terms of your own opinion, do you think that this 72-hour check—you voted, I think—and the record could correct me as well. And I don't want to—you know your record better than I do. I think you may have voted against the amendment but then voted for the final bill.

Senator ASHCROFT. I think that's correct.

Senator SCHUMER. The staff guy is shaking his head yes, so I would trust him.

Senator ASHCROFT. Well, you can see a lot better than I can. You don't have to turn around to look at him, and I do. That's your hard luck, because I don't have to look at him, only in rare instances.

Senator SCHUMER. So has your position evolved any on the 72-hour check?

Senator ASHCROFT. Well, I guess what I'm saying is that my position, as I leave the enactment arena, was mixed. I probably, as a stand-alone provision, voted against it but wasn't so opposed to it when it came back in the final product that it would stop me from voting for a very important bill. I guess that's a little bit of an academic question now. The voters of Missouri settled my abil-

ity to vote on those bills when I was not re-elected to the Senate. And I would vigorously defend and enforce the measure.

Senator SCHUMER. And almost from the point of view of argument, it just follows from the argument you would not recommend the President veto a bill that had the 72-hour gun show loophole in it? Given that you voted—

Senator ASHCROFT. I would advise—

Senator SCHUMER.—For it in the past.

Senator ASHCROFT.—The President to the best of my knowledge on legal matters. They will not be results-oriented. They will be law-oriented advices. But I will give those to him upon his request, and I really don't want to try and publicly start to hypothetically discuss all the potential questions he might ask me and try and deliver the advice here first. I just don't think that's proper.

Senator SCHUMER. Thank you.

Chairman LEAHY. The Chair would note for the record that the juvenile justice bill, which passed overwhelmingly from the Senate, went to conference, but—other than a symbolic meeting, the conference Committee never met, and the juvenile justice bill died at the end of the Congress. The press accounts, which I believe are accurate, said that it died because it closed the gun show loophole. If the gun show loophole provision was taken out, the conference would be allowed to go forward, but with it in, the various gun lobbies said that we would not be allowed to pass it, and—

Senator SESSIONS. Mr. Chairman, just a little spin on that a little different. Senator Hatch had a gun show loophole bill that a number of people favored, and I think it passed the first time in a close vote. The Lautenberg amendment passed, the full Senate voted, and as I understand it, Senator Ashcroft voted to support the Lautenberg amendment, and it never came out of conference because that amendment was rejected by the House. The House would not accept it, and your side would not agree to any compromise, and the good juvenile justice bill that a lot of us worked on never came out and up for debate. That's my view of it. I guess everybody has a different view.

Senator HATCH. Let me just end it by saying that the fact of the matter is we couldn't get a consensus to pass it. It was that simple, and let's all work to try and get something done this next year.

Chairman LEAHY. Well, the fact of the matter is we never had a conference, so we couldn't seek a consensus—

Senator HATCH. Well, because we knew it was a waste of time.

Chairman LEAHY. I have never been able to predict votes that well.

Senator HATCH. I have been pretty good about it.

Senator KENNEDY. Regular order. Can we have regular order, Mr. Chairman?

Chairman LEAHY. We haven't had it yet. Why should we start now?

[Laughter.]

Chairman LEAHY. The distinguished senior Senator from Ohio.

Senator DEWINE. Mr. Chairman, thank you very much. Senator Ashcroft, the good news is when you get to me, you are getting pretty close to lunch here.

Let me just say that I think most of us here can agree—we are talking about the juvenile justice bill, of which 95 percent of that bill was, frankly, not very controversial. Let's hope that we can get that juvenile justice bill, passed this year Mr. Chairman.

Senator, what I would like to do in the time that I have is talk about a few issues that I know are going to be coming in front of you as Attorney General. These are issues in which I have a particular interest, and I think you do as well. To save time, let me go through them. There are four or five of them. And then if you could comment at the end, I think it would probably be the simplest way to do this.

The first has to do with what is referred to as international parental kidnapping, an issue that I am very concerned about and an issue that has received a lot of publicity in the last few years. And, quite frankly, to be candid, it is an area where I don't think that the current Justice Department has been aggressive enough, and this is something I have said publicly with the current Attorney General. I would hope that you, as Attorney General, would be more aggressive in this regard. What are we talking about? We are talking about a situation where a U.S. citizen marries a foreign national, they have a child, and they separate or get divorced. One day the American citizen wakes up and the child is gone, and the other parent is gone. The other parent has gone back to his or her country of origin.

Addressing these situations has not been a priority of the Justice Department. I would hope it would be with your Justice Department. I think it is often an issue of neglect. It is a question of not setting the right priority. And, often it is a question of ignorance or just lack of understanding of the issue. I think it can be remedied by training assistant U.S. attorneys, and the Justice Department setting a priority. There also should be coordination with the State Department because it is an issue that the State Department hasn't aggressively in dealt with either. This is number one.

Number two is an area that you and I have worked on in the past, and that is a setting of priorities for the Justice Department in regard to gun prosecutions. I am talking now about a case where we have a convicted felon who uses a gun or owns a gun, which is against Federal law today—however, he goes in prosecuted. I would hope that the Ashcroft Justice Department would make this is a priority to go after these individuals as the Bush administration did.

A related area in regard to guns is when guns are used during the commission of a felony. I can't think of anything that is more important to the safety of the public than to get people who use guns during the commission of an offense off the streets. The U.S. attorney can play a very unique and special role in that regard, and I would hope that that would also be one of the priorities of your administration.

The third area is what I refer to as crime technology. It is an area that I have been involved in for the better part of a decade. It is very simple, it is very basic, but it is very important, and that is to make sure that we drive the high technology resources down to local law enforcement. We want not just the FBI but local law enforcement to have access to good DNA work, access to automated

fingerprints, access to ballistic comparisons, and access to good criminal records. This is the basics of law enforcement. It is something where the Federal Government can play a unique role. Only the Federal Government really can give the assistance to all local jurisdictions with the understanding that what happens in Xenia, Ohio, in regards to automated criminal records or automated fingerprints will affect the ability of the Missouri police to solve a crime if that defendant happens to go from Xenia to St. Louis.

This is an area that you and I have been involved. We passed the Crime Identification Technology Act several years ago, which I wrote to provide an umbrella authorization to get this done. I would just ask you to comment on that, and hope that when it comes time to present your budget you would look at that very favorably. It is basic law enforcement that will, in fact, make a difference.

The fourth area is the issue of mental health. We are seeing more and more people in our criminal justice system who have mental health problems. It is something that every law enforcement officer in this country understands and knows about. Part of it has to do with the deinstitutionalization of the mentally ill that has occurred in the last few decades. Part of it is the nature of society. But it is something that I think in our criminal justice system we have to address.

We were able to pass last year a bill that I was involved in writing, which provides assistance to local courts in regard to mental health. I wonder if you could also address this one.

Finally, I will go back to an issue that has been raised by Senator Kohl and also has been raised by Senator Grassley and several of my other colleagues, and that has to do with the antitrust enforcement. As you know, I am the Chairman of the Antitrust Subcommittee. The ranking member is Senator Kohl. I guess that means that Senator Kohl is the Chairman this week. He and I have worked very, very closely together on antitrust issues. We think they are very, very important. We think that ultimately they determine our ability to compete in the world and our ability—one of the things that makes us different as a country from other countries is that we have good antitrust laws.

I am particularly concerned—and I am not going to ask you to comment about this because I know that this is something you are going to have to study, and I also know it is something you are going to have to work with whoever is the new head of the Antitrust Division of the Justice Department. But I am very concerned about the consolidation in the aviation industry. This is something that I think we have to look at it. It is, I think, a potential direct threat to consumers when we are talking about getting down to potentially just three, possibly, major airlines in this country, or four. We have some real competition issues. And so I would just use this opportunity, again, not to ask you to comment on it, really, because I don't think it is fair for you to comment at this point, but just maybe to put you on notice this is something that I am going to be looking at. We are going to hold hearings on our Antitrust Subcommittee within the next few weeks, and we are going to take a very, very close look at that.

So, John, those are five issues that I think clearly you are going to be dealing with, five issues that I think as the Attorney General you will be confronting, and I would just like for maybe some brief comments in the time you have remaining to tell us maybe some thoughts about each one of those.

Senator ASHCROFT. Thank you, Senator DeWine. I must say that, starting with the first issue, the international parental kidnapping problem is one that you have highlighted and you have brought to the attention of America in ways that have been very helpful. I think many of us would be in a circumstance not to be very affected by this, and it would be an easy thing to just, I suppose, overlook. And I comment for your work there. I would be very pleased to work with you in this respect and the idea of making sure that where interagency cooperation could be beneficial, either through the Department of State or other departments of the Government, to remedying these tragic circumstances.

Since it is not as prevalent as some other problems, I guess some folks don't view it as a serious problem. It reminds me a little bit of Ronald Reagan's definition of a recession and a depression: It's a recession if your neighbor loses his job; it's a depression if you lose your job. If it's your child here, this becomes a national issue very quickly. And I thank you and look forward to working with you on it. And to the extent that we could enlist other aspects of the Federal bureaucracy and the Government to act with us to do what's right, I'm very pleased to confer with you.

Gun prosecution, the prosecution of gun violence, is very important to me because I think it's essential to public safety. What I think we have is clear indication and evidence that if we prosecute gun crimes, we have the greatest effect in elevating the safety and security of citizens in this country. And it's one thing to have a law on the books that prohibits certain kinds of gun purchases, and if you have hundreds of thousands of gun purchases that are denied because of it, but then you don't prosecute the people who were denied the purchase for making the illegal attempt, we really haven't done anything but force them into the illegal gun market.

If my memory serves me correctly, there is an Indiana situation where someone had attempted to make an illegal purchase, not prosecuted, went into the illegal market, acquired a firearm, and shot an African-American individual leaving church. That case sticks in my mind.

I think the context of the gun purchase requirements are very important, and in a technical sense, those are against the law and they're criminal acts. But people who actually perpetrate crimes using guns obviously need to be a focus of our enforcement effort. And the most famous of these is the Project Exile, at least for me, best known for me. As you drive across the river here, you see the billboard that says you are on notice, if you use a gun in the commission of a crime, elevated penalties are going to be a consequence for you.

And it's not just in Richmond, Virginia. I worked hard when I was a Member of the Senate to get special funding, additional funding for U.S. Attorney Audrey Fleisig in St. Louis because she has a project called Project Cease Fire. I can't answer for the details of all these projects, but I think it's largely the same thing.

You deal affirmatively, aggressively, and constructively to say we will prosecute those who commit crimes using firearms.

The third issue—and I look forward to that—I think is the crime technology issue. During my time as Governor and Attorney General, we sought through the creation of agencies and capacity capability in our State the ability to integrate our effort in a national coordination of data so that we could apprehend criminals. This is a matter of great concern to me because our society is so mobile, and it even has concerned me as it relates to juveniles, because in my home State of Missouri, our population is focused on the borders. Kansas City is one of the two largest cities, St. Louis is the other, and we share those borders with other States. And people move back and forth across those borders, and the interstate availability of information is a very important thing. And to have it available, that you can—that kind of moving from one jurisdiction can take place on a bicycle. But criminal activity can move from one part of the country to another part of the country now very easily. And whether it's AFIS, an automated fingerprint identification system, or whether it's the next generation, I think, with DNA identification, frankly I think not only for the apprehension of criminals but for the establishment of innocence and guilt with greater certainty, I think these are very important matters that relate to civil liberties as well. I think for our system to elevate the integrity and the likelihood that we get the truth when we make a conclusion is very important.

The mental health area is an important area. Immediately I thought of Senator Feinstein's comprehensive methamphetamine anti-proliferation measure which she and I had the privilege of working together on. It was a \$55-million-a-year program, but a significant part of that was for treatment. And when I talk to the prosecutors and the justice officials at the State and local level, they tell me that 70, 80 percent of all the people that we incarcerate for criminal behavior committed crimes because they were involved with drugs and substance abuse of one kind or another. And I think if we don't understand that remediation of that particular problem is a part of this and that's a mental health-related aspect of this, I think we're kidding ourselves. That's why I was pleased in the measure that we cosponsored and was passed that we had an attention to that aspect of things.

Last, but not least—and I hope I've given these items the requisite level of attention—you talked about the Antitrust Division. I will urge the President to appoint an individual who has a capacity to work well in this area. Antitrust is a refined part of the law. I spent some substantial amount of time in antitrust considerations on several issues when I was a State Attorney General. And the President I think will respond. It happens to be one of the things you'll have a chance to influence, because the advise and consent function of the Senate is operative there, and certainly I would welcome your input and the opportunity to confer with you about making a constructive response to that challenge.

Senator DEWINE. Senator, thank you very much. Thank you, Mr. Chairman.

Chairman LEAHY. Did you have something else?

Senator DEWINE. No, it's fine. Thank you.

Chairman LEAHY. Incidentally, some in the press have asked if there is anything symbolic about being in the Caucus Room. I don't mean to deflate anything, but it is more the luck of the draw. We started a system of having the Rules Committee, as Senator Ashcroft knows, assign the rooms where you go. I think they do it by computer. But, in any event, the Foreign Relations Committee, which will be hearing General Powell's nomination, needed a large room. There had been some public and press attention to this hearing which indicated the need for a large room. We both asked for a large room. This one was being used yesterday for something else. Foreign Relations didn't need that. A long way around to saying it is coincidence that we are here. I don't want anybody to draw any other conclusion from our location.

I would ask our colleague, Senator Collins from Maine, and our former colleague, Senator Danforth, to come forward and join Senator Ashcroft at the table, as I announced earlier. Once they have finished their statements and any questions that there may be for them, we will then break for lunch. When we break for lunch, it will be a 1-hour break.

Senator Collins, please go ahead.

**STATEMENT OF HON. SUSAN M. COLLINS, A U.S. SENATOR
FROM THE STATE OF MAINE**

Senator COLLINS. Good morning, Mr. Chairman, members of this distinguished Committee. I am pleased to be here today on behalf of my friend, John Ashcroft, and I thank those hearty few who have remained to hear my testimony before you break for lunch.

Let me begin by saying that if I were to tell the members of this Committee that I had a candidate for Attorney General who had attended one of the Nation's finest undergraduate institutions and law schools and had served for 8 years as a State Attorney General, 8 years as a Governor, and 6 years as a U.S. Senator, I doubt there would be much by way of concern about that candidate's professional experience.

Similarly, if I were to point out that this candidate was also an individual of tremendous integrity and high personal values, there would be little doubt that the candidate met the ethical standards for the position.

That is exactly the case that we have here with John Ashcroft. Nevertheless, his nomination has generated a controversy noteworthy for its intensity. Given John's record of public service and his personal integrity, it is fair to conclude that the genesis of this controversy is his political philosophy.

Concerns have been raised that John is simply too conservative to enforce the laws with which he disagrees. In responding to these concerns, let me first make clear that I have disagreed strongly with John on a number of issues. Our views on abortion rights, among many other issues, are far apart. But I have absolutely no doubt that John will fully and vigorously enforce the laws of the United States regardless of his personal views. He not only has given me personal assurances, but also has testified under oath before this Committee that he will do so.

This situation is not unique to John Ashcroft. Virtually every Attorney General has had to enforce laws with which he or she has

disagreed. Our most recent Attorney General is no exception, as Senator Thurmond has pointed out. Despite her personal opposition to the death penalty, Attorney General Reno has approved Federal death penalty prosecutions in 176 cases. Moreover, a fair examination of John's record shows that both as Attorney General and as Governor of Missouri, John has enforced and acted in support of laws with which he has personally disagreed. Several examples of this have already been provided to the Committee on issues ranging from abortion to gambling.

Ultimately, this question comes down to our assessment of how John will exercise his judgment. Will he use his discretion wisely, fairly, and appropriately? I would suggest to this Committee that the best proof we have that he would do so can be found in the decisions that John made last November.

The circumstances surrounding the Missouri election are well-known to all of us. The significance of the seat to the composition of the Senate is obvious. That is why I am addressing Senator Leahy as "Mr. Chairman" today. And the determination with which John campaigned demonstrated how intent he was on winning this race. And yet when tragedy intervened at the end of the campaign, John acted in a manner that we can all admire, and that was a testament to his good judgment.

John could have pursued a legal remedy for which he had strong grounds. After all, the Constitution sets forth just three requirements for a U.S. Senator, and the third is particularly relevant in this case. It expressly states that "No person shall be a Senator. . . who shall not, when elected, be an inhabitant of that State for which he shall be chosen." This constitutional requirement would have given John grounds to contest the election, and many legal experts contend he would have prevailed in court.

Despite his fervent desire to win and despite the fact that the court system was there to provide him with an avenue to continue his quest, John chose not to pursue legal action. Instead, he used his discretion to act in a manner that showed compassion to the family of a political rival and concern for the people of his State, an exercise of discretion that was clearly contrary to his personal political interest.

Like many Americans, I was deeply moved watching John's speech when he announced that he was conceding the election and that he hoped that the late Governor Carnahan's victory would provide a measure of comfort for his grieving family.

Despite the proliferation of the vitriolic rhetoric surrounding this nomination, I hope that the American people will have the opportunity to learn about the John Ashcroft whom I know. The dignity and compassion exemplified in that graceful act last November displayed the essence of the man with whom we served in this great body.

Thank you, Mr. Chairman, for your courtesy in allowing me to appear before the Committee today.

Chairman LEAHY. I thank my neighbor from New England and will assure her that, while I appreciate the appellation of "Mr. Chairman," I am making sure I don't get too used to it.

Our former colleague, the Senator from Missouri, Senator Danforth.

**STATEMENT OF JOHN DANFORTH, FORMER U.S. SENATOR
FROM THE STATE OF MISSOURI**

Senator DANFORTH. Mr. Chairman and members of the Committee, thank you very much for the opportunity to testify. I would like to address the one question that has come up repeatedly in these hearings and repeatedly in the media, and that is whether John Ashcroft's philosophical views, whether his political views would in any way circumscribe his ability and willingness to execute faithfully the responsibilities of Attorney General of the United States. And I would like to speak from 30 years, roughly 30 years of knowing John Ashcroft. I have known him since before he ever got into politics, before he held any public office.

John and I and Kit Bond were in Missouri politics and Missouri government when we were in our early 30's, and all three of us were holding public office for a time, Kit as Governor and John as State Auditor and I as Attorney General. And we were the reform movement in State government. And I want to tell you what the nature of that reform was because I think that it sheds light on the basic question before the Committee as to John's ability to faithfully execute his responsibilities.

What we inherited in State government was the old-fashioned spoils system. What we inherited was government that was based on politics. And we began, starting with the State Attorney General's office, much smaller, of course, than the Justice Department, but really a comparable office. We began to reform the very nature of State government. And the reform was that instead of hiring people on the basis of their politics, we would hire people on the basis of their ability. And we would require a day's work for a day's pay, and we would ask people only to interpret and enforce the law. And we would not impose political views on them.

So we didn't ask people what their politics were, and I have spoken to a law partner of mine who worked for John Ashcroft and asked him whether the rule that I had when I was State Attorney General was the same as John Ashcroft's, and indeed it was. He said he was never asked when he was interviewed for the job about politics. He was never asked about political philosophy. And he told me about a colleague of his in the Attorney General's office who admitted to John, I'm a Democrat. And John said to him that's not relevant to this.

Now, I think that this is an important point to make because it seems to me that someone who is just absolutely bent on superimposing his political views on an office would at least ask people about their politics before he hired them. And John did not do that.

Then in the operation of the office itself, this same law partner of mine who served with John circulated a letter that was addressed to Senator Hatch, and I want to submit the letter for the record. It's signed by 18 people who served as lawyers on John Ashcroft's staff, and the lawyer who circulated the letter told me he could have gotten many more signatures, but he got 18 and sort of ran out of time. But here is the letter that he addressed to Senator Hatch.

"Dear Senator Hatch: The undersigned are former Assistant Attorneys General for the State of Missouri who served in that capacity during John Ashcroft's tenure as Missouri Attorney General.

We are writing to state for the record that during our time in these positions, John Ashcroft never interfered with our enforcement or prosecution of the law and never imposed his personal political beliefs on our interpretation or administration of the law we were entrusted to enforce.”

That is how he operated that Attorney General’s office, and I have no doubt that he would do the same in the Justice Department.

I think it has already been referenced in this hearing, but it is, I think, a very good example of how John approached his job in Jefferson City.

In 1979, then Missouri Attorney General Ashcroft issued a legal opinion on whether religious material could be distributed on property of public schools. His opinion clearly distinguished between his personal views and his legal analysis. He wrote, “While the advance of religious beliefs is considered by me, and I believe by most people, to be desirable, this office is compelled by the weight of the law to conclude that school boards may not allow the use of public schools to assist in this effort.”

So for John, the weight of the law determined his conduct in office and not his personal thoughts about desirable actions.

Finally, I would like to say this based on 30 years of knowing this person. I think it was Senator Schumer who asked yesterday, you know, after all this history as a Member of the Senate and fighting all these battles, how can you turn it off as Attorney General? I think the same kind of question is asked to a lot of lawyers. If you are a lawyer, how do you turn off your personal feelings? How do you discharge your responsibility zealously to represent a client? It is a matter really of legal ethics, and it is a matter of how the system works.

But when John Ashcroft yesterday in that very dramatic moment raised his hand and said, “When I swear to uphold the law, I will keep my oath, so help me God,” I would say to the Committee that any of us might disagree with John on any particular political or philosophical point. But I don’t know of anybody and I have not known anybody in the 30 years I have known this person who has questioned his integrity. That is a given. And when he tells this Committee and tells our country that he is going to enforce the law so help him God, John Ashcroft means that. That is exactly what he is going to be doing.

So I think that the answer to the question, Mr. Chairman and members of the Committee, would his political or philosophical views circumscribe his responsibility to execute faithfully the duties of the office of Attorney General of the United States, the answer in my mind is absolutely certain. He would in no way superimpose his views on the duties of that office.

Chairman LEAHY. Thank you, Senator Danforth, and you have had the unique opportunity of testifying in a nomination hearing twice now in this Committee room, once as a Senator and second as a former Senator.

Are there any questions of either of the Senators? Any other questions on this side?

[No response.]

Chairman LEAHY. Then we will stand in recess until 2:09.

[Whereupon, at 1:09 p.m., the Committee was recessed, to reconvene at 2:09 p.m., this same day.]

AFTERNOON SESSION [2:17 p.m.]

Chairman LEAHY. When we proceed, we will go first to Senator Durbin of Illinois and then Senator Sessions of Alabama. But I will give an opportunity for everybody to get seated.

[Pause.]

Chairman LEAHY. The distinguished senior Senator from Illinois, Senator Durbin, is recognized.

Senator DURBIN. Thank you very much, Mr. Chairman.

Senator Ashcroft, welcome again to the Committee. On the day of your nomination, you called me and we talked about this day, and I told you that my first concern was over the Ronnie White nomination for Federal district court judge in Missouri. I will have to tell you, Senator, that this has been a bone in my throat ever since the day that it happened.

I have said this to the press, and I have said it to you personally. I think what happened to Judge Ronnie White in the U.S. Senate was disgraceful.

I am sure that you are well aware of Ronnie White's background, but for the record at this hearing, I would like to say it so that it is here for all to understand.

Ronnie White was the first African-American city counselor in the city of St. Louis. He was the only African-American judge on the Missouri Court of Appeals. He served three terms in the Missouri House, was Chairman of the House Judiciary Committee and the Ethics Committee. He became the first African-American to serve on the Missouri Supreme Court in its 175-year history. It was so significant the St. Louis Post Dispatch said that his appointment was "one of those moments when justice has come to pass."

At his swearing-in ceremony, it took place in the old courthouse in St. Louis. Having grown up across the river in East St. Louis, I know the history of that building. That was a building where the *Dred Scott* case was tried twice and where slaves were sold on the steps of the courthouse.

That was the man who was elevated to the Missouri Supreme Court, Ronnie White. That was the context of his elevation.

And as I look at your decision to oppose his nomination, which led to a party-line vote defeating him, I am troubled. I am troubled by what I think is a mischaracterization of Ronnie White's background, his temperament, his judicial training, his experience on the bench. He came before this Senate Judiciary Committee and said, with a question from Senator Hatch, that he supported the death penalty. When you spoke against Ronnie White on the floor of the U.S. Senate, you suggested that he was pro-criminal.

Well, I might suggest to you that the facts tell us otherwise. In 59 death penalty appeals which Judge White reviewed while on the Missouri Supreme Court, he voted to uphold the death sentence in 41 cases, 70 percent of the time. The record also reflects that Judge White voted with the majority 53 times, 90 percent, on the death cases before the Missouri Supreme Court.

His decision were affirmed 70 percent of the time, a significantly better record than his predecessor, who was affirmed 55 percent of

the time, a gentleman whom you appointed to the Missouri Supreme Court.

And then there was the Kinder case which raised a question as to whether a judge could be impartial, a judge who days before a decision relative to an African-American made disparaging, racial comments in public. You said that the case there was about affirmative action and that it was Judge White's commitment to affirmative action that led to his decision to dissent in that case. In fact, Judge White expressly said in his decision that the judge's position on affirmative action was irrelevant and what was relevant was what Judge White characterized as a pernicious racial stereotype.

It is interesting that after you defeated Judge White, the Senate voted him down, the reaction across Missouri. The 4,500 members of the Missouri Fraternal Order of Police wrote, "Our Nation has been deprived of an individual who surely would have been proven to be an asset to the Federal judiciary." It has come to light that your campaign organization contacted law enforcement officers to enlist them in your crusade against Ronnie White. Most of them refused. In fact, the largest organization expressly refused.

I find it interesting that this man, who was so important in the history of Missouri, had such an extraordinary background as an attorney, a legislator, and a jurist, somehow became the focus of your attention and your decision to defeat him.

One of the statements made by one of your supporters should be a part of this record. Gentry Trotter, a Missouri Republican businessman and an African-American, who has been one of your fundraisers for many years, resigned from your campaign after the vote on Judge White.

Trotter said in a letter to you that he objected to your "marathon public crucifixion and misinformation campaign of Judge White's record as a competent jurist." Mr. Trotter wrote that he had never met White, but he suspected that you had chosen "a different yardstick" to measure his record.

Senator Ashcroft, did you treat Ronnie White fairly?

Senator ASHCROFT. Senator Durbin, let me thank you for your candor in this matter. I did call you either the day or the day after the President nominated me for this job, and you expressed to me as clearly then as you have now your position. And I appreciate that and I appreciate your feelings in this case.

I believe that I acted properly in carrying out my duties as a member of the Committee and as a Member of the Senate in relation to Judge Ronnie White. I take very seriously my responsibility. Pardon me. Let me amend that. I no longer have that responsibility. I took very seriously my responsibility as a Member of the Senate, and I don't mean to say that I still have that responsibility.

Judges at the Federal level are appointed for life. They frequently have power that literally would allow them to overrule the entire Supreme Court of the State of Missouri. If a person has been convicted in the State of Missouri but on habeas corpus files a petition with the U.S. District Court, it's within the power of that single U.S. District Court judge to set aside the judgment of the entire Supreme Court of the State of Missouri. So that my—the seriousness with which I address these issues is substantial.

I did characterize Judge White's record as being pro-criminal. I did not derogate his background. I'm not as familiar as you have made us all with his background. It was not my intention to interfere with his background or discredit his background. And, frankly, it's not my intention to comment on his membership on the Supreme Court of the State of Missouri because that's a different responsibility and that's a different opportunity.

Not a single Republican voted for Judge White because of a substantial number of law enforcement organizations that opposed his nomination.

Senator DURBIN. How many?

Senator ASHCROFT. Well, I know that the National Sheriffs' Association did.

Senator DURBIN. The Missouri Federation is one group, and they represent, I think, 70 municipalities. The larger group of Missouri Chiefs of Police, including the cities of St. Louis and Kansas City, refused to accept your invitation to oppose him. Some 456 different law enforcement authorities came to the opposite conclusion you did as to whether Judge White was pro-criminal. Does that give you pause?

Senator ASHCROFT. I need to clarify some of the things that you have said. I wasn't inviting people to be a part of a campaign—

Senator DURBIN. Your campaign did not contact these organizations?

Senator ASHCROFT. My office frequently contacts interest groups related to matters in the Senate. We don't find it unusual. It's not without precedent that we would make a request to see if someone wants to make a comment about such an issue. Of the sheriffs in Missouri, 77 of them signed a letter to me saying that I should be very careful in this setting because they had reservations about the way in which Judge White had been involved in a single dissent in regard to the *Johnson* case.

Senator DURBIN. Senator Ashcroft, I am sorry to interrupt you, but the Missouri Police Chiefs Association, representing 465 members across the State including the police chiefs of St. Louis and Kansas City, their president, Carl Wolfe, in an article that appeared in the St. Louis Post Dispatch on October 8, 1999, said his group had received a letter from your office dealing with White's decisions in death penalty cases. He said he knows White personally, has never thought of him as pro-criminal. He said, "I really have a hard time seeing that White's against law enforcement. I've always known him to be an upright, fine individual, and his voting record speaks for itself."

Senator ASHCROFT. I would be very pleased to continue to respond to your question.

As it relates to my own objections, I had a particular concern with his dissents in death penalty cases. Judge White has voted to give clearly guilty murderers a new trial by repeatedly urging lower standards for approving various legal errors.

Senator DURBIN. In which specific cases?

Senator ASHCROFT. Well, let me begin to address a case. In the *Johnson* case, *Missouri v. Johnson*, the Missouri Supreme Court affirmed four death sentences for one James R. Johnson, who went

on a shooting rampage in California, Missouri. This was during the time—

Senator DURBIN. Senator Ashcroft—

Senator ASHCROFT.—I was Governor of the State.

Senator DURBIN. I am sorry—

Senator HATCH. Let him answer the question.

Senator SESSIONS. Let him answer the question. He has been interrupted about five times.

Senator DURBIN. Well, I am anxious to have a complete record, but I also want this to be an exchange and dialog as opposed to a complete speech on one side. I am familiar with the case, and I have read it. I would like to ask you a specific question about the case.

Senator ASHCROFT. Well, you have made a number of statements, Senator, and obviously I'm not running this hearing.

Senator DURBIN. Please—

Senator ASHCROFT. But I would like to have the opportunity to respond—

Senator DURBIN. Please do.

Senator ASHCROFT.—To your statements, and I think it's fair to put the situation in context.

I was going to talk about some other items that you mentioned about the statistics of his dissents. He had four times more dissents than any of the other—than the Ashcroft appointees to which comparisons have been made on the case. And, frankly, I think it's important to note that just statistical numbers about the times you say guilty or innocent doesn't really prove anything. I mean, if we both took a true/false test, we might have equal numbers of trues and falses, but you might score 100 and I might score a zero. But he obviously—and the first case that I would mention is the *Johnson* case, the *Johnson* case with the multiple murders. The sheriff's wife was shot while she was conducting a Christmas party for her, I think, church organization, five times. The murderer shot three other—three law enforcement officers, killing three other law enforcement officers, I believe, and then wounding another law enforcement officer. And the defendant in the case had pleaded—not had pled but had confessed completely to the crime in a statement that alleged no difficulties or no problems. So that when the case finally was litigated, it was clear that there was no question about whether or not he conducted himself in a way which was somehow excusable.

Senator DURBIN. But, Senator, didn't the dissent from Judge White come down to the question of the competency of his counsel? And didn't Judge White say expressly in that decision that if he is guilty, then, frankly, he should face the death penalty? There was no question about it. But if you have read the case, as I have, I cannot believe that you would have hired or would hire if you are appointed Attorney General for the United States the defense counsel in that case to represent our country. The man was clearly lacking in skill in preparing the defense, and that is the only point made by Judge White.

Senator ASHCROFT. Well, I think that being the only point, it's an inadequate point to overturn a guilty verdict for murder.

Senator DURBIN. So the competency of counsel in a death penalty case you don't believe is grounds for overturning?

Senator ASHCROFT. It's part of the necessary grounds, Senator, but I believe mere incompetency of counsel without any showing of any error or prejudice in the trial against the defendant does not mean that the case should be overturned. If you'll read carefully—and I believe you would come to that conclusion—the opinion of the court here, you'll find that the disagreement in the case was what weight incompetency or alleged incompetency should have and the extent to which the trial should be set aside if there isn't any real evidence that the incompetency or the mistake affected the outcome.

Senator DURBIN. Well, Senator, clearly we see this differently, because I am proud that my Republican Governor in my State, even though I support the death penalty, as you do, my Republican Governor in my State has declared a moratorium on the death penalty. I think he has taken the only morally coherent position that if we find DNA evidence that exculpates an individual or if we find a clear case of a capital case where there is evidence of incompetent counsel, it raises a serious question as to whether or not that defendant was adequately represented. And I think that is the point that Judge White.

Senator ASHCROFT. I commend your Governor for following his conscience in that respect. I think that's an option for each Governor and each person in that setting to make a judgment on.

I want to make it clear. Defense counsel in the *Johnson* case decided to advance a theory of a post-traumatic syndrome for an individual who had been involved in Vietnam at one time. It was in so advancing that theory, they alleged that the defendant had set up a perimeter of string and tin cans around his house to alert the defendant of anybody coming in, and also that the defendant had flattened the tires on his own car so as to avoid someone coming in to take his car and use it against him.

When the defense counsel alleged this, they sought to prove that he thought he was still back in Vietnam. The truth of the matter is he hadn't done that at all.

Senator DURBIN. That was the point that Judge White made—

Senator ASHCROFT. That is the point—

Senator DURBIN.—That any competent counsel would have established the police had put in the perimeter and the defense counsel's defense of mental incapacity was based on a fact that he had not checked on. Incompetent counsel in a death penalty case? I will just say to you, Senator—we have run out of time here, but for you to reject Judge White based on that decision, on that important issue of competent counsel in a death penalty case, troubles me greatly. This is an extraordinary man with an extraordinary background. I think he was treated extremely poorly by the U.S. Senate, and I am troubled by that.

I yield to the Chairman.

Senator ASHCROFT. Mr. Chairman?

Senator HATCH. Do you have anything further to say on that?

Senator ASHCROFT. Mr. Chairman, I think that it's important for us to understand that alleging a mistake at trial is not enough. We should show that the mistake at trial made a difference or was

very likely to make a difference. And there is a standard such in the law of the State of Missouri, and there is such a standard in the law of the United States of America. And it's pretty clear that that standard was something that Judge White thought simply should be swept aside.

That's not my view. That's the law.

Now, the consequence of ruling, as Judge White would have ruled in that case, was this: If you and your attorney concoct a lie and it succeeds, you win. But if you and your attorney concoct a lie and it fails, it's incompetency in your counsel and you lose, but you get a new trial.

I think we have to look at the result of these cases. Now, I'm prepared to talk about a number of other cases that Judge White ruled in and discuss his positions there. Unfortunately, they're not any less grisly than the four murdered law enforcement officials and their relatives. They reflect, in my judgment, an approach which, if you're one or two of the dissenting judges on the court in Missouri, it doesn't make a difference in the ultimate outcome. But if you turn out to be the sole judge in Federal district court, you have the ability to erase a guilty verdict and provide that a person, once adjudicated guilty for these crimes, is no longer guilty.

I know of no regime anywhere that says merely the detection of an error at trial without measuring its impact is—anywhere in the law where that's in effect. And I don't think it should be in effect here. I believe this is very serious. I believe it's very important. But I don't think there was any reasonable likelihood that the defendant who went in and confessed completely his crimes without reference to any difficulty and without any evidence of involvement in a situation where he was out of control, in a flashback in Vietnam, could later on expect that defense to be sustained.

Senator DURBIN. Well, I might say, Mr. Chairman, in conclusion here, if I might, it appears that your conclusion about Justice Ronnie White is a conclusion that is not shared by the law enforcement community of the State of Missouri. A man who has an extraordinary background was given, I think, shabby treatment by the Senate because of your instigation, Senator Ashcroft. And I think that is troublesome.

Chairman LEAHY. Senators, we will, I am sure, come back to this issue more, and I will extend extra time to the Senator from Alabama, who has been patiently waiting.

Senator SESSIONS. Thank you, Mr. Chairman, and I welcome you, John, back to the pit. You have been doing a tremendous job, and how you can remain cool and thoughtful when we switch from subject to subject, many of them most complex and many of them over quite a number of years, is really a tribute to your intellectual capacity and your clear thinking. And I appreciate that, and I think anybody who has watched this hearing from the beginning will see that you have confronted honestly and directly every allegation or complaint and have explained them in a way that makes sense to them, and it makes sense to me, and I believe the American people owe you that. I believe this Committee owes you that. I believe—I know that there are groups who care a lot about it, and they have every right to raise issues and complain and ask ques-

tions. That is part of this process. I am sure it is not fun, but it is part of it, and we have to go through that. And I value that.

I would just call to my friends on the other side, their attention to the fact that sometimes there are conservative groups that attempt to impose views on how a vote should go in this Committee. Our Chairman, Chairman Hatch, has been approached a number of times to do this or do that on behalf of groups, and he has said no, that he is the Chairman of this Committee, and he alone bears the responsibility for making those decisions, and he has conducted it with great integrity and has been able to keep a proper distance from outside groups who might try to dictate an outcome of a hearing, because it is our duty to get to the bottom of that. I just say that to start with.

And with regard to Justice White, I know Senator Durbin feels strongly about this, and he has looked at it. But I just don't agree. I am not—you know, we say this is not a racial question. You voted for every African-American judge that has been up here. But a big point is made of his race. I think he should be treated like any other nominee, and that is what is fair. And he does have an important job now, which he will continue to hold. He is one of seven judges there.

Now, before I became a Senator, I was Attorney General 2 years, but for 15 years I spent full-time practicing every day in Federal court before Federal judges. I have the greatest respect for Federal judges. But I can tell you it is a pleasure to go to work before a great Federal judge, and I had the rare opportunity to practice before a series of great ones. But a bad Federal judge can ruin your day. It cannot be a pleasant experience. And they are there forever. And you can go home, and you can be so frustrated that you want to scream. But they are there. They will not be removed. I have often wondered how our Founding Fathers made such a colossal mistake to give a person a job he can never be gotten rid of. The only opportunity the American people have to have public input in who this person will be is at a confirmation hearing. So I think that is what was done in this case, and serious questions were given to it.

There are great powers to a Federal judge. They can grant motions. They can deny motions. They can order discovery. They can rule on search and seizure issues and those sort of things, some of which you can appeal. Many of them either practically can't be appealed or as a matter of deference the Appeals Court will give to them, you can't be successful. There is great power in a Federal judge.

One of the greatest powers in the entire governmental system of this United States is the power of a Federal judge at the conclusion of the prosecutor's case to grant a judgment of acquittal. And at that moment, that defendant is freed, jeopardy is deemed to have been attached under law. He can never be retried no matter how horrible that crime was. Most people don't believe that is true. Trust me. That is the law in America. It is unreviewable power, cannot be appealed.

So I think from the point of view of a prosecutor—and John Ashcroft served 8 years as an Attorney General who handles appeals on a routine basis before the Supreme Court, they know the

importance of making sure that whatever we do, that not on my watch as U.S. Senator from Alabama will I confirm a judge I believe is not fair to law enforcement. Not fair to law enforcement is not fair to victims. Not fair to law enforcement is not fair to justice. So this is a big deal, No. 1.

This *Johnson* case I believe is also a big deal. Let's sum this thing up. This defendant, a deputy came to his door because of a domestic disturbance. He killed, shot that deputy several times. He laid on the ground moaning. Then the defendant, *Johnson*, comes out and shoots him through the forehead, murders him there, goes to the home of the sheriff. The sheriff is not there. His wife is in the house with a party, a social of some kind going on. He shoots her five times through the window, killing her, then goes and shoots another deputy, then goes and lays in wait and shoots two more deputies out trying to do something about this event.

He was surrounded, finally surrendered, gave a detailed confession, did not say he was having—he thought they were Vietcong or he thought he was in Vietnam, he was under attack. He had driven from place to place, as a matter of fact. He did not give that kind of defense. It was a complete confession.

And the defense attorney, I submit, was in a difficult position. Obviously, the prosecutor was not going to agree to a plea bargain of less than death in a case like this. If this isn't a death case, there was never a death case in Missouri. He could not give that death case up. So what would he do?

So they came up with a homerun, goofy defense that it was post-traumatic stress syndrome. That is what they tried to pull off. And it failed. They were caught in it. The defendant was convicted.

To my understanding, they were good lawyers. In fact, there was a hearing at a later date on the competency of the counsel in this case, and they were found to be competent. So they got caught. The truth is that is what jury trials are all about: who is telling the truth, the defendant or the prosecuting witnesses. They concluded that he was not telling the truth. It was a false defense, and they rejected the defense. That happens every day in court all over America.

Now we are going to create—what Judge White did and why it was big-time significant was he created a circumstance in which you encourage a defense lawyer to try the most outlandish defense scheme to see if they can get away with it, and if they don't get away with it and they get caught, they can ask for a new trial for the defendant.

Why, this is a big deal, and I did not like the language that he used that, well, maybe this is not insanity, Judge White wrote. He said it is something akin to insanity, and we have had some real problems in this country of getting a clear definition of "insanity." After the Hinckley shooting of President Reagan, this Congress dealt with and confronted that difficult question and came up with a much more clear rule for Federal court. To me, his opinion indicated a lack of fully comprehending the importance of a clear definition of insanity in that case in addition to violating the established law about ineffective assistance of counsel.

In an exchange, Senator Durbin, between you and Senator Ashcroft, I don't think you do dispute that it is the established law

that you must show not only effectiveness, which I suppose you could say this was ineffective since they tried a defense that didn't succeed, but what other defense did he have, but, second, if it was ineffective from that technical point of view, you don't dispute that it has to have an impact on the outcome of the trial. So that is the established law, I believe, in America, as Senator Ashcroft has articulated, and that is why I think it was a big error.

I didn't like the *Kinder* case either. I think that was almost a very strange ruling. So that was, to me, significant.

Now, there were serious concerns about Justice White's reputation for law enforcement effectiveness. Seventy-seven sheriffs in the State signed a petition in opposition to his nomination. That is well over half. I am quite sure many of those were Democratic sheriffs in opposition writing to Senator Ashcroft as State Senator opposing that nomination. I think that is very significant. In addition to that, the National Sheriffs' Association opposed the nomination.

The Missouri Federation of Chiefs of Police wrote, "We are absolutely shocked that someone like this would even be nominated to such an important position. We want to go on record with your offices as being opposed to his nomination and hope you will vote against him."

The Mercer County prosecuting attorney's office wrote, "Justice White's record is unmistakably anti-law enforcement. We believe his nomination should be defeated. His rulings and dissenting opinions on capital cases where he did four times as many dissents as his brother justices, in capital cases and on Fourth Amendment cases"—that is the search and seizure where there is a lot of daily work done there—"should be disqualifying factors when considering the nomination."

Now, I know that it is no fun. It is a difficult thing in a situation like this to oppose a nomination of somebody who appears to be a good person in every respect, but a lifetime appointment to that bench is very important, and I think we can do better about it.

Do you have anything to add to that?

Chairman LEAHY. Don't you agree?

Senator SESSIONS. The first one is do you agree.

Senator ASHCROFT. I appreciate your clear explanation of the *Johnson* case. I think what you have to look for in a case is what will be the rule if the opinion of the judge is embraced. The rule in the *Johnson* case was is if you try a really whacked-out theory of something and it is revealed as the lie that it is, then you get a new trial because it was an incompetent or ineffective thing to do at trial. If you succeed with it and get them to believe it, you don't need the new trial.

What bothered me about the case was that the judge basically wanted to lower the standard, and frankly, what bothered me about the Senator's articulation of the case in addition to the fact that—well, was that incompetence alone overturns the verdict.

As a matter of fact, in the *Kinder* case, which is another unpleasant case, I mean, this is another case of a woman who was beaten to death with a pipe after being raped by a defendant who had been seen with the pipe shortly before the rape and found with the bloody pipe in his hand after the rape, and the defendant's semen had been found in the victim of the rape. And there was an allega-

tion about a statement that the judge had made prior to the trial in another setting that indicated that the judge was a person who was biased against African-Americans, and the defendant and the victim were both African-Americans in the case.

Now, I don't think there is any question about the fact that judges should ever make statements that reflect racial bias. I think swift and sure action should be taken to keep individuals like that from being apart of our judicial system if they are biased, but you have a situation here where there is an alleged bias. I am not going to debate it. But Judge White said that the alleged bias alone should overturn the murder conviction of that young woman, should set aside the murder conviction, and it didn't matter that there has—that there was no error at the trial, none. There was no allegation of any impact of the bias. As a matter of fact, I believe there was a separate review of the trial by authorities to try and find an indication of bias that affected or otherwise was reflected in the trial and had an impact on the outcome and they couldn't.

Missouri v. Irvin is another case. Now, this was not about Judge White urging broad, lenient, legal rules, but it still caused me a great alarm. In order to have a death penalty in Missouri, you have got to be able to say that the crime was committed with cool reflection, torture, or depravity of mind which includes brutality of conduct.

In this case, the defendant went to the victim's residence late one night. They appeared to get in an argument. The defendant stabbed the victim, an older man, in the neck and the upper chest and dragged the naked victim out of the trailer in front of others by something tied around his neck. The victim had been stripped of his clothes in the interim. I think the victim was propped up against the tree, and the victim said, "Go ahead. Kill me, James," at which time the defendant beat the victim in the head four to five times with a brick and walked away, and shortly thereafter, when the victim began to move and to moan, the defendant came back again and beat him in the head with a brick, causing fatal wounds.

Now, I think there is enough depravity of mind and brutality of conduct in that description to satisfy almost anybody—almost anybody, but Judge White says it just barely concurs that there is a submissible case of first-degree murder here. Well, it is this kind of view over and over again—there are other cases—that I came to the conclusion that this was not a person that I felt should sit in judgment in a setting where the ruling of the single judge could displace the conclusions of the entire Supreme Court of Missouri.

Now, in these settings where he was the solo or with one other judge in dissent, that is a different circumstance, and I don't comment on that.

Chairman LEAHY. The Chair would note it has given the same amount now of extra time to both the Senator from Alabama and the Senator from Illinois.

Senator ASHCROFT. I thank the Chair.

Senator SESSIONS. Could I just have 1 second to wrap up?

Chairman LEAHY. Well, the Senator from Alabama, then, will have more time. Let's go ahead.

Senator SESSIONS. I would just want to say that there was a hearing later on these competent counsel. The judge found him competent and, in fact, said they were highly skilled attorneys, devoted hundreds of hours to the defense. They were privately retained attorneys, not public defenders. They were professional trial lawyers with extensive experience. One had been a leader in the Criminal Defense Bar. Another one had graduated with Judge White from college. They were all three competent and capable attorneys trying to make the best defense in a difficult circumstance, and I don't think they should be rewarded for failing in that effort.

Chairman LEAHY. I know the Senator from Alabama wanted to note the fairness of both the Republican and Democratic leaders in this Committee.

Senator SESSIONS. I will note that, Mr. Chairman.

Chairman LEAHY. The distinguished senior Senator from Delaware, as I noted before, has been absent because of chairing the Powell hearing. So, at this point, he is able to rejoin us. I yield to him.

I would also note that the Senator from Delaware did not have the 3 to 4 minutes of opening statement he would have had yesterday. He is entitled to that today as well as his 15 minutes, should he want it.

Senator BIDEN. I thank the Chair. I will try not to take all my time, and I do apologize to Senator Ashcroft and my colleagues for not being here.

Yesterday, I had the privilege of representing the Senate and giving one of the eulogies for our colleague, Alan Cranston, in San Francisco, and that is why I was not here.

I am for a very brief fleeting moment Chairman of the Foreign Relations Committee, and I am chairing the Committee on the Powell nomination as we speak. That is by way of explanation of my absence.

I asked the Chairman, and he was kind enough to put in an opening statement yesterday. I just want to read one paragraph from my opening statement:

You are to become the people's lawyer more than you are to be the President's lawyer. Consequently, the questions relating to your nomination are not merely whether or not you possess the intellectual capabilities and legal skills to perform the task of Attorney General and not merely whether you are a man of good character and free of conflict of interest that might compromise your ability to faithfully and responsibly and objectively perform your duties as Attorney General, but whether you are willing to vigorously enforce all the laws in the Constitution, even though you might have philosophic disagreement with them, and whether you possess the standing and temperament that will permit the vast majority of the American people to believe that you can and will protect and enforce their individual rights.

That was my opening statement in 1984 when I was considering how I would vote on the nomination of Edwin Meese. I cite that only to say that my standard that I have applied—and I have told you on the phone, Senator, and I appreciate you calling me and us finally catching up with one another—has been consistent for the 28 years I have been a United States Senator.

My greatest concern is on questions relating to race. I will try not to tread on the various issues that have been raised here except to say to you on the last point that I have always asked whether or not the vast majority of Americans will believe that you

will enforce the law vigorously on their behalf, not just whether you will, whether they believe that you will.

There are only two places that black Americans and all minorities have over the last 40 years been able to go with some sense of certainty that their rights would be vindicated and aggressively pursued. One has been the Federal courts, and some State courts, but primarily the Federal courts. The other has been the Justice Department.

I sincerely wish, John, you had been nominated to be Secretary of Defense or Secretary of Commerce or Secretary of State or Secretary of anything, but this single job as Attorney General.

I will, as is not unusual for me, be pilloried by the right and the left for saying this. I find you a man of honesty and integrity. As I said to you, I think you were the classiest person in the last election, the way you bowed out of your race. You did it with class and dignity that was not seen by many Democrats or Republicans in your position, and I have always had a good relationship with you. I think you would agree to that.

But I told you bluntly what my concerns were when we spoke and what they are now, and for those who suggest that maybe this is a bit of an epiphany, I would suggest that it has been the standard I have applied my entire Senate career.

I say to folks it does matter what you are nominated for. For example, if I had—well, let me just say it this way. I am worried, Senator, about the cumulative weight of items that lend the perception at least that you are not particularly sympathetic to African-Americans' concerns and needs, not just the Ronnie White case which is of concern to me, not just the voluntary desegregation order which was obviously a very contentious issue during your tenure back in Missouri, not merely your appearance at the Bob Jones University, not merely your strong opposition to Bill Lann Lee to be the head of the Civil Rights Division, but there seems to be—not merely your sponsoring an act called a Civil Rights Act of 1997, I guess it was—don't hold me to that—which said that no longer could preferences be given in employment and Federal contracts.

The cumulative weight is what, quite frankly, concerns me, and I raise with you an interview that you did in a magazine—if this has been raised, please tell me, Mr. Chairman, and I will read it in the record—in the magazine called the Southern Partisan. That is a magazine to which you gave an interview, and it is a magazine that has been characterized by the Associated Press and other mainstream publications as a southern neo-Confederate publication that regularly vilifies Abraham Lincoln as a tyrant, helps—and so on and so on. I won't go into all the details, but excerpts from the magazine that I have asked my staff to get for me such as Negroes, Asians and Orientals, Hispanics, Latins, Eastern Europeans have no temperament for democracy, never have and probably never will. Or, a 1996 article that came with the following claim, slave owners did not have a practice of breaking up slave families, if anything, they encouraged strong families to further slaves' peace and happiness. Or, a 1990 Journal article of the same outfit, celebrating former KKK Klansman David Duke as a candidate concerned about

affirmative discrimination, welfare, profligacy, and taxation, a popular spokesman for a recapturing of an American ideal.

It goes on. After a visit by one of the writers for the Southern Partisan to New York, he said, "Where are the Americans? For I met only Italians, Jews, and Puerto Ricans," and the list goes on of these outrageous statements that this magazine carried.

Now, again, by way of context, it may seem by itself unfair to ask you about this, but were I going to be the Secretary of Interior or were I nominated to be the Secretary of Interior and I had given a long interview with the outfit that is called the Earth Liberation Movement, the one that goes and burns down any dwelling that is on a Federal land in open space, or were I to give interviews to and say some of the things you said about this magazine to the People for Ethical Treatment of Animals, if I were going to be the head of the Department of Agriculture, I think that most Midwestern Senators would have a problem. I think most Western Senators have a problem if it were regarding the Earth Liberation Movement.

Well, I have a problem coming to this Senate on getting involved in politics because of civil rights. My State to its great shame was segregated by law. We have not been very progressive until the 1970's in my State on these issues, and so it bothers me.

Now, that is a long background to a relatively short question. You gave an interview to that magazine where you said, "Revisionism"—and I think you have a copy of this—"Revisionism is a threat to the respect that Americans have for their freedoms and liberty that was at the core of those who founded this country, and when we see George Washington, the Founder of our Country, called a racist, that is just the total revisionist nonsense, a diatribe against American values." Well, so far, so good.

"Your magazine also helped set the record straight. You have got a heritage of doing that, of defending Southern patriots like Robert E. Lee, Stonewall Jackson, Jefferson Davis. Traditionalists should do more. I have got to do more. We have all got to stand up and speak in this respect, or else we will be taught that these people were giving their lives, describing their sacred fortunes in their honor to some perverted agenda."

In the introduction of that article, they describe you—and you can't be responsible for how you are described, I acknowledge, but in the description of it, it says, "John Ashcroft has made a career of public service in Missouri after serving"—and it goes on and it says that "in a short time in Washington, the Senator has already become known as a champion of States' rights and traditional values. He is also a jealous defender of national sovereignty against the new world order," and so on and so forth.

Now, I have two questions relating to this, Senator, or actually three. One, were you aware of the nature of this magazine before you gave the interview, and, two, are you now aware, if you weren't then, of the nature of this magazine, and, No. 3, if you are aware now, do you think it was a smart thing to do to give this interview, not just because I am asking you the question?

Senator ASHCROFT. Thank you, Senator, and I appreciate the candor of your remarks. I also appreciate the kind things you have said about me.

Senator BIDEN. I mean it.

Senator ASHCROFT. If some day there is a President Biden, maybe you will consider Defense and Commerce and those other things for me.

Senator BIDEN. America is in enough trouble right now.

Senator ASHCROFT. Let me make something as plain as I can make it. Discrimination is wrong. Slavery was abhorrent. The fundamentals of my belief and freedom and liberty is that these are God-given rights, and we have had the stain of slavery in our past, and I recognize that our Nation's history is complicated.

It is hard for me to know how Thomas Jefferson could write, "We hold these truths to be self-evident that all men are created equal and endowed by their creator with certain inalienable rights, and that among these is life, liberty, and the pursuit of happiness," and at the same time be a slave owner. And while he owned slaves, I think his articulation of these freedoms planted the seeds that resulted in ultimately doing away with slavery, and so it is complex and complicated.

On the magazine, frankly, I can't say that I knew very much at all about the magazine. I have given magazine interviews to lots of people. Mother Jones has interviewed me. I don't know if I have ever read the magazine or seen it. It doesn't mean I endorse the views of magazines and telephone interview, and I regret that speaking to them is being used to imply that I agree with their views.

Senator BIDEN. No, just to make it clear, John, I am not saying that. I know you better.

Senator ASHCROFT. OK.

Senator BIDEN. Speaking to them implies to me an incredible insensitivity, No. 1. No. 2, speaking to them, learning who they are and not condemning them after the fact implies a bit of bull-headedness at the least and a—I don't know what else, but it ain't good. No, I sincerely mean this. It is a big deal. It is a big deal. You have got 20 million black Americans out there whom you are going to be representing. They are going to look to you and say, "Is this guy going to enforce the law?" and then they are going to say, "Wait a minute. This guy finds out that this outfit is this racist neo-Confederate outfit that writes things about Jews and blacks and Eastern Europeans and immigration, and he doesn't condemn them. He doesn't condemn them."

I mean, look, we have all spoken to people we wish we hadn't. We have even had people contribute. I remember Jimmy Carter when he had a picture taken in Ohio and it turns out to be John Wayne Gacy was in the picture. Do you remember that? But after he found out it was John Wayne Gacy and he got arrested, Carter said, "I condemn the guy." He didn't say, "You know, well, I am not really going to have anything to say about that. I talk to everybody about these things, and John Wayne just happened to be there." That is the part that confuses me, John. I don't quite understand that.

Senator ASHCROFT. Well, I condemn those things which are condemnable. I mean, slavery—

Senator BIDEN. Isn't the magazine condemnable? I mean, isn't the magazine condemnable? They sell T-shirts that says, you know, the assassin was right.

Senator ASHCROFT. If they do that, I condemn them. I mean, if they sell T-shirts saying that Abraham Lincoln should have been condemned, I condemn that. Abraham Lincoln is my favorite political figure in the history of this country.

Senator BIDEN. Allegedly, they sold T-shirts with a picture of Abraham Lincoln with the words, "Thus always to tyrants," the words of an assassin.

Anyway, what I still haven't quite gotten, I still haven't quite gotten why—and by the way, a lot goes by in a campaign. We all understand that. We have all been in campaigns, and we all get faced with the proposition, "gee, if I disassociate myself with that outfit, even though I don't like him, is that going to raise more questions?" I can understand tactical judgments in the middle of a campaign, but what I couldn't understand is why right after this—and this is called to your attention—you just don't say boom, boom, boom, "I should have never gone to get a degree from Bob Jones University, I should have never had this interview."

I mean, as you all know, this place loves contrition. I mean, I have had my share of having to do it. We all make mistakes, but I don't get it. I don't get it.

And by the way, you are a great supporter of Scalia, as many others are. I mean, Scalia said the same things, your old buddy did. To illustrate the point, he voted on a case to overturn the death penalty that had been imposed on a disgruntled ex-employee of a married couple. The defendant entered the couple's home, shot the wife twice with a shotgun, then shot and killed the husband, and then when he realized the wife was still alive, he slit her throat and stabbed her twice with a hunting knife. In the second case, he wrote an opinion reversing the death penalty that had been imposed on a defendant who had raped and strangled a 13-year-old girl. Should Scalia not be on that Court? That was a publicized case. I raised it on the floor of the Senate. I happen to think he probably made the right decision under our Constitution, but what people are looking for is balance.

So I would have less trouble with Ronnie White if you had gone to the floor when this decision was made and say, "You know, I am really disappointed in Scalia. He was one of my heroes. He was one of the people I most respected, and look what he just did."

But nobody says that. I just want you to understand why people are suspect, John. People are suspect not because they believe, at least to the best of my knowledge, because they believe you are a racist. They do not believe it. I do not believe that. But they are suspect because they believe that your ideology blinds you to an equal application of not just the law but the facts, and that is the part that I have told you that troubles me. I mean, what would you all have said if I had gone up here and my justification—I voted for Scalia, as I tell you. He is a great guy. I told him. I was once asked what is the one vote out of over 10,000 I regretted, it was voting for Scalia. That was the one I most regret. I told him that. He jokes about it. I teach a class in constitutional law. When he found out, he called me and said, "Joe, I have got to come up and

co-teach that class with you because you are really probably steering those kids in a different direction than they should go.” We have a good relationship and I respect him, but I think he is dead wrong.

But if I had stood up and said, you know, “I am voting against Scalia for that reason and organized votes”, I think you all would have said, “Well, wait a minute.”

I do not know, John. I guess what I am trying to get at, and it is my frustration, because darn, I am not looking to vote against you. I mean, this is not a comfortable thing. Just like my friend from Alabama said when he came. He said, “You know, it is hard to vote against a guy like Ronnie White. He is a decent honorable guy, hard to vote against him, but on the issues he is wrong. He is, obviously, otherwise, a decent honorable man.” But you know, that old expression we remember from law school, “Hard cases make bad law.” But this is a hard case, and I just want you to know my frustration. I wish you were able to be more forthright—not forthright—more direct in your condemnation of things that you know now to be mistaken, and further, I wish you would understand why—take away the interest groups. I am not a big fan of interest groups, as you probably know. I am not a—I do not meet with them any more because I do not trust them, with two exceptions in my experience. But I wonder why—and I will end with this, and I am sorry—I hope you understand why there are so many—as this stuff comes out—so many average black Americans who sit there and say, “Geez, I don’t want this guy. I don’t want this guy. I am not crazy about having this guy.” Just if you understand that, because you are probably going to be Attorney General, and I hope that you take away nothing from this except this matters to people, John. Words matter. Words matter. And unless you have—the more distraught you are, the less you think you can get representation, the more the words matter.

Sorry. Sounds more like a lecture than anything else, but I do not mean it that way. That is my frustration.

Chairman LEAHY. Senator Ashcroft, do you wish to respond? Obviously, you have time to.

Senator ASHCROFT. Well, thank you very much.

First of all, I want to make very clear that I repudiate racist organizations and racist ideas, racist views.

Senator BIDEN. Is the Southern Partisan Magazine racist, in your opinion?

Senator ASHCROFT. I probably should do more due diligence on it. I know they have been accused of being racist. I have to say this, Senator, I would rather be falsely accused of being a racist than to falsely accuse someone else of being a racist. I have told my children I would rather have my wallet stolen than for me to be someone who steals a wallet.

Senator BIDEN. I got that, John, but all those folks behind you, your experts, they knew this was coming up. Didn’t they tell you what that magazine is? The guy sitting back to your left, he has done ten of these. He has forgotten more—he has read every one of those issues. You know it and I know it. Didn’t he tell you, “Hey, this is a racist outfit?”

Senator ASHCROFT. No.

Senator BIDEN. What more do you need to know?

Senator ASHCROFT. No. No. I mean, I don't want to be disrespectful, but for you to suggest that I was told that all these things that you have alleged are true, I wasn't told that, and frankly, I have been told that some of them aren't true, and I don't know the source of your things, but I'm not here to challenge what the senators on this panel say. I'm here to express myself—

Senator BIDEN. John, if I am wrong, you should tell me, because I am operating on this. If I am factually wrong, I would be happy to hear.

Senator ASHCROFT. Well, I'm not—that's not my purpose. Let me express to you that I believe that racism is wrong.

Senator BIDEN. I know you do.

Senator ASHCROFT. I repudiate it. I repudiate racist organizations. I'm not a member of any of them. I don't subscribe to them. And I reject them. And had I been fighting in the Civil War, I would have fought with Grant. I probably would have, at Appomattox, winced a little bit when Grant let Lee keep his sword and take his horse home with him, but I think that was the right decision. It was a signal at that time by the people on the ground that they recognized that some people who fought on both sides were people of decent will, and it is not time for us to find out who we should be able to hate now that there is a long time gone by. You know why we should respect Grant. You know why we should respect Lee. This Congress has acted to restore the citizenship of Robert E. Lee, and there are a series of members of this panel that voted in favor of restoring the citizenship of Robert E. Lee. And at the time they did so, they said that the entire nation has long recognized the outstanding virtues of courage, patriotism and selfless devotion to the duty of General Robert E. Lee.

Senator BIDEN. John, you are good, but this ain't about Robert E. Lee. I just hope when you are Attorney General, you will understand, you have got to reach out.

Chairman LEAHY. Gentlemen.

Senator BIDEN. I have spoken too much.

Chairman LEAHY. Did you have further?

Senator ASHCROFT. Well, I don't mean to be—really, I don't have any purpose for arguing with my friend, and I believe he has a good heart, and he has the right motive here. And his question is: Can I serve America as the Attorney General of this country, and will people be able to have confidence in me? And I assure him that they will. And for those that don't have confidence at the ab initio, if we want to go to the law school phrase, they will, because I will serve and I will serve well. And if the absence of unanimous confidence in any individual becomes a disqualifier, all we do is to invite groups to signal, and lack of unanimous confidence, and they paralyze the system.

I will enforce the law. I reject racism. I will reach out to people, all people, and enforce all of the law, and I respect this panel's and this Committee's dedication, and I don't have an argument with the senator.

Chairman LEAHY. Gentlemen, we have extended extra time because the senior senator from Delaware was unable—while representing the Senate at a funeral yesterday, was unable to be here,

so he had his time for then and today. The witness has had ample chance to answer the question. Am I correct?

Senator ASHCROFT. I didn't answer all of the things that—you know, when a person spends 15, 20 minutes asking a protracted question, it does place on the respondent a need to sort of say, "I want to respond to the nature of the questions and not to all of them." And I think I did that. I'm not complaining, not asking. I thank the Chair for its fairness in this respect, and if I come up with something else that I think I should say, maybe I'll submit something.

Chairman LEAHY. As I said yesterday, the witness will not have to feel his answers in any way are being cutoff. If the nominee feels at any time there has not been adequate time to answer, as I said yesterday, we will provide the time. I will provide the time to go back to any answer that he wants to change, clarify or add to, and of course, the record is always open for that. As I stated this morning, when I felt that there may have been an errant answer yesterday, I raised that point. Again, if the witness—the nominee does not accept that analysis, he will also be given time. I want to have as complete a record as possible. I do not want either the nominee to feel that he has not had a chance to answer all of the questions that are asked of him as completely as he wants, but in the same token, I want to make sure that all senators, both Republican and Democrat have the opportunity to ask their questions.

With that, I will turn to the Senator from New Hampshire, Mr. Smith.

Senator SMITH. Mr. Chairman, because of being in and out with another hearing which I was involved in, is it a 15-minute period? How much time do we have?

Chairman LEAHY. You have not had a chance?

Senator SMITH. No.

Chairman LEAHY. Then you have 15 minutes.

Senator SMITH. Thank you, Mr. Chairman.

Let me just say in terms of watching, participating in the hearings yesterday with you, Senator Ashcroft, and watching how you conducted yourself in response to the questions and the comments, and then again today, my admiration for you is about tenfold beyond what it was yesterday, and it could not get much higher yesterday.

The way that you have risen above the attacks that have been delivered upon you is remarkable. It is a tribute to you. The fact that a distinguished person like yourself would have to endure comments about racism and segregation and all of the other things that have been said or insinuated throughout this hearing, dredging up racist organization charges and so forth, is really, in my view, demeaning the U.S. Senate.

You know this—I thought we were going to start off in a spirit of bipartisanship this year and to try to look at things if we could on a more even basis. John Ashcroft, the nominee for this position, has said that he will enforce the law period. He raised his right hand and took an oath and said, "I will enforce the law." Even though I know John Ashcroft well enough to know that if he had the choice on the enactment of some of those laws, they would be

a lot different, if he could have enacted them unilaterally. But he also said, "I will enforce the law."

That is what this hearing is about, whether or not you think John Ashcroft will enforce the law. Not enact the law. He had that opportunity for 6 years here as a U.S. Senator. That is not what this hearing should be about. Let us stay focused on what it really is about.

It is ironic too, that where Senator Ashcroft has said that he will enforce the law, even if he would rather change the law, he would still enforce it. On the other hand, his critics from the left are saying that if you cannot agree with my view on the law, you cannot be Attorney General. This is very, very, very, very troubling. You could disqualify a heck of a lot of people from being Attorney General. One of them was an appointment by John F. Kennedy to the Supreme Court of the United States, Byron White, who was pro-life, one of the leading pro-life advocates on the United States Supreme Court. So I guess we would have to disqualify him as well, using that kind of a marker.

I think this is thin ice that we are on. This is not a Supreme Court nomination. This is the President's cabinet, and I want to make just a couple of points, Mr. Chairman. I doubt that I will use the 15 minutes.

A while back this morning, former Senator Danforth testified, and he made a very good point, I thought, and I would just like to expand on it briefly. As a lawyer, we are talking now about this so-called case before the State of Missouri, the Kansas City case. His point was that as a lawyer, you have an ethical obligation to vigorously defend your client. That is what you are obligated to do. Every day in America we defend the most reprehensible people, murderers, rapists, robbers, thugs, every day, as well we should. It is the basis of our entire Constitution. If we ever walked away from that, God help us.

And so I think when we—we would have to disqualify every single lawyer in America who applies the ethical code of his or her state from being Attorney General of the United States if we are going the use that marker. So I would hope that we would stay focused here, and say that to imply—even to imply, let alone say, that somehow a lawyer—in this case the Attorney General who was defending his state as he is obligated to do by law and by the ethics of his profession, to somehow imply that borders or comes to racism is outrageous, and especially since some, even on this Committee, were involved in supporting against the opposition of the NAACP, I might add, and many other prominent people. People on this very Committee were supporting certain candidates for reelection to office in spite of that. So we will let the chips fall where they may.

But let me just add one more point. I might just say, Senator Durbin, your quote on the Ronnie White matter, when you were questioning Senator Ashcroft a few moments ago, quote, "It appears that your conclusion about Justice White is a conclusion that is not shared by the law enforcement community of the State of Missouri." I do not know where that came from, but we have a letter from the National Sheriffs' Association, Missouri Association of Police Chiefs, Missouri Sheriffs' Association, all stating their oppo-

sition to Judge White. And I might—and Senator Ashcroft, if you would like to respond or make a comment, feel free to do it. I want everybody to understand—and I think Senator Ashcroft understands this—I heard all this stuff about how Senator Ashcroft led the fight to deny Ronnie White. He never spoke to me about it personally, never asked me to do anything other than what my own conscience would dictate. So I guess I am puzzled by all of this information that seems to be coming to light. But let me just refer quickly to a letter from one of the victims, who is also a sheriff. And you know, the issue here—and I am doing this only to get us back to focus as to what this is about—Judge White had every right to make the decision he did, as a Judge, every right to do it, but there are consequences for that. The consequences are you could be perceived as being against tough law and order, and that is the way 54 United States Senators saw it. That is not about race. And to imply that it is, is outrageous.

Let me tell you what it is about. This is from Kenny Jones, whose wife was murdered. “I’m writing to you about Judge White”—and I’m not going to read it all, I’ve entered as part of the record—“of the Missouri Supreme Court, who’s been nominated to be a Federal judge. As law enforcement officers, we need judges who will back us up, and not go looking for outrageous technicalities so a criminal can get off. We don’t need a judge like White on the Federal court bench. In addition to being sheriff of Moniteau County, I am a victim of violent crime. So are my children. In December 1991, James *Johnson* murdered my wife, Pam, the mother of my children. He shot Pam by ambush, firing through the window of our home during a church function that she was hosting. *Johnson* also killed Sheriff Charles Smith of Cooper County, Deputy Les Lork of Moniteau County and Deputy Sandra Wilson of Miller County. He was convicted and sentenced to death. When the case was appealed and reached the Missouri Supreme Court, Judge White voted to overturn the death sentence of this man, who murdered my wife and three good law officers. He was the only judge to vote this way. Please read Judge White’s opinion. It is a slap in the face to the crime victims and law enforcement officers. If he cared about protecting crime victims and enforcing the law, he wouldn’t have voted to let *Johnson* off death row.”

“The *Johnson* case isn’t the only anti-death penalty ruling by White. He has voted against capital punishment more than any other judge on the court, and I believe there is a pattern here.”

And he goes on to say, “Please write to our Senators Bond and Ashcroft”, et cetera. The point being there is nothing here about racism or segregation, nothing. And to imply otherwise is really, in my view, less than what this Senate should be about, to say it mildly. This is the law enforcement people of the State of Missouri, as well as a victim who was a law enforcement person, and as I said, I respect Judge White for making that decision. He has every right to make that decision. But so do we as people here in the Senate in confirming or not confirming a person to go on the Federal bench. We have a right to use that information and to look at that information and make a decision as to whether or not that person should be on the bench.

So I think I am going to stop here, Senator Ashcroft. You have had enough questions, I am sure, to last you a long time, but just to say again that it would be, in my view, one of the most egregious acts ever committed by this Senate, should be filibustered or not be confirmed. A man of your qualifications and decency, it would be—I just cannot imagine that it would even be thought of in this body to do such a thing. If there is anybody that is more qualified or ever has been more qualified, I do not know who that person is.

I understand that Senator Hatch—is Senator Hatch here? I thought Senator Hatch wanted some of my time. I will be happy to yield it to him or any other senator on my side who would like—Senator Specter, would you like the remainder of my time?

Senator DURBIN. Mr. Chairman? Mr. Chairman?

Senator KENNEDY. [Presiding] Yes?

Senator DURBIN. Since the Senator has mentioned my name, I would like to just briefly ask unanimous consent to enter into the record a letter dated October 21st, 1999 from the 4,500 members of the Missouri State Fraternal Order of Police, in which they say, quote, “The record of Justice White is one of a jurist whose record on the death penalty has been far more supportive the rights of victims and the rights of criminals.”

Senator SMITH. Well, I have a letter here from the Fraternal Order of Police, Grant Lodge, who support Senator Ashcroft, a letter to Senator Leahy, dated 10 January, supporting Senator Ashcroft to be the Attorney General of the United States.

Senator KENNEDY. Both letters will be included as part of the record.

Senator SMITH. Mr. Chairman, I also have some other documents, the letters from the Sheriffs’ Association, and as well as the Supreme Court of Missouri *Johnson* Case that I would like also to enter in the record.

Senator KENNEDY. They will be so included.

Senator SMITH. Thank you, Mr. Chairman. I yield my remaining time to Senator Specter.

Senator SPECTER. How much time remains for Senator Smith?

Chairman LEAHY. 4 minutes and 30 seconds.

Senator SPECTER. With a little extra time, Senator Ashcroft, I would be glad to oblige.

I turn to an issue which has been a major one during the administration of the current Attorney General, and that is the issue of independent counsel on a statute which has lapsed. And now the Department of Justice has structured through regulation a classification called Special Counsel. The critical part of that law has been the difficulty—the Independent Counsel Law, the critical part has been to have any review of the judgment of the Attorney General of the United States in declining to appoint independent counsel. It is possible to structure a legislative review for the special prosecutor, but I would like to explore with you at this time would be first, what are your general views as to the desirability of having an Office of Independent Counsel?

Senator ASHCROFT. I am happy to respond to that. Thank you.

May I just—since there was so much talk about race and the White case in the last—may I just take a few seconds first to just say that I don’t intend my actions or statements to be offensive,

and to the extent they are, I'm very ready to say to people that I don't want that to be the case, and that I deplore racism and I always will. And I say to people, who want to look at the confirmation record, that I, for 26 out of 27 black judicial nominees, I voted for them.

And in the Foreign Relations Committee, where it was my responsibility to shepherd the appointment of diplomats to our posts around the world, I'm sure, given my assignment, that I saw more people confirmed as minorities to those posts than any other person in that interval during my service.

I just want it clear that I reject racism, and that I do not intend my actions or statements to offend individuals, and I sincerely will avoid that in every potential opportunity.

Let me address the special counsel item which you have raised.

Senator SPECTER. Senator Ashcroft, with only about 2 minutes left, let me zero in on a point of particular interest to me, and I will come back to the generalized question when I have another round.

The difficulty has been in having any review of the Attorney General's judgment, and we have had a substantial number of hearings, as you are well aware, in the Judiciary Committee, challenging the judgment of the Attorney General on declining to appoint independent counsel in a number of specific cases, where there was a generalized view there was more than enough basis to do so. Special counsel is the category now, as I have said, for the Attorney General to appoint outside counsel if a conflict arises. It is my thinking that to have an effective Independent Counsel Statute or a category of Special Prosecutor, that there has to be a mechanism for reviewing the judgment of the Attorney General.

And what I would like to see structured, either by regulation within the department, as the department now has a regulation for Special Counsel, or a statute which would provide that a majority of the Majority of the Judiciary Committee, or a majority of the Minority—and I take that standards from the old Independent Counsel Statute—could go to United States District Court and ask for a review on a standard of abuse of discretion, where there is precedent for the Court to intervene and overturn the exercise of discretion of a prosecuting attorney, and there are some District Court cases on that point.

What would your thinking be on such a procedure to review the Attorney General's discretion?

Senator ASHCROFT. I have lamented, as a member of this Committee, the unwillingness of the Attorney General to act in some case, and I'm not sure what the remedy is, but one of my ambitions and one of my aspirations, I should say, if I have the honor of being confirmed in this responsibility, is to increase our participation and our—the communication and our cooperation. I would be pleased to consider with you this kind of proposal, but this is a delicate arena of the line between the executive and the judicial. And the right oversight is obviously a very important—pardon me—executive and legislative—and the right oversight by legislative officials is very important. So I would be happy to confer with you and to examine these potentials with you.

I know that as a career prosecutor—not a career prosecutor, but once prosecuting and organizing an office of 300 probably prosecutors in Philadelphia, one of the most notable U.S. Attorney's Office in America, that you know the need for the right kind of information flow to the person in direction of the office, and if everything were public, how chilling it could be. So that there are delicate balances here, and I would be pleased to confer with you about these.

Senator SPECTER. Let me explore it with you when my next round comes.

Chairman LEAHY. I have tried to give the senator from Pennsylvania extra time. He has gone a couple minutes over, and the senator from Washington State has been waiting patiently, and I note that the senator from Washington State is the newest member of the Committee. She was also in attendance on behalf of the Senate at the same funeral as Senator Biden yesterday and did not get her 4-minute opening statement, so if she wants to take that time in addition to her 15 minutes, that is available.

Senator CANTWELL. Thank you, Mr. Chairman. I appreciate that and I will defer my opening statement, which was submitted yesterday, and go right to questions, if I can.

Senator Ashcroft, you and I have not met before this morning. I have not had the opportunity the same as my colleagues of working with you in the past, so I look forward to this question and answer session to, if I can, get some specifics on some policy areas in your record as well as the process by which you intend to uphold the law in these key areas. And I will try to be brief in my comments. If you could be brief in your answers, maybe we can get through a couple of these key issues; otherwise, I will come back to you.

But first I would like to go to the environment because obviously, to be sure, the Attorney General plays a significant role in protecting the environment. The Environment and Natural Resources Division of the Department of Justice has been called the Nation's environmental lawyer. In fact, with 700 employees, you could say it is the largest environmental law firm in the country.

The Division is charged with several tasks obviously related to protecting the environment. The Division ensures the environmental laws on the books, whether that is the Clean Air Act or the Clean Water Act or the Endangered Species Act and vigorously enforces on behalf of its primary client agency, the Environmental Protection Agency. It also defends the United States against suits and challenges to Federal laws, and also the Division criminally prosecutes the worst offenders of the environment.

So there can be no doubt that the Department of Justice through this Division has a crucial role in maintaining a clean environment for future generations. Unfortunately, Senator Ashcroft, I am troubled with your environmental record, particularly in attempts to weaken enforcement tools that EPA has, but as has been said at this hearing numerous times, the job of Attorney General is different. Now you will be charged with vigorously enforcing the very environmental laws, some of which you may have disagreed with, and obviously we have covered this, but it is a very important issue that I would like to cover. That is, how do you proceed given that clearly the Environmental and Natural Resources Division exer-

cises this vital role? Will we continue to see an aggressive Division that enforces the current law and goes after polluters? And will we continue to see a very aggressive and vigorous enforcement of the Superfund laws that ensures that environmental cleanup is done and completed?

Senator ASHCROFT. Well, let me thank you very much for your questions, and thank you for the opportunity to meet you this morning. I appreciate the clarity of your questions.

I have had an opportunity to enforce environmental regulations before in prior incarnations as the State Attorney General and Governor. Whether it was fish kills or whether it was making sure that the way in which Federal projects were operated and power generation facilities that threatened the wildlife and fish in my home State, I took action. It is an important Division.

I believe that we should do everything we can to fully enforce the environmental laws. That doesn't distinguish it from other Divisions of the Attorney General's office. It will be my responsibility to fully enforce the laws in all of them.

I have a commitment to the environment personally as well as a commitment to the environment that would come as a result of my oath of office. I happen to be a private environmentalist. Janet and I own a farm of 155 acres which we have tried to maintain in ways that enhance the environment, with cultivating the right kind of trees so it qualifies as a tree farm, sowing the right kind of grasses, and leaving the right kind of borders between the river and the rest of the farm so that we do that.

I say that just to let you know that I am a person that believes that our responsibility is one of stewardship, and that certainly would reinforce my willingness to obey the law and to enforce it.

Senator CANTWELL. Well, I do have some concerns about your environmental record, but I will leave that aside and get to a specific question that I think may be very timely, and that is, the Department of Agriculture has recently issued a final roadless area conservation rule. Certainly the implementation of the roadless initiative has been long and somewhat controversial. Already the rule is being challenged in the court.

As Attorney General, will you aggressively defend and uphold this rule, which was implemented in accordance with the Administrative Procedures Act? If I am not mistaken, this is exactly the type of case that the Environmental Defense Section of the Environmental and Natural Resources Division of DOJ is charged with defending.

Senator ASHCROFT. Very frankly, I'm not familiar with this rule, and I would have to examine it carefully and make a decision based on the outcome of my consultation with members of the Department and others in the process.

Senator CANTWELL. It is a very timely issue, and I would like further information on that as it relates to the particulars of a rule that has now been put in place and obviously is being challenged in the courts.

Senator ASHCROFT. I'll be happy to work to provide you with additional information on that.

Senator CANTWELL. Thank you.

My second line of questioning is in regards to family planning. We have learned during the time that you were in the Senate you have advocated what some would describe as an extreme position in regards to reproductive choice and contraception. Many believe—for example, you were a supporter of human life amendment to the Constitution that would have declared life begins at conception, not fertilization. Many believe that such a binding legal precedent would outlaw common contraception such as the pill. And as I have stated before, you are entitled, obviously, in your previous position as Senator to your opinions. That said, the nominee of the office of the U.S. Attorney General, let me ask you specifically about contraception.

Are your personal views opposed to family planning?

Senator ASHCROFT. I think individuals who want to plan their families have every right to do so.

Senator CANTWELL. In the use of contraception?

Senator ASHCROFT. And I think individuals who want to use contraceptives have every right to do so.

Senator CANTWELL. So in regard—

Senator ASHCROFT. I think that right is guaranteed by the Constitution of the United States.

Senator CANTWELL. So about the laws that create legal rights to contraceptive coverage, for example, the EEOC recently issued a decision stating that employers who failed to include contraceptive coverage in employee health benefit plans engage in sexual discrimination and violation of Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act.

Notwithstanding your personal opinion, will you defend challenges to this law or initiate actions against employers who fail to provide such coverage?

Senator ASHCROFT. I have not examined the law on the requirement that a private employer provide coverage in this respect and am at this time not prepared to comment or to provide advice about the course of action I would take there.

Senator CANTWELL. And is that something that you wouldn't comment further on before your vote on nomination or just this afternoon?

Senator ASHCROFT. Well, I would defend the rule. You know, it's the job of the Attorney General to defend the rule. But in terms of my own comments about how I feel about it, I haven't weighed the legal—I thought you were asking me for advice on it. Maybe I misconstrued your question.

Senator CANTWELL. Yes, would you defend challenges to the law or initiate action against employers who did discriminate—

Senator ASHCROFT. I would defend challenges to the law and seek to uphold the law.

Senator CANTWELL. Including actions against employers who failed to provide such coverage?

Senator ASHCROFT. I'm not sure I have enforcement authority of that rule in the Justice Department, were I to be confirmed. And so I'd be reluctant to say that I would deploy the resources of the Department of Justice to enforce the rule if the enforcement by statute focused in another agency.

Senator CANTWELL. Thank you. I would like to cover one last issue, if I could, and it follows some line of thinking similar to some of the questions asked earlier today about judicial appointments. And I guess I'm trying to, if you will, understand the Ashcroft standard on your process of judicial appointments.

There is one judicial appointment that I am familiar with, Margaret McEwen, a Federal judge from the Ninth Circuit Court of Appeals, and I won't go through her various accomplishment, but she was supported by both Senator Gorton and Senator Murray. And in the end, after a 2-year delay, she was confirmed by an 80–11 vote on the floor of the U.S. Senate. So in that particular case, your opposition to Margaret McEwen, I am just trying to understand, again, the Ashcroft standard in looking at the decision in opposition to that appointment.

Senator ASHCROFT. Frankly, I don't remember the case. There were 230 different votes on judges. I do know that 218 times I voted for confirmation, but I don't remember the circumstance.

Senator CANTWELL. Well, I would ask if—this is a very important appointment as it relates to the Northwest, and I guess my concern is in a speech that you gave—and not to catch you off of comments, because we all give speeches. This was given in March 1997, in which you characterized Margaret McEwen as taking marching orders from the ACLU and characterized her efforts as sinister as it—in, I thought, a very harsh tone against a nominee that you and 10 other Senators voted against. And so if you could give me information about your opposition to her, and I would be happy to provide a copy of these remarks that were part of the Heritage Lectures. But in trying to understand the framework of us moving forward on your nomination, I am trying to understand the framework of what you applied to other appointees and reflection upon that as you put your own team together in the various divisions underneath you.

Senator ASHCROFT. Well, thank you, Senator. Let me just add this: The standard for judicial nominations and lifetime positions are integrity, a commitment to rule of law, no issue litmus test. President-elect Bush has said he wants judges who will interpret the law, not legislate from the bench. I'll be happy to provide you additional information about the particular inquiry you made, and thank you—

Senator CANTWELL. Well, I think my question relates to the fact that she was held up for 2 years and your comments on record have been very harsh. So I'd like to know your criteria and standards, so I appreciate you getting back to me on that.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

The Senator from Kansas will be recognized next. For those who are watching this on television, they will see that the little red and green lights have been going on. Somehow that seems to have broken down the last few minutes. I am having the staff notify me when there is 2 minutes left in the Senator's time, and I would just make that announcement as unobtrusively as possible, both for Senator Brownback's case but also for Senator Ashcroft's case.

Senator Brownback?

Senator BROWNBACk. Thank you very much, Mr. Chairman, and thank you, John, for hanging in here. It has, I am sure, been a long day, and you would rather have been at the dentist all day than here with the difficulties. I note some of the discussion back and forth with some amusement at points. The questions on the magazine interview that you did, which I thought was interesting from the standpoint a lot of people do interviews in magazines. I noted that Al Gore gave interviews to Playboy and Rolling Stone magazine, and some of the advertisements in the back of the magazines were for drugs, certain sexual items, paraphernalia, or such that I do not care to really repeat them right here. However, I think it would be fair to assume that Vice President Gore did not endorse those advertisements.

Senator ASHCROFT. Nor do I.

Senator BROWNBACk. Very good.

Senator ASHCROFT. I'll get that out as quickly as I can.

Senator BROWNBACk. And that is not to make light of the line of questioning, but it is to say that there are a lot of publications out there, and none of us endorse these horrible lines that some would put in in those. The ideas of racism, it is just deplorable. But there are a lot of magazines that put a lot of things out there, and just because a person grants an interview doesn't at all mean that they agree or—

Senator ASHCROFT. Let me see if I can clarify this. If the magazine has done the things that people on the Committee have said to me that it does, I repudiate the magazine. I don't want to be a part of a magazine—I don't even want to do an interview with a magazine that in any way promotes slavery. I don't. That's my not—I had no understanding that that was the case about the magazine. I don't know if that is the case. But if it is, I repudiate it.

Slavery is abhorrent. It's a stain on the fabric of America's history and life, and it's one we've had a hard time scrubbing out. And we never will and perhaps we shouldn't scrub out our memory of it because it should warn us against the kinds of things that people can do to each other.

Senator BROWNBACk. Thank you. I want to go down the line of questioning on a couple things on law enforcement, and I noted, Mr. Chairman, that in the panels assembled for the hearings, nobody has been invited, not a single member of the law enforcement community on these panels. And I find that to be an unfortunate omission since we are here to review the qualifications of the Nation's chief law enforcement officer, the Attorney General of the United States. So with the Chairman's permission, I would like to read and submit for the record a letter I received yesterday from the National Sheriffs' Association endorsing John Ashcroft. It says, "On behalf of the National Sheriffs' Association, I'm writing to offer our strong support for the nomination of Attorney General-designate John Ashcroft. As a voice of elected law enforcement, we are proud to lend our support to his nomination and look forward to his confirmation by the Senate. As you know, NSA is a non-profit professional association located in Alexandria, Virginia, representing nearly 3,100 elected sheriffs across the Nation, and it has more than 20,000 members, including deputy sheriffs, other law enforcement professionals, students, and others. NSA has been a longtime

supporter of John Ashcroft, and in 1996, he received our prestigious President's Award. After reviewing Senator Ashcroft's record of service as it relates to law enforcement, we have determined that he will make an outstanding Attorney General and he is eminently qualified to lead the Department of Justice. NSA feels that Senator Ashcroft will be an outstanding Attorney General for law enforcement and the U.S. Senate should confirm him." And it is signed by the president of the organization, and I ask that that be submitted into the record.

Chairman LEAHY. That and the other letters from law enforcement agencies which have been sent here will all be—if they have not already been included in the record, they, of course, will be.

Senator BROWNBACK. Thank you, Mr. Chairman.

I also note along those same lines, I would like to point out that Senator Ashcroft, who has been designated by President-elect Bush to be the Nation's chief law enforcement officer, has also been endorsed by the Law Enforcement Alliance of America. While I won't read their entire endorsement letter, I would like to submit it in its entirety for the record. And I would note at the outset that this is the largest coalition of law enforcement, crime victims, and concerned citizens in the country. They state in here, quote, they are "firmly and vociferously working to ensure that former Missouri Senator John Ashcroft is confirmed as the Nation's highest-ranking law enforcement officer." That is a pretty good endorsement. The LEAA has endorsed President-elect George W. Bush's choice to head up the Justice Department "because of his proven tough-on-crime record, not only in the U.S. Senate but also as Missouri's former Governor and Attorney General. John Ashcroft has consistently demonstrated his profound respect for the sanctity of the law. Because the law and order issue is fundamental to the demands of an Attorney General, Senator Ashcroft exemplifies the kind of individual who can be trusted to uphold the law. There is no doubt that John Ashcroft will be a guardian of liberty and equal justice."

I ask that be submitted into the record as well.

Then from the Kansas Attorney General Carla Stovall, Carla Stovall sent me a letter urging my support for John Ashcroft to the esteemed position of United States Attorney General. While Carla Stovall and I don't agree on all the issues, we have a great deal of respect for each other, and she sent this letter in support of John Ashcroft: "I'm writing to urge you to support John Ashcroft for the esteemed position of the United States Attorney General. Senator Ashcroft, as you know, at one time in his career held the position of Missouri Attorney General and served as the President of the National Association of Attorneys General. I am hopeful he will be responsive to the interest and needs of the States as we deal with the Department of Justice on many issues of mutual concerns. While I have numerous philosophical differences with the positions I've read that Senator Ashcroft has taken over the years, I do believe President-elect Bush should be afforded the right to have the men and women he has selected for key posts be confirmed by the U.S. Senate. I hope his intentions are so honored by your colleagues."

I submit that into the record as well.

Now, an issue that I think is a major current one facing the country that will be in the hands of the Attorney General coming up is an issue of drugs, in particular methamphetamine. I want to direct your attention—and I have a couple of questions along that line.

I think we have to do everything we can to combat this scourge on the Nation, and at the risk of being repetitive, I have received again another letter yesterday, this one from the Director of the Kansas Bureau of Investigation describing what is taking place in my State in this problem with methamphetamine. And I think we unfortunately are typical of many other places across the country of this scourge of methamphetamine. He states this in his annual report of what is going on in the State of Kansas regarding drugs. He said, "In a word, the bad news is methamphetamine. In law enforcement, we seldom have the luxury of selecting our targets of preference, our goals and objectives. We are compelled to face what is in front of us at the time. We must confront the most serious threats challenging the safety and security of our citizens. In Kansas, the past several years and at the present time and in the foreseeable future, what is in front of us is methamphetamine and local meth labs. Kansas law enforcement seized approximately 700 meth labs. The final count is not yet tabulated, but obviously another record. At any rate, narcotics in general and methamphetamine in particular remain our agency's top investigative and forensics priorities. We have no other choice. Such is the demand for our services and on our resources for municipal, county, and State law enforcement agencies and Kansas prosecutors."

To put things in perspective, and then I would like to ask you your views on what we need to do about methamphetamine, our laboratories in 1994 received 5,513 drug case submissions. Last year there were just under 9,000 new drug cases. Meth lab seizures since 1994 have increased almost 15,000 percent. We continue to receive an average of 33 new drug cases in our laboratory every business day.

Chairman LEAHY. I would just note the light is back on and it is at 3 minutes.

Senator BROWNBACK. OK. Thank you.

I would appreciate your comments on what we should do about meth labs and methamphetamine and its scourge on this country, John.

Senator ASHCROFT. Well, as you well know, Missouri has had the unfortunate distinction of being one of the two meth capitals in America. The State of California and the State of Missouri have led the Nation in meth labs, and it's certainly a sad thing. And I know that local law enforcement authorities have needed the assistance of HIDTAs, high-intensity drug-trafficking area, Federal assistance programs to help us and have also needed the assistance of the DEA, part of the Justice Department, in dealing with the contamination that is left behind when these meth labs are either abandoned or broken down by law enforcement officials.

The residue of methamphetamine production, which all can be made from stuff you buy at a variety store, is toxic and it's dangerous. And I think the role that we must take is comprehensive. And I was pleased—I have mentioned on several occasions the

privilege I had of working with Senator Feinstein of California not only to have the right penalty structure so this drug which is characteristic of rural America in many cases has the same seriousness attached to it that some of the urban drugs like cocaine do—and I think that's not only fair but necessary for us to fight against the drug—but, second, that we have the ability to clean up and help especially the small—in my area, a rural sheriff's department doesn't have toxic cleanup capacity, and so we need cooperation there.

But methamphetamine has been disastrous to the lives of individuals, and we need to explore treatment and to be emphasizing education. That's why in the last measure which was signed into law just less than 6 months ago we had a component for assisting law enforcement, assisting in law enforcement training, assisting in cleanup, assisting in education, and assisting in treatment. And I think this kind of problem only remediates when we have good cooperation between the local law enforcement officials and people at the national level. And it would be my ambition and my aspiration, if I have the privilege of being confirmed to this office, that we would keep those relationships, some of which you recite earlier, at the very highest level so that we can work together. Methamphetamines are just one series of drug problems that could very well steal a substantial portion of the future of America from us.

Our young people are only 25 percent of the population. They are 100 percent of our future.

Senator BROWNBACK. I appreciate your work on that, and I also appreciate your common-sense approach on the protection of the weakest, most vulnerable amongst us in this society, no matter what their stage in life. I think that speaks volumes about a society if we are willing to protect those who are the weakest. And thank you for doing that.

Thank you, Mr. Chairman.

Chairman LEAHY. We have gone through the first round of questions, and we will now take a break for 10 minutes to allow the witness and others to stretch their legs, and we will come back at the end of that time.

[Recess from 4:10 p.m. to 4:42 p.m.]

Chairman LEAHY. We will give a moment or two for everyone to have a chance to come on in.

So that we all understand the procedure, we are going to go to 5-minute rounds now, and I would really urge members to try to keep it as close to that time as possible and that we do it in the usual fashion.

I understand, Senator Hatch, everybody on your side has had their initial—

Senator HATCH. That is right. Everybody has.

Chairman LEAHY. Everybody has on this side, and I know a number of Senators have had other confirmation hearings and have been balancing their time, but let me begin.

In October 1997, President Clinton nominated James Hormel to serve as the U.S. Ambassador to Luxembourg. He was an immanently qualified nominee, had a distinguished career as a lawyer, a businessman, an educator, a philanthropist. He had diplomatic

experience as the Alternate U.S. Representative to the U.N. General Assembly. Luxembourg's Ambassador to the U.S., because as we always do with Ambassadors, we check first with the country that he would be sent to, to see if he would be acceptable. They said the people of their country would welcome him. A clear majority of Senators were on record as saying they would vote for his confirmation. That vote never occurred because it was blocked. In the Foreign Relations Committee, only two Senators voted against him, Senator Ashcroft and Senator Helms.

I am told, Senator Ashcroft, you did it without attending the hearing or submitting questions or statements for the record. You did say at a luncheon with reporters that, "People who are nominated to represent this country have to be evaluated for whether they represent the country well and fairly. His conduct in the way in which he would represent the United States is probably not up to the standard that I would expect."

It would appear that you were referring to his sexual orientation, although this is a man that, while you placed a hold on his nomination, all but one other member, Republican and Democrat, in the Foreign Relations Committee voted for him.

Former Secretary of State in President Reagan's administration, George Shultz, strongly supported him. After you voted against his nomination in Committee, James Hormel wrote a letter. He asked to meet with you regarding his qualifications. He followed up with a number of phone calls, to your office. You did not return the phone calls. Your staff did not. You refused to meet him, which is similar to a complaint made by Congressman Conyers, who shared concerns about your nomination.

Now, I know it is traditional for Senators to extend the President's nominees the courtesy of a meeting. I don't think I have ever declined meeting with any nominee of any President when they have asked to. I know of no Senator who has refused to meet with you when you have asked. So I am asking you this. Did you block his nomination from coming to a vote because he is gay?

Senator ASHCROFT. You know, I did not, and I will enforce the law equally without regard to sexual orientation if appointed and confirmed as Attorney General.

He just addressed these issues a little bit since they—

Chairman LEAHY. Why did you refuse to—why did you vote against him, and why were you involved in an effort to block his vote—his nomination from ever coming to a vote?

Senator ASHCROFT. Well, frankly, I had known Mr. Hormel for a long time, and he had recruited me when I was a student in college to go to the University of Chicago Law School.

Chairman LEAHY. He was your dean, was he not?

Senator ASHCROFT. At the University of Chicago, he was an assistant dean of the law school.

Chairman LEAHY. OK.

Senator ASHCROFT. He, I believe, had focussed his efforts on admissions processes and things like that. The dean of the law school, if I am not mistaken, was a fellow named Phil Neill, but I did know him. I made a judgment that it would be ill-advised to make him Ambassador based on the totality of the record. I did not believe that he would effectively represent the United States in that par-

ticular post, but I want to make very clear sexual orientation has never been something that I have used in hiring as in any of the jobs in any of the offices I have held. It would not be a consideration in hiring at the Department of Justice. It hasn't been for me. Even if the executive order would be repealed, I would still not consider sexual orientation in hiring at the Department of Justice because I don't believe it relevant to the—

Chairman LEAHY. To what extent will the fact—

Senator ASHCROFT.—Responsibilities.

Chairman LEAHY. I am not talking about hiring at the Department. I am talking about this one case, James Hormel. If he had not been gay, would you have at least talked to him before you voted against him? Would you have at least gone to the hearing? Would you have at least submitted a question?

Senator ASHCROFT. I am not prepared to re-debate that nomination here today. I am prepared to say that I knew him. I made a judgment that it would be ill-advised to make him Ambassador, and as a Senator, I made the decision that based on the totality of his record that I didn't think he would effectively represent the United States.

Chairman LEAHY. And it was your conclusion that all the other Senators on the Foreign Relations Committee, with the exception of Senator Helms were wrong and you were right; that George Shultz who had been the Secretary of State under President Reagan was wrong and you were right, and the people of Luxembourg who had the full record on Mr. Hormel were wrong and you were right, and you did that without either meeting with him, going to the hearing, asking a single question, or even answering his letter.

Senator ASHCROFT. No. I did not conclude that I was right and they were wrong. I exercised the responsibility I had as a Senator to make a judgment. I made that judgment. I expected other Senators to reach judgments on their own. They have a responsibility to do that. I have a responsibility to do what I did, and based on the totality of the record and my understanding, I made that judgment. I did not pass judgment on other Senators or upon those who endorsed his nomination.

Chairman LEAHY. But part of that judgment was to help make sure that these other Senators never got a chance to vote on Mr. Hormel on the floor. So, basically, you substituted your judgment for what appears, at least by those who stated their willingness to vote for him—you substituted your judgment for a majority of the U.S. Senate.

Senator ASHCROFT. I don't believe I put a hold on Mr. Hormel's nomination.

Chairman LEAHY. Never?

Senator ASHCROFT. I don't believe I put a hold on Mr. Hormel's nomination.

Chairman LEAHY. If you find otherwise, feel free to correct the record on that.

Senator Hatch?

Senator HATCH. As one who openly supported Mr. Hormel because of his experience, you made the decision based upon your

knowledge and the totality of the evidence, and as a Senator, you had a right to do so. Is that right?

Senator ASHCROFT. That's correct.

Senator HATCH. I mean, we can disagree once in a while around here—

Senator ASHCROFT. I think that—

Senator HATCH.—Or do we just have to play the political correctness game right on down the line?

Senator ASHCROFT. Well, I made a judgment based on the totality of the record. I am one of—

Senator HATCH. I accept that.

Now, Senator Ashcroft, isn't it true that while it has been suggested that as Attorney General, you essentially mounted too vigorous a defense of your client in the State of Missouri in the St. Louis school litigation? You were the one insisting to State officials that the court orders be followed. Indeed, didn't the Democratic State Treasurer get so frustrated with your insistence that orders to pay for students' transportation be complied with that he told the press that he was planning to hire outside counsel to mount a more vigorous challenge to these orders? Is that correct?

Senator ASHCROFT. That's my recollection.

Senator HATCH. All right. In other words, while some have criticized you for defending your State in these matters, others, including the Democratic State Treasurer, were criticizing you for not litigating them hard enough. Is that right?

Senator ASHCROFT. That's correct.

Senator HATCH. Well, so, in fact, you were being criticized for defending the State while the Democratic State Treasurer was resisting complying with the court orders which you were insisting he had to comply with. Now, I sense maybe a little serious hypocrisy here. Isn't what you were doing simply following the law and discharging your duties in defense of your State as a State Attorney General?

Senator ASHCROFT. I believe that I was faithfully discharging my duties in protecting the interest of the State and the children in the State. When the State Treasurer balked at writing the checks, it became necessary to send a special delegation from my office to him to indicate to him that we believed compliance with the law was the inescapable responsibility, that we had the duty and responsibility to resist in the courts where we felt like there was injustice, but upon the conclusion of the matter by the courts, our duty, we felt, was to pay the bill, and I still believe that to be the case. And fortunately, the State Treasurer at the time made the decision to abandon plans for a separate counsel and to go ahead and make the payments.

Senator HATCH. Mr. Chairman, I would like to return to one point raised earlier today where Senator Ashcroft was criticized for his defense of the State of Missouri in the school desegregation cases.

Well, Jay Nixon, Secretary and Senator Ashcroft's Democratic successor, and the current Attorney General also opposed State funding for desegregation, at least that is my understanding. Is that true?

Senator ASHCROFT. Yes, it is true.

Senator HATCH. Well, let me get it further. Jay Nixon took many of the same positions as John Ashcroft. Yet, Senator Ashcroft has been attacked by some of our Democratic friends, and Jay Nixon has been supported by Democratic friends. Indeed, many of them campaigned for him. Am I wrong in making those comments?

Senator ASHCROFT. I think it is fair to say that he has been supported by Democrats. He is the Democrat Attorney General of the State.

Senator HATCH. I don't blame him for that. I am just saying that it just seems like kind of a double standard to me.

Senator ASHCROFT. Well, the standard that I referred to was the need to represent the State and to defend its interests, but when a matter would be concluded, we complied with the orders—

Senator HATCH. All right.

Senator ASHCROFT.—Of the Federal District Court and of the Eighth Circuit Court of Appeals and of the United States Supreme Court.

Senator HATCH. Senator Ashcroft, I think Senator Cantwell raised an important issue regarding enforcement of environmental laws in which you have a solid and positive record. For example, as Missouri Attorney General, you aggressively enforced Missouri's environmental protection laws against polluters including an action brought to prevent an electric company from causing oxygen levels and waters downstream from the powerplant to fall, thereby harming fish; and to recover damages for fish kills, a successful action brought against the owner of an apartment complex and an action against an owner of a trailer park for violations of the Missouri clean water law relating to treatment of waste water.

Furthermore, as Missouri Attorney General, you filed numerous amicus briefs, friend of the court briefs, supporting environmental protections. For example, *Pacific Gas and Electric Co.*, the State Energy Resources Conservation and Development Commission, a 1983 case, you filed a brief supporting a State of California law that conditioned the construction of nuclear powerplants on findings by the State that adequate storage facilities and means of disposal are available.

In *Svorhas v. Nebraska*, a 1982 case, you endorsed the State of Nebraska's effort to stop defendants from transporting Nebraska groundwater to Colorado without a permit.

Let me just mention one more. In *Baltimore Gas and Electric Company v. Natural Resources Defense Council, Inc.*, 1983, you filed a brief supporting the Natural Resources Defense Council's position on tougher environmental relations relating to the storage of nuclear waste.

Now, I could go on and on. This is impressive, and as U.S. Attorney General, will you similarly enforce our country's environmental laws?

Senator ASHCROFT. I will enforce the laws protecting the environment, and to do so to the best of my ability. It is a public trust, and it is a special responsibility to the next generation.

Senator HATCH. Well, thank you, Senator. My time is up.

Chairman LEAHY. Senator Kennedy.

Senator KENNEDY. Thank you very much.

Of course, Jay Nixon, no matter how nice a fellow he may be, is not up for Attorney General. That is the major difference. That is the big difference in this particular case.

Now, Senator Ashcroft, yesterday and today, you testified that you will uphold your oath of office to defend the Constitution. Five times before, you took that same oath. As Attorney General and Governor of Missouri, you said, "I swear to uphold the Constitution of the United States and of the State of Missouri and to faithfully . . . myself in the office, so help me God," and yet, you fought the voluntary school desegregation in St. Louis. In fact, Judge Stephen Limbaugh who was appointed by President Reagan noted that the State has resorted to factual inaccuracies, statistical distortions, and insipid remarks regarding the Court's handling of the case. Limbaugh continued to warn the State to desist in filing further motions grounded in rumor, unsubstantiated allegations of wrongdoing. He added that the State even resorted to veil threats toward the Court to thwart implementation of the previous order. That was his estimate.

When you became Attorney General in 1976, *Roe v. Wade*, guaranteeing a woman's right to choose, had been the law of the land, and needless to say, all during this period of time as after the *Brown v. Board of Education*.

Now, when you became Attorney General in 1976, *Roe v. Wade* guaranteed a woman's right to choose, had been the law of the land for 3 years during the period from 1973 to 1976. The Supreme Court had not altered its original ruling that the decision was settled law, but during the period between 1976 and 1992, the 16 years that you served as Attorney General and Governor of Missouri, you became one of the Nation's most aggressive leaders of the strategy to dismantle or reverse that decision protecting a woman's right to choose. You brought case after case in the lower Federal courts. You pressed those cases all the way to the United States Supreme Court. You personally argued the Planned Parenthood case in the Supreme Court. You signed legislation into law to try to overturn *Roe* and to severely restrict a woman's right to choose, and in a 1991 dinner, you boasted that no State had more anti-abortion cases that reached the Supreme Court than Missouri.

Isn't there a serious loophole in your view of your oath of office? You say you will enforce the laws of the land as long as they are still on the books, but in the fundamental areas like civil rights, women's rights to choose, gun control, when you don't agree with the laws on the books, you have demonstrated beyond any reasonable doubt that you will use all the powers of your office to undermine those laws, to persuade the courts to overrule them. That is what you have done very time before, every time. So why will it be any different this time?

Senator ASHCROFT. Let me just say to you that I have lived within the rulings of the court in every one of those settings. *Roe v. Wade* defined a setting which said that abortions were not to be regulated or not to be forbidden, but it left a very, very serious gap in the health care system regarding reproductive health services.

If you couldn't regulate abortions, could you have minimal standards for abortion clinics? Could you require that abortions would be conducted by physicians instead of back alleys? Could you require

that there be certain conditions like parental consent for minors who were going to have an abortion? Could you require that there be certain counseling so that young women who were going to get an abortion so that they could be assured they were making a decision that was in their best interest and that they understood the health impacts? All of these questions were things that were left unanswered and unresolved by the case of *Roe v. Wade*, and virtually every jurisdiction in the United States began to find ways to safeguard everything from maternal health to provide the right framework in which to exercise its responsibility as it related to this situation in reproductive health care.

Senator KENNEDY. Well, my point, though, Senator, is that you lived within the rule because you had to. That was the law, but you tried to change and alter and took great pride in it, and we have heard based upon deep-seated beliefs which I respect, but that is the record. You took the oath of office all those times as Attorney General and Governor and still were willing—

Senator ASHCROFT. Senator—

Senator KENNEDY.—In these areas—

Senator ASHCROFT. Senator, let me respond. We are out of time on this, but I think implicit in what you are saying here is that a person swears to uphold the law. It means if he goes into government, he can't govern by way of changing the law. Every time—and if you will allow me to answer this question. I have been very patient in this respect.

Senator KENNEDY. OK.

Senator ASHCROFT. And I would just ask the Senate for the right for me to respond.

Chairman LEAHY. The Chair will give you whatever time you need. I have said that a dozen times during this hearing.

Senator ASHCROFT. Mr. Chairman, I appreciate that assurance as well, but I would like to have an uninterrupted time to explain my position here, and all the assurances of time will not allow me to make a statement which I think I ought to be able to make here, and I think in fairness, I would request that.

Now, you have criticized me because I said that I would uphold the law and the Constitution of the United States, and then I did things to define the law by virtue of lawsuits. I did things to refine the law when I had an enactment role which is the job of a Governor when he signs things into the law.

I don't think it is subverting the Constitution for a Governor to sign a change in the law. I don't think it is a breaking of his oath. I think all those things are done within the framework of the law and within the framework of the Constitution.

There seems to be a misunderstanding here today, and I am sorry that I have this responsibility to clarify it that when someone tests an order in court that someone is defying the law. Frankly, I have always been raised to believe that the way you tested things was take them to court, that the judicial system was established for the purpose—for the purpose of resolving differences. That is what our—that is why the Constitution sets it up, and so that, yes, when the State was offended by an order which we thought was illegal, our view was not to disrespect it. Our view was not to disobey it. Our view was to litigate it, and then if it came out in our

direction, we were winners, and if it came out against us, we abided by the law.

You raised the case that I argued in the Supreme Court. There were a handful of different provisions there, some the Supreme Court said no, these don't pass muster, some the Supreme Court said these pass muster.

Now, I submit to you that to participate in the development of the law is not to violate your oath as long as you participate in the development of the law in accordance with the opportunities expressed.

Now, I defended the State of Missouri. I defended the State of Missouri aggressively. That is the job of the Attorney General.

Jay Nixon has done the same. All the Attorneys General—Jack Danforth did it before I did it. Jay Nixon did it after I did it. That is the job of an Attorney General, and my job as Attorney General would be for me to defend the law of the United States and I will do it, all the laws. That is my job.

Now, one of the laws which might pass is a law that might deal with partial-birth abortion. Now, I don't know whether you would ask me if the Congress comes up with a law that relates to that issue to abandon my duty to defend that law. A majority of the members on the panel of this Committee voted in favor of such a law in the last Congress, and I think if Janet Reno—pardon me—if Attorney General Reno had defended the law, she wouldn't have violated her oath of office. So I just—I want to say that it is not uncommon for Attorneys General to defend the interests of their States. That is what their job is, and it is not a violation of their oath of office or the Constitution of the United States to seek to make sure that what is done at the State level is consistent with the Constitution at the State level or consistent with the Constitution at the national level, and when we swear to uphold the oath of office, I think we are swearing to do things in an orderly and lawful manner.

Jay Nixon has done that as the Attorney General of Missouri. I don't criticize him.

I'm sorry, Mr. Chairman. I have gone too long, and I apologize, and I thank all of you for allowing me to respond.

Senator KENNEDY. Just to finish it—but I appreciate your response—my sense, Senator, is that you were attempting to overturn the law on the *Roe v. Wade*. It wasn't just testing it to find out its limits. It was to overturn it. That was the thrust.

The reason I raise this is because earlier today you gave the assurances in response to Senator Schumer about how you would treat that case in the future, and the logical question came into my mind that if you challenged it in the past, having taken the oath of office, wasn't there a good likelihood that you would challenge it in the future after taking it. That is the—

Senator ASHCROFT. Oh, I think that is a very good question. I am very pleased to have a chance to answer that.

When the State Legislature of Missouri passed a law that needed to be evaluated in that context, I advanced that law. It was my job. I advanced that in the courts to defend it. But my job as Attorney General of the United States will be to defend the law and Constitution of the United States as it's been articulated. And I think

for me to have abandoned my responsibility as the Attorney General of the State would have been to set myself outside the system at that time just as much as it would be for me to set myself outside the system if I were to break my word and not defend the law that I would be sworn to uphold and defend if I am honored with the confirmation by the U.S. Senate.

Chairman LEAHY. I would note that the Chair, at the request of the nominee, extended more than double the time so that he could have an uninterrupted answer, and he had it. I would hope that we might follow the example, always of a hopeful nature that we could follow the example of Senator Hatch and myself, who stayed within seconds of our time.

I turn to the distinguished soon-to-be President pro tem.

Senator THURMOND. Thank you.

Senator Ashcroft, I want to congratulate you on the tremendous support and endorsements you have received. For example, I notice that you were endorsed by the National Association of Korean Americans. Also, the largest grass-roots Jewish group in America has urged the Committee in a letter to Senator Hatch to confirm you. They wrote, and I quote, "We know John Ashcroft to be a man of honesty and integrity, not only in regard to his personal and professional dealings but also in a broader, more profound sense." What stronger endorsement can anyone get than that? I congratulate you. I think you are honest, I think you are capable, and I think you are courageous. And I expect to vote for you.

Thank you.

Senator ASHCROFT. Thank you, sir. I am grateful to you.

Senator KENNEDY. [Presiding.] Senator Kohl?

Senator KOHL. Thank you very much.

Senator Ashcroft, the recent revelations about Firestone tires and tread separation have generated tremendous concern throughout the country about tire safety. I am sure you share in the distress about the defective tires and the efficiency of the recall. I wonder whether you share my concern that evidence of the defective tires was kept in for far too long through legal settlements that gagged the disclosure of the information vital to the safety of the driving public. In product-defective cases like Firestone, corporate defendants often ask plaintiffs to accept secrecy agreements as part of a settlement. Sometimes these orders serve a legitimate purpose, for example, keeping a trade secret confidential. But all too often these agreements simply hide vital information that could potentially affect the lives of many, many thousands of people and certainly general public health and safety.

The Sunshine in Litigation Act would compel judges to consider the impact on public health and safety before accepting secrecy orders. Since the Firestone cases, this legislation is necessary I believe now more than ever.

At a hearing before this Committee in 1995, I asked respected attorney Ted Olson about this bill. You probably know him as the man who argued the election case for President-elect Bush before the Supreme Court. Mr. Olson agreed with me, saying, and I quote, "It is the public's business that is taking place before the courts, and there ought to be an awfully good reason before the courts are

used as an instrument and the public cannot know what is going on.”

I ask you, Do you agree with Mr. Olson on this issue? And as the Nation’s top litigator, would you sign off on a Justice Department settlement that concealed information vital to the health and safety of the American public?

Senator ASHCROFT. I believe, if I understand Mr. Olson correctly, that I do agree with him. I think unnecessarily hiding or otherwise concealing from the public those kinds of things would be against the interests of the people. I think I would have to consider each case on its individual merits, but I think there’s great danger in not providing public information.

As it related to the Firestone Tire case, I was active following that because I don’t think we have a good enough clearinghouse for providing information about recalls. And I would hope that the United States could find a way to take a lead in providing, if nothing more than a clearinghouse so that we could know when problems have emerged with products anywhere in the world.

Senator KOHL. The recalls are one thing, but, you know, we are talking about judges to allow companies to sign settlements with people who sue that give them money in return for gagging the settlement and as a result defective products continue to be sold. Doesn’t that strike you as being a wrong thing to do in the United States? And wouldn’t you agree that judges should at least consider, which is all this court—

Senator ASHCROFT. Yes.

Senator KOHL. Just consider the impact on the public health and safety before they agree to a gag order.

Thank you. One more, child safety laws. You have consistently voted against gun safety proposals, including the moderate child safety lock amendment that Senator Hatch and I wrote. You argued that we need to enforce the current gun laws rather than pass new ones. The Senate and the House passed the child safety lock provision overwhelmingly, and polls consistently show that about 80 percent of the American public agrees that we should sell all handguns along with a child safety lock.

Now, everyone agrees that we need to enforce the current laws as a part of a comprehensive gun safety strategy. Unfortunately, no matter how many prosecutors we have, 10,000 children a year will still be involved in accidental shootings unless we make it virtually impossible or very difficult for children to fire the guns.

And so I ask you, Would you be willing to reconsider? Would you be willing to consider whether or not it is legitimate along with a handgun to see to it that a child safety lock is sold? To put it to you another way, what would you have against it?

Senator ASHCROFT. Thank you, Senator Kohl. Let me try and answer this very quickly. I do support the Second Amendment and the right to bear arms for citizens. But as I indicated earlier, there are things that are within the range of that that can be done, and I don’t think, for instance, child safety locks offend the Constitution of the United States. The President-elect has expressed himself in favor of a program for providing child safety locks, and I’d be very happy to advance that interest of his and to work with you in terms of improving our performance there.

Senator KOHL. But that falls a little bit short, and this is my last question because my time has run out. It falls somewhat short to see to it that every handgun that is sold has a child safety lock. Whether it is free or whether they pay for it is another question. But I am suggesting that it makes common sense, and I'm asking you your opinion. It is common sense, along with the person who buys a handgun, should also have a child safety lock. There is no requirement that they have to use it. That is not written into this law. If they don't want to use it, they don't use it. But shouldn't we, in the interest of our children, see to it that when a handgun is sold, a child safety lock accompanies that handgun?

Senator ASHCROFT. It's my understanding that the President-elect of the United States would support legislation requiring child safety locks and then supporting the provision of child safety locks with that requirement, and I would be happy to participate with the President in achieving that objective.

Senator KOHL. I thank you.

Senator ASHCROFT. Thank you.

Chairman LEAHY. The senior Senator from Pennsylvania.

Senator SPECTER. Thank you, Mr. Chairman.

Picking up on what Senator Kohl has said, the business about disclosing those agreements on product liability cases is very much, in my view, in the public interest. As I recollect it, we had a vote on an amendment offered by Senator Kohl which passed, and then the bill was taken down. And I would urge you to take a look at Senator Kohl's recommendation.

Senator ASHCROFT. I'd be happy to do so.

Senator SPECTER. When you take a look at Firestone and Ford and the kind of conduct that they engaged in, there was a reckless disregard for the safety of people who died. More than 100 people died. And legislation has now been enacted which provides for criminal penalties for failure to report those defects which will come squarely under the administration of a vigorous U.S. Attorney General which is something you ought to take a hard look at, if confirmed.

Let me move back to the question of independent counsel, which I only had a very brief time on, time yielded by Senator Smith, and I am not sure it can be handled even within a 5-minute time interval. But I raise the issue of having review of what the Attorney General does. Now, whether it is by statute, like the independent counsel statute, or whether it is by regulation, as the special prosecutor has been denominated by Department of Justice regulation, there is, it seems to me, an urgent need for at least Congressional oversight when the Attorney General makes a ruling which is so much at variance with the facts and what others have recommended.

On the issue of independent counsel, Charles LaBella recommended it, Bob Conrad recommended it, Bob Litt recommended it, FBI Director Louis Freeh recommended it. We came down in hearings, and there were clear issues of law. For example, on a critical question as to whether hard or soft money was being raised, there was a memorandum in the file which referred to hard money as evidence. And the Attorney General testified that she would not consider it because the witness didn't remember. But that missed

the legal distinction between prior recollection recorded, which is solid evidence, as opposed to present recollection refreshed. I see Senator Ashcroft nodding in the affirmative.

Now, there simply has to be some remedy, and there is a lot of litigation which says that a taxpayer can't come into court and seek redress, but where you have the Judiciary Committee—and the Judiciary Committee of both Houses has been singled out as a party with standing under the old statute where requests could be made that the Attorney General had to respond to, not for appeals but had to respond to. And in order to give the minority standing, it said if there was a majority of the minority on either Committee, and the same applied to the majority, a majority of the majority. Not every Senator in either party had to agree to give standing.

And it seems to me that you just don't have the rule of law if on something as critical as a conflict of interest—and there is no division of view as to whether you need some remedy, somebody outside the Department, if a ranking official, without getting involved in defining who that should be, and you have the special prosecutor by regulation.

Now, it is true, as you said, there are sensitive matters between the executive and judicial branches, and then you said, well, executive and legislative branches. Conflicts all around. And there are constitutional issues. But I would urge you to take a look at it, and I know that you have a deep regard for Congressional oversight.

Now, you may have a little different view as Attorney General than as a Senator about the kind of oversight. But I would like your response as to whether—and I will ask you a leading question. Don't you think that the Attorney General of the United States on matters of that importance ought to have a judgment reviewable by someone and initiated by an entity with standing like the Judiciary Committee and reviewable in court? What about it, Senator Ashcroft?

Senator ASHCROFT. Well, I, first of all, greatly respect your understanding of this issue. I don't know of anyone who has devoted more time and energy to it or thought to it. And you've done it from the perspective of a prosecutor, which I think is the basic role you would assign to the Justice Department in this setting.

Senator SPECTER. And a Senator.

Senator ASHCROFT. And a Senator. So you've understood both sides in ways that I haven't. I would be very pleased to confer with you and to work toward greater accountability in those settings.

I would also say to you that I would hope that I would be able to work with this Committee. I enjoyed this Committee greatly when I had the privilege of working with it as a member. And as the first Attorney General, if I am confirmed, to serve from this Committee in a long time in that office, I would hope that we would work together in order to resolve these differences in a context that would also protect the kind of flow of information that has to exist in the prosecutorial operation.

I offer myself fully to confer with you about that and to find a way to resolve these issues.

Senator SPECTER. Thank you.

Chairman LEAHY. The Senator from Wisconsin, Senator Feingold.

Senator FEINGOLD. Thank you, Mr. Chairman.

Senator Ashcroft, I believe Senator Leahy touched on this a few minutes ago, but I know that you have strongly held views on gays and homosexuality. You and I have had discussions about this, and in a 1998 appearance on CBS' "Face the Nation," you said, "I believe the Bible calls it a sin, and that's what defines sin for me."

Now, following on Senator Leahy's question, one of the great successes of the civil rights struggle of the 1960's was the enactment of Federal law prohibiting discrimination in employment on the basis of race, national origin, religion, or gender, and in 1996, Attorney General Reno implemented a policy at the Justice Department that prohibits discrimination in employment on the basis of the employee's sexual orientation, as well as race, gender, religion, and disability.

If confirmed as Attorney General, would you continue and enforce this policy of non-discrimination based on sexual orientation?

Senator ASHCROFT. As Attorney General, I will not make sexual orientation a matter to be considered in hiring or firing in that matter.

Senator FEINGOLD. So you will continue that policy?

Senator ASHCROFT. Yes, I will. I, as State Auditor of Missouri, did not, as Attorney General of Missouri did not. I did not as Governor of Missouri, nor did I as a member of the Senate. I would continue the policy, executive order or not.

Senator FEINGOLD. Thank you, Senator. Will you permit DOJ Pride, a voluntary organization of gay, lesbian, and bisexual DOJ employees, to continue to use Justice Department facilities on the same basis as other voluntary employee groups or other minority Justice Department employees?

Senator ASHCROFT. It would be my intention not to discriminate against any group that appropriately was constituted in the Department of Justice.

Senator FEINGOLD. Thank you. Attorney General Reno clarified that sexual orientation should not be a factor for FBI security clearances. As Attorney General, would you continue and enforce this policy?

Senator ASHCROFT. I have not had a chance to review the basis for the FBI standard, and I'm not familiar with it. I would evaluate it based upon conferring with the officials in the Bureau.

Senator FEINGOLD. I respect that and hope the conclusion will be consistent with your earlier answers.

Let me switch to a topic that has been already covered in part, the so-called Southern Partisan article. I want to return to the question that Senator Biden asked about the interview you gave. I understand that you told Senator Biden that when you gave that interview, you didn't know much about it, that it was a telephone interview, and you give lots of interviews. And I certainly understand that as somebody who has given a lot of interviews. And Senator Brownback indicated that as well.

The fact that you did an interview with a magazine doesn't mean that you subscribe to its views, but if you didn't know much about the publication, how could you praise it in such glowing terms in the interview? How could you say, "Your magazine always helps set the record straight"?

Senator ASHCROFT. Well, I was told that they were involved in a group that opposed revisionism. I had recently finished reading a book published by a fellow named Thomas West from the Claremont Institute about the founders of our country and the revisionist history. The individuals who set up the interview said these folks are interested in history. It was presented to me as a history journal, and on that basis I made the remark.

Senator FEINGOLD. Thank you. Let me switch to one other area. Yesterday, a number of people mentioned an Attorney General opinion that said there was no basis in Missouri law to allow the distribution of religious literature in the public schools, and at one point you said something that struck me, and I want to make sure I understood it. I believe you said that the Missouri Constitution was more clear with regard to the principle of separation of church and state than the Federal Constitution. Do you have any doubt that the First Amendment of the Constitution—excuse me, of the Bill of Rights of our Constitution requires a separation between church and state?

Senator ASHCROFT. No, I don't. But I would just say that for things that had been approved by the United States Supreme Court, like transportation to secular—religious schools and all, have been approved under the Federal Constitution. That was more explicitly defined out of the potential in the Missouri Constitution so that the interpretation of the Missouri Constitution had been for a more durable barrier in this setting. And I think I expressed that because there are a number of things which have been ruled acceptable under the law of the United States of America that are not acceptable under the laws and Constitution expressed in—

Senator FEINGOLD. But you don't consider the First Amendment vague on the point of the separation of church and—

Senator ASHCROFT. No, I don't, and I think the courts have construed it. And my point was that as the courts have construed it, the courts have said things are OK in the Federal setting that aren't OK in the Missouri setting. So I had to go beyond the Federal law to go and read the law that I was charged to read in the setting of the State Constitution.

Senator FEINGOLD. I thank you for that clarification. I think my time is up. Thank you, Mr. Chairman.

Chairman LEAHY. The Senator from Arizona.

Senator KYL. Thank you, Mr. Chairman. I think I will just be very brief and make this comment. It is difficult for us in this setting, I think, to really be able to evaluate things which we can't possibly anticipate. Some of my colleagues on the panel here have concerns that Senator Ashcroft as Attorney General would try to change the law. Senator Kennedy referred to this a moment ago. And certainly based upon his firm advocacy in the past, it is a reasonable sentiment to hold.

Senator Ashcroft, on the other hand, is in the unfortunate position almost of having to prove a negative, to prove that, no, he won't do anything improper. Well, it is hard to prove that you are not going to do something improper in the future. He has basically said give me a chance and I will show you.

It is also true that we are talking to some extent about shades of gray here. It is not the case that there is something called “the law” and that is all there is to it and everybody knows exactly what it is and it is always clear to the Attorney General exactly what to do as a result of that.

The Attorney General will have to make decisions, and as Senator Ashcroft pointed out, when he was Attorney General there were some questions at the periphery of the settled law. Well, we know what *Roe v. Wade* is, but can you require parental consent, for example? That is a new question, so it has to be litigated. And I think that those of us on the side of supporting Senator Ashcroft have to acknowledge that there will be those kinds of situations, and that there will be areas for judgment. And I also think that some of our friends who have some skepticism about what Senator Ashcroft should do should also then consider the fact that a lot of these policy issues will be informed by the position of the new President of the United States. I think we can all make our judgments about how aggressive he will be to move in certain areas, but I urge my colleagues to at least consider that element of the policy choices that the Attorney General will make. And I also urge them to consider the integrity of the nominee and his strong commitment to keep his word.

So I guess what I would caution here is that both people who are skeptical of Senator Ashcroft and those who are his adherents here probably both overstate the case a little bit to make the political point. In many respects, we can't know, and that then raises the question: What's the default position?

And, Senator Ashcroft, to get back to something you said at the very close of your opening statement, you can't prove to us that you will satisfy every one of us. Some of my colleagues are pretty pleasantly surprised, I must confess, that you have been so willing to agree to enforce laws that you haven't always agreed with. And so the real question is: At the end of the day, what will persuade them that they can trust you?

I would like to have you comment on that very briefly. In my own case, what you said at the conclusion of your opening remarks is very persuasive, and that is that you take your oath of office very, very seriously. And you have also noted a couple times you are going to be very available to us in the future. And since you know us and we know you, I suspect you know how well you would be treated if you went outside the bounds of some of the commitments that you have made.

So I just wonder if you would like to comment on that to try to add to the assurances that you have already given to members of this Committee.

Senator ASHCROFT. Well, I thank the Senator. I really believe my record is a record of operating to enforce the law as Attorney—

Senator THURMOND. Speak in your loud speaker.

Senator ASHCROFT. Thank you, Senator. I believe my record demonstrates my willingness to enforce the law, and that's why I was so eager to clarify my position when Senator Kennedy asked me about the school cases. And there is a difference, though, that I would cite, and I think it's important, that the State Attorney General is an elected official who makes final decisions on policy on his

own. When the Governor of the State calls the State Attorney General on policy issues, the State Attorney General says, you know, you ran for the wrong office if you want to run this office on policy.

In the Federal system, the Attorney General is—the structure of the systems designs to make the Attorney General part of the administration, not an administrative or an executive office, part of the executive, and there's a delicate balance there. And I think the responsibility to respond to the executive is one that is important and it relates to policy, not to law enforcement in the same way.

Senator KYL. Thank you.

Chairman LEAHY. The senior Senator from New York.

Senator SCHUMER. Thank you, Mr. Chairman. And thank you for your cooperation, Senator Ashcroft. It has been a long day.

First, I would ask you two quick questions, and please try to answer these yes or no. They are not complicated or intended as traps in any way.

As you know, there is an ongoing Civil Rights Department investigation of Voting Rights Act violations that might have occurred in Florida. As Attorney General, would you allow that investigation to continue?

Senator ASHCROFT. I will investigate any alleged voting rights violations that have credible evidence, and I'm not familiar with the evidence in the case, but that would be the standard I would apply and have no reason not to go forward and would not go forward for any reason other than a conclusion that there wasn't credible evidence to pursue the case.

Senator SCHUMER. OK. The next one, just also quickly, and just a little elaboration. You had mentioned that on the matter of sexual orientation you never discriminated in your various offices in terms of hiring. But you were one of a minority of Senators who refused to sign a statement that you wouldn't discriminate when you were a Senator. Can you explain the seeming disparity?

Senator ASHCROFT. I've never discriminated. I don't have any recollection about this statement, and, frankly, I'd have to answer I don't know or invent an answer now, and I don't have any recollection of that.

Senator SCHUMER. OK. But we could take it, given your previous statements, that you would fully enforce the Hate Crimes Act.

Senator ASHCROFT. I would fully enforce the Hate Crimes Act were it to be passed, and—

Senator SCHUMER. A few acts—the Statistics Act has been passed already.

Senator ASHCROFT. Yes, OK.

Senator SCHUMER. I was the author of it.

Senator ASHCROFT. All right. Yes, sir.

Senator SCHUMER. You would. OK. And what would be your attitude toward the Hate Crimes Protection Act next year? Would you urge that we pass it, not pass it?

Senator ASHCROFT. From what I know about the Act now, I believe it to be constitutional. I would defend it—

Senator SCHUMER. How about—

Senator ASHCROFT.—If it were to be enacted by the Congress and passed by the President. I would have to confer with the President, obviously, before I endorsed any specific legislation.

Senator SCHUMER. But you wouldn't urge him to veto it on any constitutional or legal or moral basis?

Senator ASHCROFT. Based on what I know now, I would not.

Senator SCHUMER. OK. Now, I'd like to just pursue a little further your follow-up initially to my questions earlier this morning, and Senator Kennedy had mentioned them, and then you began to clarify. I think what you were saying—and I am just trying to clarify here—is that on the issue of choice, when you were in the Missouri State Government, you thought it was your right, and certainly not unconstitutional, to challenge and change the law. But as Attorney General, United States Attorney General, that because the Supreme Court has ruled, and recently in the *Stenberg* case said this is settled law, something you just—that was your words.

Senator ASHCROFT. That's regarding the denial of cert of that specific challenge—

Senator SCHUMER. Correct. That you would not—and I just want to get this clear—that you would not urge the Solicitor General in any way to join suits to try and change those rulings. Is that correct? That is what you said to me earlier this morning, and—

Senator ASHCROFT. I stand by my answer from this morning.

Senator SCHUMER. Thank you. Let me ask you this, then: Let us say people in the Senate or the House try to introduce a statute that was identical or very similar, nearly identical, for all material purposes identical, to the statute where the Supreme Court denied cert in the Nebraska case. Would you urge the President—a little step further but the same basic reasoning. Would you urge the President to veto it because it is unconstitutional based on the Supreme Court, the very same ruling in the Nebraska case, in the *Stenberg* case?

Senator ASHCROFT. Let me understand what you're saying. If the Congress were to seek to do in exact language what the State of Nebraska did—

Senator SCHUMER. Correct.

Senator ASHCROFT.—What would my advice be to the President?

Senator SCHUMER. Correct. It passed both Houses. He has to sign it or veto it.

Senator ASHCROFT. The President, when he announced his appointment of me, asked me not to share advice with the public that I would be asked by him. I would tell you this: that I would give him my best judgment as to what the law. It would not be a result-oriented judgment. I have promised him that I would tell him the law, and I don't think it takes—when you have an on-point case, I think that's pretty clear what that advice would be.

Senator SCHUMER. And I would just like you to say it because it is not contradictory to what happened before. This is settled law, in your judgment, settled law enough so that the Solicitor General would not—you would not urge him to overturn it. Why wouldn't the same—I'm not asking your advice to the President. I understand the difference there and respect it. But we are talking about the role that you have talked about quite well as implementer of the law and definer of constitutionality. This is not a moral issue. This is not an ideological issue. This is a constitutional issue where it is extremely important for the Attorney General to enforce the law, something you have repeated regularly today and yesterday.

Why wouldn't you just be able to tell us here—this is not a question of your private conversations about statutory or ideological views with the President. Why couldn't you say that the law is unconstitutional and the President should veto it?

Senator ASHCROFT. I would give the President my best estimate of the law. I think it's very clear that the Supreme Court has ruled on that particular law. The only change that could be made is if the Federal Government and its Congress had authority to do something that the State of Nebraska didn't do. I don't have—haven't considered that fully. But—

Senator SCHUMER. But the Supreme Court's ruling was a Federal ruling, sir.

Senator ASHCROFT. Yes, it was, but—

Senator SCHUMER. It was not based on State of Nebraska law. It was based on the right of—it was based on the Federal right of privacy in the Constitution—as the Supreme Court has defined the Constitution and as you recently told us is settled law. This is an important issue, and some of us don't want to be unsettled that you have said this and are now sort of taking it back a little bit.

Senator ASHCROFT. I'm not taking it back, sir. I will give my best judgment as to what the law is to the President whenever he asks me for legal advice, and that will be very clear. And the Nebraska statute was ruled unconstitutional.

Senator SCHUMER. Correct.

Senator ASHCROFT. And I will tell the President that.

Senator SCHUMER. And that the—excuse me, just—and that the same law that passed by the House and Senate is unconstitutional as well? The same exact law using the same Federal ruling, what would prevent you from saying that if you—and I believe you have—if you truly believed what you told us before? There is no difference.

Senator ASHCROFT. Well, nothing prevents me from saying it, and I believe the Nebraska law has been clearly ruled unconstitutional.

Senator SCHUMER. Correct.

Senator ASHCROFT. And if you're asking for my personal view, I don't know of any reason why the Federal Congress would be allowed to do what the State governments were forbidden to do.

Senator SCHUMER. So you would tell the President it's unconstitutional?

Senator ASHCROFT. I would tell him that I don't know of any reason the Federal Government has the authority to do what the State constitution—State group couldn't do that was ruled unconstitutional at the State level. And it would—I guess I would have to say I would expect the same to be the result from the Federal level.

Senator SCHUMER. Thank you for your indulgence of a little extra time, Mr. Chairman.

Chairman LEAHY. And I will certainly offer the Senator from Ohio the same amount of extra time. The Senator from Ohio?

Senator DEWINE. Mr. Chairman, thank you very much. Senator Ashcroft, thank you.

In examining your record as Missouri Attorney General, it is clear that you had as part of your agenda the whole issue of consumer rights. You attacked pyramid schemes. You sued oil compa-

nies, charging them with restraint of trade. You had one case where you sued a company that was selling fraudulent franchises. They were claiming that they were helping the disabled, and many, many other cases.

I wonder if, as you define the job of Attorney General and you look at your role you believe that is also part of your mission, part of your agenda to protect consumers.

Senator ASHCROFT. I thank the Senator from Ohio. As Attorney General, I had a portfolio of consumer protection, and I ended up suing everybody from the oil companies, when they were either contaminating—selling contaminated gasoline or when they were price-fixing gasoline, a number of cases like that. I sued the pyramid schemes because they were just a means of defraud individuals, and I had the opportunity to sue people for fraudulent franchises and distributorships and all kinds of things like that.

I don't know if the portfolio of the Justice Department is quite as extensive when it comes to consumer protection. I enjoyed that part of my responsibility in my job. And I also got involved in some things nationally that I thought were important for consumers. The one thing that I have dealt with years and years later now here in the Congress, while I was a Member of the Senate, was copyright laws regarding television and other programs. I sued as an amicus in the *Sony Corporation v. Universal City Studios*, which allowed people to tape-record television programs if they couldn't be home at the time the program was on so that they could later see it.

But I think that I'll do what I can to try and help consumers in settings, but I believe the Federal Trade Commission and other agencies of the Government have the lion's share of consumer protection, and I'd be happy to learn if I could be involved in that arena, but my opportunity I doubt would be quite as extensive as it was when I was Attorney General.

Senator DEWINE. Senator, thank you very much. Mr. Chairman, thank you.

Senator KENNEDY. [Presiding.] Senator Durbin?

Senator DURBIN. Thank you very much.

Senator Ashcroft, to follow up on Senator Schumer's question, for several years now, we have been debating the so-called partial-birth abortion ban on the floor of the U.S. Senate. Many of us have argued that if it included a health exception for the woman involved, we could support it. And Mr. Santorum from Pennsylvania has adamantly stuck to his position that it should not include a health protection.

Now, the *Stenberg v. Carhart* decision, which has been the subject of this debate, really says that *Casey* gives us no choice. *Casey*, a case which you referred to in your opening statement, made it clear that you had to include a health exception, and I want to make it clear in my mind that the Santorum bill, which has been debated and voted on in the House and the Senate now, based on what you have said today and what we understand *Stenberg v. Carhart* to say, clearly would be unconstitutional and that it does not meet the test of *Stenberg v. Carhart* of providing for protection for the health of the woman.

Senator ASHCROFT. If legislation regarding partial-birth abortion is passed by the U.S. Senate, I will ask Department lawyers to assemble the best assessment of that legislation and evaluate its pluses and minuses and its likelihood of constitutionality. And I would advise the President of that.

If it is arguably constitutional, I would defend it because I think that's the responsibility of an Attorney General. I think it is important to be able to advise the President confidentially because you might find yourself in the setting where you advise the President that something is unconstitutional, but he decides to sign it, and because it is arguably constitutional, but maybe not going to be constitutional, you go in to defend it.

Now, if you have advised the President publicly that this is probably unconstitutional but it could be constitutional, and then he signs it and you have to go defend it, you have cut the legs out from under your ability to effectively sustain the enactment or argue for its sustenance in the court. So—

Senator DEWINE. But, Senator, this element, this element of protecting the health of the woman is clearly the decision made in *Stenberg v. Carhart* based on *Casey*, a case which you yesterday said in your opening statement was settled law of the land. It is not a question of constitutionality if it settled law of the land in your mind. And how then could you have any question, as you sit there, and say, well, maybe *Stenberg* really didn't say the health of the woman? It was based on *Casey*, and it related to protecting the health of the woman, and Santorum, which we have considered in the Senate for years now, does not include that protection. I can't think of a clearer illustration of your earlier statement where you said the administration is not going to set out to overturn *Roe v. Wade* and that you were committed to the settled law of *Roe v. Wade* and *Casey*.

Senator ASHCROFT. I am and I would advise the administration in regard to any proposed—or legislation it was considering that I considered *Casey* and *Roe v. Wade* and *Stenberg* to be settled law, and in evaluating those—any proposed enactment or any enactment which came for signature to the President, I would advise them with that understanding.

It's possible—the number of permutations in legislation, as we all know, is infinite, and I would give my best advice to the President. I would give it to him privately, because if he signs something, it would be my responsibility to defend it and seek to defend it and harmonize it with those cases. I just think that's one of the places where you have a situation that tells you why you should advise confidentially to the President, because some advice about constitutionality doesn't—if it were 51–49 constitutional, this may not be the case. You said I really think this is unconstitutional but you were wrong about that and you could later defend it, you'd have a responsibility to do so. So I would like to take that option.

Senator DEWINE. If I might ask you an unrelated question, if you were confirmed as Attorney General of the United States of America, would you appear at Bob Jones University?

Senator ASHCROFT. My appearances at a variety of places depend on what I think there is to be achieved and accomplished. When I get an invitation, I have to ask myself why is this invitation here,

what can I support by responding to the invitation, what will be the consequence of my response.

I will tell you that I understand, having been a participant in these hearings and the prelude to these hearings, that the Attorney General is a person who needs to exercise care in—greater care, I think, than a Senator does. I reject the racial—any racial intolerance or religious intolerance that has been associated with or is associated with that institution or other institutions. And I would exercise care not to send the wrong message, but—and I think that's the basis upon which I'd make decisions about going from one place or to another.

Senator DEWINE. But even in light of President-elect George Bush's comments to the late Cardinal O'Connor and the obvious embarrassment he felt when he learned of the anti-Catholic, and some racial comments, that were made by the leaders of that university, you would not rule out as Attorney General of the United States appearing at that same school?

Senator ASHCROFT. Well, let me just say this: I'll speak at places where I believe I can unite people and move them in the right direction. My church allows women as ministers. The Catholic Church doesn't. My grandmother happened to have been an ordained minister. I'll go to a Catholic Church and speak. It's discrimination against a woman from one perspective, but I'm not in the business of trying to find things in one faith setting that make it impossible for me to be there. I want to be there to try and promote unity.

There are other different faiths that have different aspects of their belief. I mean, some churches will forbid me to take Communion. My church invites people to take Communion if they feel like they want to. But I don't discriminate against going and doing things that I—if they invite me to come and do something that's helpful and therapeutic and will unite people and not divide them, I want to reserve the ability to do that. And I'm grateful for the friends who tolerate me by inviting me. Frankly, I want to focus my energy and effort to unite rather than divide and to find things of mutual respect rather than to find things that I can pick at or otherwise challenge.

But I want to make it very clear that I reject racial and religious intolerance, and I reject any current or prior policies of those. I do not endorse them by having made an appearance at any—in any faith or any congregation. Those who prefer not to allow women in certain roles, I don't endorse that when I go there, nor do I endorse any racial or other intolerance at other places when I make appearances.

Chairman LEAHY. So are you equating Bob Jones with the Catholic Church, Senator?

Senator ASHCROFT. Obviously not. And I thank you for clarifying that. Throughout this hearing you have helped me clarify things that were important.

Chairman LEAHY. The Senator from Alabama.

Senator SESSIONS. Well, Mr. Chairman, I think that would have been better left unsaid. I don't think that was a fair summation of his remarks. We have got to treat people here with fairness, in con-

text. If you take anything people say out of context, you can make people look bad.

Chairman LEAHY. As the Senator addressed that to me, I will respond. I gave Senator Ashcroft the chance so he would not leave that implication. I think I understood what he meant. I thought that my question to Senator Ashcroft—and in his response he saw it the same way—was done as helpful to him.

Senator SESSIONS. Well, if that was the spirit, I will apologize for my error.

I do notice that Senator Ashcroft said some time ago these positions of Bob Jones University I reject categorically, I reject the anti-Catholic position of Bob Jones University categorically. Bob Jones University is a narrow university with many views I do not agree with, not consistent with my faith, but, frankly, some good things have been happening. The ban on interracial dating as a result of this hoopla and the visits of political attention has changed. They also have softened apparently their statements about the Catholic Church saying they do not hate them but love them.

And so I think maybe these things have been healthy. Maybe it has been healthy to have that, and to say you will never go somewhere, I am not sure is wise.

On the partial-birth abortion question, I think Senator Durbin opposed the vote we had, but 64 Senators, as I recall, a bipartisan group, voted in favor of the partial-birth abortion amendment that was in the Senate, and two-thirds of the American people favor that. Eighty-six percent, according to the April 2000 Gallup poll, oppose abortions in the third trimester, and according to a conversation I had with Senator Boxer, there may be some ways we can develop some bipartisan progress on that, but I think we need to realize that the American people are not comfortable with unlimited abortion in this country. I, for one, do not condemn a person like Senator Ashcroft who is troubled by the ease and blase-ness we have about this most serious matter.

Senator Ashcroft, you talked about the role of Attorney General. I served as Alabama's Attorney General. Is there anybody else but the Attorney General that represents the State of Missouri but the Attorney General?

Senator ASHCROFT. In the courts, the Attorney General represents the interests of the States—State.

Senator SESSIONS. You speak for the legal interests of the State.

Senator ASHCROFT. Yeah. Now, there are some agencies that have their own counsel, but most of the time, say the Board of Healing Arts, if there is a dispute between whether doctors can prescribe medicine or—and some other group, you know, the State frequently—or the position of the Attorney General resolves those by Attorney General's opinions, or if someone sues, the position of the board or the State is defended by the Attorney General.

Senator SESSIONS. Well, I guess I have had personal experience with the kind of proposed consent decrees that are being talked about and you have been criticized about here today.

It is only the Attorney General that represents the State, and it is only the Attorney General that can bind the State in a court of law on a consent decree. Isn't that basically correct, or have I overstated that in some fashion?

Senator ASHCROFT. No, I think in general that correctly states the law.

Senator SESSIONS. So the point—

Senator ASHCROFT. You know, it has been a while since I was Attorney General.

Senator SESSIONS. Well, I had this.

Senator ASHCROFT. That was in 1984, I ceased that role.

Senator SESSIONS. I have been through this problem. I have been through the problem where plaintiffs sue school board, mental health system, prison system, and the people who get sued, they want more money for what they want in their programs. They want more money. So they go in and say, “Well, let’s settle, and we will have the State pay for this, and get a Federal judge to order us. If we can just get a Federal judge to say that the mental patient is not being treated well enough, the prisoners are not being treated well enough, the school system is not being treated well enough, then we can go tell the legislators who won’t give us more money that the Federal court ordered it.” This is a systemic problem in America that Attorneys General have to deal with, and it is difficult to go in and say no.

I have had to do it. My predecessor agreed to a settlement I could not believe that altered the way Supreme Court justices were to be elected, and when I was elected, I switched sides and reversed it in the Eleventh Circuit Court of Appeals. Had I not been elected, the Alabama constitution would have been altered because the Attorney General, in my view, didn’t defend the State. He did what was perhaps what the people wanted, but really not that.

Is my time out? I guess it is, Mr. Chairman. I apologize.

So I think there are times when the Attorney General represents the State, he has an obligation and duty regardless of what the parties to a litigation may say to ensure that it is fair for all the people of the State. I think you did that. That is why Jay Nixon who I knew and served with, a Democrat, Attorney General after you, did the same thing, and I also would note for the record that Senator Kennedy and Tom Harkin had fund-raisers for Jay Nixon while he was taking this very position. Apparently, it is the problem of whether you got a “D” or an “R” after you name whether that is worthy of criticism.

My time is up.

Chairman LEAHY. Is the Senator from Alabama finished?

Senator SESSIONS. Yes.

Chairman LEAHY. The distinguished senior Senator from California.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Senator Ashcroft, let me just qualify Senator Durbin’s question and ask it another way. You are now confirmed as Attorney General. In 6 months, you receive an invitation from Bob Jones University. You now know about Bob Jones University. Do you accept that invitation?

Senator ASHCROFT. Well, it depends on what the position of the university is, what the reason for the invitation is. It depends on what I might be able to achieve.

They have abandoned the policy on interracial dating, which was offensive. Their website, which I wasn’t aware of when I went

there, if it still had the anti-Catholic aspects, I would be loathe to go back.

I would hope that they would approach things differently, and I don't want to rule out that I would ever accept any invitation there because I think I would hope that they would make what I consider to be progress. They did when they abandoned the interracial dating ban which they had, and I would hope they would make other progress as well.

Senator FEINSTEIN. Do you have reason to believe that they are no longer anti-Catholic?

Senator ASHCROFT. No. I don't know whether they are abandoning or changing or modifying their position.

I would state this. I think it is clear, and these hearings have been valuable in this respect, that I am sensitive at a higher level now than I was before that if the Attorney General in particular needs to be careful about what he or she does and I would be sensitive to accepting invitations, so as to not allow a presumption to be made that I was endorsing things that would divide people instead of unite them.

Senator FEINSTEIN. Along those lines, let me ask you another question. You were on the Foreign Relations Committee, and Jim Hormel, a person whom I happened to know very well—he comes from my city and I have known him for many, many years—was up for Ambassador to Luxembourg. You voted against him at the time saying because he engaged in a gay lifestyle.

My question to you is would someone be denied employment by you or not be selected by you for a top position in the Justice Department if they happen to employ a gay lifestyle.

Senator ASHCROFT. No. They would not be denied. I have never used sexual orientation as a matter of qualification or disqualification in my offices. I have had individuals whose situation became apparent to me, sometimes tragically, that worked for me, and I have not made that a criterion for employment or unemployment in my office and would not do so.

I will hire as if that is not an issue, and it is not, and whether or not the executive order would be in effect or not, that is my practice and has been in all the offices in which I have conducted myself since I have got into politics, and that began in January 1973.

Senator FEINSTEIN. Thank you.

If I might ask you a question about the Hyde amendment, now law. The amendment requires States to fund abortions for women who rely on Medicaid and who choose that option if the pregnancy is a result of rape or incest or if it threatens the woman's life. The amendment attempts to ensure that poor women with the consequences of rape or incest have the service and are not disadvantaged because of their economic status.

It is my understanding that at least two States are not in compliance with the Hyde amendment. What action as Attorney General would you take?

Senator ASHCROFT. First of all, I voted for the Hyde amendment on several occasions. I don't really know what enforcement actions there are, whether they are taken through the Attorney General's

office or whether they are taken through some other agency of the Government, but I would seek to enforce the law.

I am just not sure what the enforcement action is that is appropriate in that setting. I don't know whether HHS has a way of dealing with that or not.

Senator FEINSTEIN. I wanted for a moment to talk about another past position, and this has to do with felons obtaining weapons. The National Rifle Association has consistently supported enabling felons to restore their privilege to purchase firearms both through taxpayer funding, for a "relief from disability" program, and lawsuits.

Many in law enforcement have serious concerns about enabling convicted felons to possess guns. In 1999, you voted for an amendment to the juvenile justice bill that would have required the FBI to create a data base to identify felons who have been granted relief. Rather than establishing a national data base, my question is why don't we just prevent felons from getting guns in the first place.

As Attorney General, would you support felons obtaining this so-called "relief from disability" so they could buy guns despite their felony convictions?

Senator ASHCROFT. Thank you, Senator.

The restoration of gun rights is not a Justice Department function under the law now. It is a Treasury Department function, and I know Senator Durbin, I think, was instrumental in—maybe I am wrong about that. I thought you made sure that wasn't funded. Pardon me. But—pardon me for—it is getting late, and I'm—things are—

Senator FEINSTEIN. No, I understand. My question is a very simple one.

Senator ASHCROFT. Yes, I understand that, and let me address that.

This is a matter of policy about which I would confer with members of the Justice Department and also with the President of the United States in arriving at a decision.

Senator FEINSTEIN. My point is I think all of law enforcement believes that felons should not possess weapons, and my question to you, as Attorney General, do you agree with that, would you be supportive.

Senator ASHCROFT. Keeping guns out of the hands of felons is a top priority of mine, and it would be as Attorney General.

Senator FEINSTEIN. So the answer is yes, you would be supportive?

Senator ASHCROFT. Yes. I think that's—yes, it is.

Senator FEINSTEIN. Let me ask another gun question, if I may.

Chairman LEAHY. The Senator's time—

Senator FEINSTEIN. Oh, it is? I apologize. Thank you very much, Mr. Chairman.

Chairman LEAHY. The Senator from Kansas.

Senator BROWNBACK. Thank you, Mr. Chairman.

I think every question has been asked three or four or maybe five different ways so far. So the only thing I would like to add at this point is I would like to submit to the record a letter received by the Judiciary Committee from Charles Evers. He is the brother of

slain civil rights leader Medgar Evers, and this letter is in favor of the nominee, of John Ashcroft for Attorney General, and strongly supports that. So I want to submit that into the record.

Chairman LEAHY. Without objection.

Senator BROWNBACK. I think that pretty well wraps up the topics.

Thank you, Mr. Chairman. I would like to yield some time to my colleague, Senator Kyl.

Senator KYL. No. No, I don't.

Mr. Chairman, might I just ask unanimous consent to insert in the record at this point an op-ed piece in the Arizona Republic by the columnist, Robert Robb, on this subject.

Chairman LEAHY. Yes.

In fact, following the normal practice, the practice under both Senator Hatch and myself, the record will be available for Senators as long as the hearing is going on to submit statements of that nature. We have a number of them, and several Senators do.

The Senator from Kansas, is that it?

Senator BROWNBACK. That is sufficient for me.

Chairman LEAHY. I would also submit questions, as we have in the past, of other Senators not on the Committee to have been able to submit questions on behalf of the two Senators from Florida, Senator Bob Graham and Senator Bill Nelson, regarding the investigations into allegations of discrimination, November 7th, 2000, election in Florida, including the use of voting devices that resulted in significantly higher numbers of minority voters, ballots being thrown out. This refers to the Civil Rights Division and the Commission of Civil Rights investigation. I would submit that, and we will give copies to your staff and the questions for the record.

Senator FEINSTEIN. Mr. Chairman, may I submit some amendments—or some questions to be answered in writing?

Chairman LEAHY. Yes. The Senator from California may, of course.

If nobody else has any submissions, the Senator from Washington—

Senator KENNEDY. Mr. Chairman, I was wondering, Senator Biden had yielded the time. If everybody is ready, I don't want to—others have questions, but there is one. I am wondering if I could use his time. I will only take 1 minute.

Chairman LEAHY. Do you want to use it now, or do you want to—

Senator CANTWELL. I yield to the Senator. I yield.

Senator KENNEDY. I'll do whatever. Oh, I'm sorry. Excuse me. I apologize.

Chairman LEAHY. Why don't we have the Senator from Washington State—

Senator KENNEDY. I apologize.

Chairman LEAHY.—And then the Senator from Massachusetts.

Then, just so that people understand, once the Senator from Washington State has finished, the Senator from Massachusetts is using the time of the Senator from Delaware. I discussed this with the Senator from Utah. We will recess for an hour to have dinner and then return.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

Senator Ashcroft, thank you for your patients and fortitude.

Senator HATCH. Excuse me. Could I ask one question? Are we coming back to re-question Senator Ashcroft, or will that be it for him?

Chairman LEAHY. Well, I have got a couple of questions. I mean, I would be happy—

Senator HATCH. Well, why don't we finish the questions.

Chairman LEAHY. Well, I will tell you what we will do, we will stay until 6:30. We will stay until 6:30 and break at that time, and then at what seems like a logical time, come back to 7:30. I give you my commitment, to the Senator from Utah, to go late at night if need be to help get this done. We can start the clock on the Senator from Washington State.

Senator CANTWELL. Thank you.

Again, Senator Ashcroft, thank you for your patience and your fortitude. Yes, the hour is getting late, so I appreciate your attention to these issues.

If we could go back to the roadless area, the question that I brought up earlier, and I can go back to the record of your statement. Since I don't have that in front of me, I am not clear whether you said you were unfamiliar with it or unfamiliar with where it was in the Administrative Procedures Act and the rulemaking authority.

Senator ASHCROFT. Maybe I need to be refreshed, and I am very sorry, but I don't understand what you are talking about.

Senator CANTWELL. OK. The roadless area policy—

Senator ASHCROFT. Oh, roadless area. OK.

Senator CANTWELL. Roadless area policy that has now been implemented by the Administrative Procedures Act, and just completed that process, and I asked you earlier about that and I was unclear exactly—you said you weren't familiar. I wasn't clear whether you were—and I can go back to the record where you say you were unclear about the policy or—

Senator ASHCROFT. It is my responsibility to defend both the laws and the rules and regulations, and it is my understanding that it would be my responsibility to defend these regulations upon it if and when they are attacked.

Senator CANTWELL. OK.

Senator ASHCROFT. But I am not familiar with them.

Senator CANTWELL. Well, you have sent—from—according to Mining Voice, you have sent a letter basically raising concern about the roadless area policy and the Clinton administration's, as you called it—it appears the administration has launched an orchestrated campaign to preclude mining on vast acreages of public lands and multiple-use land. I understand you don't always remember everything you have—

Senator ASHCROFT. Well, I think that this maybe makes reference to what would be the situation in the Mark Twain National Forest in Missouri, the old lead and zinc mines, but I shouldn't speculate. Frankly, it is getting late in the day—

Senator CANTWELL. Yes.

Senator ASHCROFT.—And I don't want to do that, Senator.

Senator CANTWELL. Here is why I think it is such an important issue, because you may have, again, legislative—which we said numerous times today, what you have done as a Senator is different as you might do as Attorney General, but, yet, it seems as if you raised concerns about or opposition to that policy. Now it has actually been, as far as the Administrative Procedures Act, completed. It is now law.

It may be that the President-elect opposes that policy, but you as Attorney General—and there are court cases already now being filed and challenged to that administrative—to the roadless area policy that has now been implemented by this Administrative Procedures Act.

So, even if the President-elect is opposed to that policy, will you as the enforcement agency underneath your office enforce and uphold that law and defend those cases?

Senator ASHCROFT. I will, regardless of whether or not I supported something as a Senator, defend the rule, and if it is a rule with the force and effect of law, I will defend those cases.

Senator CANTWELL. Even if the President might be seeking a new administrative overturn of that?

Senator ASHCROFT. I think if the President wants to change the law, he has to follow the law in order to do so.

Senator CANTWELL. OK.

Senator ASHCROFT. And I will support and enforce the law. I think that's—that's a responsibility, and I think that is what I have promised to do.

I can't be result-oriented. I have to be law-oriented, and I think I would disserve the President and the country were I to do otherwise.

Senator CANTWELL. Thank you very much. Thank you.

Chairman LEAHY. Thank you.

Senator Kennedy who has reserved the time of Senator Biden.

Senator KENNEDY. I will tell my good friend, Senator Sessions, that if Jay Nixon was nominated, I would be asking him the same questions.

Senator, this is just on the tobacco. I would like to ask you just two quick questions, one on the issue of guns. There are three cases now. I will ask you the questions, and perhaps you can respond to them in writing, unless you want to give an answer. There are three occasions now where the gun law, that is, the Brady bill, is under a review, case pending on the Fifth Circuit of Appeals where the defendant is challenging conviction of weapons under the Brady bill. There is a case pending in the D.C. Circuit on the ban of assault weapons with the high-capacity ammunitions, and there is a case pending in the Sixth Circuit of Appeal which the gun lobby is, again, challenging the assaults ban.

If you can give us your reaction to those. I did not tell you before that I was going to raise those. There is no reason that you ought to know about them, but if you could, please.

Senator ASHCROFT. I believe these are all enactments of the Congress signed by the President, laws of the United States that are under attack.

Senator KENNEDY. Good, OK.

Senator ASHCROFT. I would expect to defend those vigorously.

Senator KENNEDY. Good. Thank you.

Finally, just in your May speech—this is on tobacco. In your May speech, you ridiculed the administration's effort to reduce the youth smoking, criticizing the ethic of victimology that treats tobacco as a drug and drugs as tobacco. In that statement, you appear to reject the overwhelming weight of scientific opinion that nicotine in tobacco is a highly addictive drug and reject the massive evidence that children have been the victims of a deliberate effort by the tobacco companies to addict them to smoking at a young age.

Now, the administration has a legal action on that particular question moving forward. It has gotten to the point where a Federal judge has already examined the Government, in this case, the RICO claim and rule, that it can go forward as a matter of law. We are all aware of the mountain of evidence showing that the tobacco industry did engage in unlawful acts. This is basically a recommendation of DOJ professionals.

Can you give us any assurance about that case if you intend at this time to withdraw it? Do you intend to carry it forward? Can you give us any indication of what your disposition on that will be?

Senator ASHCROFT. Well, let me clarify that I am no friend of the tobacco industry. I don't smoke. My family doesn't smoke. I regret the fact that smoking is very dangerous to individuals.

I will—I have no predisposition to dismiss that suit. I would evaluate that suit, conferring with members of the Department of Justice. I note—and hoping to learn from it—that the Attorney General, 2 years ago, said that the Federal Government had no independent cause of action against tobacco companies in a statement which I think she later reversed, and I don't want to make a statement ignorant of the kinds of facts and considerations that ought to inform my judgment when I get to the Justice Department if I have the benefit of confirmation.

I don't mean to be presumptive in my statements, but I will consider it, and is this the case where there were three causes of action and two of them have been dismissed, but the RICO cause remains? That is about all I think I know in terms of that.

Senator KENNEDY. That is correct, and they have said that the defendants cannot possibly claim their alleged conspiracy was isolated. The complaint described that. Well, they have upheld this. There are three different criteria for RICO, and they have gone through.

Senator ASHCROFT. Well, suffice it to say—

Senator KENNEDY. And I won't take the time of the Committee to go through the justifications, but they have met that particular requirement. The case is moving ahead.

You have taken a very strong position on the questions of substance abuse. I doubt if there are many medical professionals who don't believe that tobacco is a gateway drug, and I think that there is such an extraordinary concern, from parents as well as professionals, in terms of trying to make a difference with youth smoking and the targeting of companies toward youth smoking. I certainly hope that would get some action. I appreciate your attention to it now, and we look forward to talking about it some more.

Thank you. Thank you, Mr. Chairman.

Senator HATCH. I think our side is about wrapped up, at least I hope so, and I hope yours is, too.

Chairman LEAHY. Let me do this. I do have a couple of questions I will ask him, and then we will break unless somebody on your side wants to do one. The Senator from Pennsylvania wishes to ask questions.

I will ask a couple. We will go to the Senator from Pennsylvania so that he can ask some. We will then break. I am concerned about the amount of time the former Senator from Missouri has had to spend here, but with all due respect, I am even more concerned about Mrs. Ashcroft who has had to look at all of us, but then we have had to look at you. So we will do my questions. We will then turn to the Senator from Pennsylvania. We will break, and during that time, I would ask the Senator from Utah if he would check on his side which, if any, Senators will still have questions. I will do the same on our side.

Bob Jones University is not up for confirmation here, but just as you have spoken of a heightened awareness about some of these issues because of the confirmation hearing, you will not be surprised to know that many nominees in both Democratic and Republican administrations have said that they became more aware of some of the issues following their confirmation hearing.

But just so you understand the concern, when President-elect Bush spoke at Bob Jones University about a year ago, he did express regret for the appearance in recognition of their anti-Catholic and racially divisive views. When your Republican colleagues received an honorary degree from Bob Jones University, Representative Asa Hutchinson later called the school's policies indefensible.

In March, Bob Jones made clear on national TV that he views the Pope as the antichrist and both Catholicism and Mormons as cults.

My suggestion—and you can do whatever you want—I made my position very clear yesterday how I feel about you—on any questions of racial or religious bias. I stated at that time that neither I nor anybody on this Committee would make that complaint about you.

But let me say this, if you are being somewhat sensitized to this, frankly, if I were you, with all the information that has come out—some of which you may have known because there was a dispute with one of your own judicial nominees over the question about whether Bob Jones should have a tax exemption or not—with all that, if I can make a recommendation to you, I would put that honorary degree in an envelope and send it back to them, and say this is your strongest statement of what you feel about their policies.

But let me ask you this. I gave your staff a speech that you made in 1997 called "On Judicial Despotism." You characterized the Supreme Court's landmark abortion decision in *Roe v. Wade* and *Casey* as illegitimate. You called the justices who struck down in Arkansas a Congressional term limit law, you called them "five ruffians in robes", and said that, quote, "They stole the right of self determination from the people." And you posed a rhetorical question, quote, "Have people's lives and fortunes been relinquished to renegade judges, a robed contemptuous intellectual elite fulfilling Patrick Henry's prophecy that have turned the courts into nurs-

eries of vice and the bane of liberty?" And you also said, "We should enlist the American people in an effort to reign in an out-of-control court."

Now, I have disagreed with Supreme Court decisions, and I have always emphatically stated that while I may disagree, we have to follow them. I disagreed with *Gore v. Bush*, but I went over with the then-Chairman of the Senate Judiciary Committee, my Republican counterpart, went to the arguments, came back out and said, "We have to obey the law, whether we agree with it or not."

Now, the "five ruffians in robes" to whom you refer are members of the Rehnquist Supreme Court. That's a conservative Court, oftentimes activist, decidedly conservative. I have heard Justice Anthony Kennedy and Ruth Bader Ginsburg called a number of things, but "ruffians" is a little bit stronger than I have ever heard before.

How do you feel about that speech today?

Senator ASHCROFT. Well, first I'd say that I have never said that people shouldn't obey their outcomes, and inasmuch as I may be spending substantial time presenting things to the Court, I think I'll be respectful to the Court.

Chairman LEAHY. And would it be safe to say—I do not want to put words in your mouth—how do you feel about your term "ruffians in robes?" Probably one best headed for the trash can?

Senator ASHCROFT. I don't think it will appear in any briefs.

[Laughter.]

Chairman LEAHY. Well, probably not on your side. You may find it quoted on the other side about you, but I think I understand your answer. The Senator from Pennsylvania?

Senator SPECTER. Thank you, Mr. Chairman.

Senator Ashcroft, we are trying to wrap up. It is late. I want to touch on a couple of areas and urge you to give consideration to them.

On campaign finance there is a memorandum of understanding between the Department of Justice and the Federal Election Commission which I had questioned the Attorney General about extensively, because there are criminal penalties, and under our law, they are to be enforced by the Department of Justice, and I would urge you to take a look at that memorandum of understanding with a view to reasserting Department of Justice authority to enforce the statutes of the United States which have penal provisions.

On the issue of espionage, I would urge you to take a very close look at the procedures which are used under the Foreign Intelligence Surveillance Act, to make sure that major matters do not fall between the cracks on the investigations which are of the utmost critical nature. Some of those matters have gone directly to the Attorney General, and have been delegated without supervision, and major investigations have been thwarted.

With respect to international terrorism, there have been tremendous advances made by the Federal Bureau of Investigation in overseas activities, leading to some really remarkable prosecutions on extraterritorial jurisdiction, something we did not have before 1984 and 1986 statutes were enacted, and I would urge you to take a close look there and to pursue that.

On the antitrust laws, I approach that very briefly, and I would urge you to take a look at areas where there can be an aggressive pursuit, and with some specificity, I would your attention to OPEC. Just in this morning's news, they are going to curtail production in order to raise prices. And there is a very solid legal theory for proceeding against OPEC under our antitrust laws, Sherman and Clayton. And an impediment had been the Foreign Sovereign Immunities Act, which prohibits law enforcement from going after acts of state, but there is an exception if there is a commercial practice and there is an acceptable international standard available, which there is now, with an emerging international consensus, that price fixing is unlawful. And what OPEC is doing, pure and simple, is an old-fashioned violation of the cartels, in restraint of trade, keep up the prices. And Americans are being victimized there, and they really do not have sovereign immunity because of a new brand of international standard. The advances in international law are remarkable in many, many fields with the War Crimes Tribunal and a consensus on international law.

And I mention those to you just in passing for your attention, because it has been a long day, and it would be my hope that we would move on to other witnesses following today's termination.

Let me ask you as a final question, Senator Ashcroft. There have been a lot of concerns expressed—and you have heard them all, you heard them all and then some—about many, many touchy subjects, and President-elect Bush has articulated a really desirable view of being a healer. And we talk about bipartisanship and about bringing America together, and that is going to be a very, very important item. And I believe that the assurances you have given on many items are really important, and if confirmed, people are going to be looking at you to see that you are going to carry them out. And I would urge you to establish a dialog with the groups which have been identified as being opposed to you, whatever the line may be, the desegregation cases, the abortion clinics, the pro-choice issue, all of these items, and show them the man that I know from working with you for 6 years in the Senate, with a sense of humor, and balance, and realism, and integrity, and very strong-held views, but a very sharp delineation between your personal philosophy and law enforcement, which we have tried to articulate and pin down, and I think you have made a lot of very important commitments.

So I would ask you in a final question, what do you see that you can do in an active way to carry forward the healing that President-elect Bush talks about, and give assurances on an ongoing basis to so many people who have raised these tough questions?

Senator ASHCROFT. While I see the time is up, let me just briefly say that—

Chairman LEAHY. I think the Senator from Pennsylvania has asked a very good question, so certainly take the time to answer.

Senator SPECTER. Senator Ashcroft, on time, I do not think there is any time limit on you. There are time limits on us, not on you. We have seen a lot of practices around here, on 10 minutes, a long speech, and a question at the end of the 10 minutes. It is a common practice for senators to take all the time, but you have the time you need.

Senator ASHCROFT. Let me just say thank you for the question. I'm delighted to respond to the question.

I am very eager to be the Attorney General for the people of the United States of America. I'm eager to talk to them. I'm eager for the Justice Department to have an elevated understanding by the public, and standing with the public. I personally feel that the Justice Department has, of necessity, been sort of inward focused in a lot of ways recently because of circumstances that have surrounded the executive branch of government, but I think we can invite people to participate in fashioning and shaping and understanding a Justice Department that will be seen as a Justice Department for all the people.

I have toyed with a variety of ideas, not presuming my confirmation, but it's hard if someone invites you to think about being the next Attorney General, not to think about what you could do. And I've thought about a variety of ways to be involved with the people, with being in various cities and asking people to come and tell me what they expect from the Justice Department, being on college campuses and asking people, young people to chat about the justice objectives for the United States of America. Some of you I've shared these dreams with, and I've even suggested that it would be appropriate for, in these sort of things outside the strict legal responsibility we have to participate together in, because I think the future of America is very bright, and I would hope that we could find a way to fashion that brightness as a team effort.

So that I look forward to reaching out to people. I don't know that I will be as interest-group oriented. I want to reach out to people, not just interest groups. But I will not reject the opportunity for individuals who are associated with groups to be involved as well, because I think it's time for the Justice Department to be seen as an instrument of American justice for all the people, not necessarily just a defense of the administration or defense of the executive branch of government. And it shouldn't be something that's merely Washington based. I think it should be something that's understood across America.

I would plan to visit—I hope to visit, early in my opportunity, if I am confirmed—personally every jurisdiction, to meet with the US Attorneys there. I want them to be inspired about what the Justice Department does. I want them to be proud of it. I want them to have a sense that there is integrity about what we do, that we'll operate based on principle, the kind of principle that—more eloquently than I could state—Jack Danforth, your former colleague, spoke to you about. It was the kind of thing he established in the Attorney General's office in Missouri, and frankly, I followed assiduously that example when I was there.

People who—a culture that doesn't have a reference to the rule of law doesn't have freedom, and I believe freedom is the circumstance in which people flourish and individuals grow. My philosophy of government is government exists so that people grow, people reach the maximum of their potential. That's what government is about, and I'd like for the Justice Department to be a part of that. So I intend to engage in a conversation with the American people as aggressively as I can, to help them understand the Justice Department, and to help them inform me about what they ex-

pect from the Justice Department. And then I would take those conversations to the President of the United States with a view toward being responsive to the people of America to give them the kind of Justice Department in which they can have confidence, and on which they could rely for integrity and justice.

And it's an exciting, very exciting thing to me. If I am honored with the confirmation of the U.S. Senate, I will make it my high-intensity effort, and I believe the outcome will be very, very satisfactory and pleasing, and I thank you for the question.

Chairman LEAHY. Thank you. The Committee will stand recessed until 7:30. During the break, Senator Hatch will check with members on his side, I with members on my side, to see if there are further questions of the nominee, or whether there are simply questions that can be submitted. You have had a long day here, and I would hope that you and your staff, but especially Mrs. Ashcroft, could take some time to relax.

[Recess from 6:38 p.m. to 7:44 p.m.]

Chairman LEAHY. Let me tell you where we are. During the break, as I had suggested we would do, Senator Hatch and I conferred. We have checked with the senators on both sides of the aisle. We do not have—assuming nothing unforeseen in later questions of other witnesses—we do not have other oral questions of the nominee.

What we will do, because there is still some of his paperwork that has not yet come to the Committee, and senators have to have a chance to see that, but also, once they have had a chance to check the transcript of yesterday and today's hearing, and once also that Senator Ashcroft has had a chance to see if he wants to make any changes in any of his answers, we have the right, both sides do, to submit further written questions to the nominee. That, of course, is a practice we have always followed with any nominee, and those answers would have to come back prior to any vote. But I do not intend to recall Senator Ashcroft tonight under these circumstances. We will hear from a Congressional panel this evening, and have questions.

Senator Hatch?

Senator HATCH. Well, I am really happy to have this basically over for Senator Ashcroft. I think he more than answered the questions, and I think that he did a very good job.

Now, it is my understanding, Mr. Chairman, that we will proceed with whoever is here tonight congressionally.

Chairman LEAHY. That is right.

Senator HATCH. But I have to take the blame, because I thought we would be going late tonight on Senator Ashcroft, which we have done, and I basically indicated to our witnesses J.C. Watts and Congressman Hulshof, that I did not think they would need to be here, so they are not.

Now, I have also requested, and I respectfully request again, that since Congressman Hulshof is the prosecutor in the *Johnson* case, that the prior practice of the Committee, at least during my tenure, where you have a witness in the case of Ronnie White, we allow Congressman Hulshof, who was the prosecutor, who wants to testify with regard to the law in that area, that we allowed them to appear together, which would be the fair thing to do. I do not think

there will be any bombastedness or anything. I just think it would be good to allow the two witnesses together and especially since Congressman Hulshof has requested in writing, respectfully, the privilege of doing so, if we could do that, I would feel very good about this. However, if we are just going to have one witness, and then throw Hulshof, who is relevant to that witness, then Ronnie White is relevant to Hulshof.

Senator SPECTER. Mr. Chairman?

Chairman LEAHY. Yes?

Senator SPECTER. I would like to second what Senator Hatch has to say. It is frequently done, really customary, where there are two witnesses who have testimony on the same subject matter, to have them appear together. I anticipate that there may well be a difference of contention as to what the facts are, and in my tenure here, which is not as extensive as Senator Thurmond's, but a while, and where I have presided at hearings, I make it a practice to bring the people in who have the same things to say, and there are frequently clashes where—for example, we had key officials of the Department of Justice and key officials of the FBI, who flatly disagreed with each other. They did not quite call each other liars, but there was a kind of a conflict where you could follow up on questions on factual matters that you do not have if you have Justice White, and then you have Congressman Hulshof, unless you are going to recall Justice White, and we are not going to do that. So, it seems to me preeminent and fair, and also, there is no doubt that what Justice White has to say is very germane. He is a major witness. And as a matter of fairness, there ought to be an opportunity for the other side to be heard simultaneously, so I would press to have what Senator Hatch has requested be the rule.

Senator HATCH. If I could just add one last thing. I think, Mr. Chairman, you have conducted very fair hearings here. This is no reflection on you whatsoever, except that we believe that the only fair way to do this is to allow the two relevant issues, on those relevant issues to be able to be on the same panel. If we do it that way, it seems to me, we get rid of the problem. People can ask their questions both ways if they would like to, or not ask any questions, and it is just the fair thing to do. If we do not do it, I would think it would be pretty unfair.

Senator DURBIN. Mr. Chairman?

Chairman LEAHY. Yes.

Senator DURBIN. Mr. Chairman, I would object to that, and I want to state my reasons for it. The difference is this: Ronnie White was rejected in his effort to be appointed to Federal District Court, without an opportunity to ever explain his point of view. He did not receive the same fair hearing that Senator Ashcroft has received during the last 2 days, or that virtually every other judicial nominee receives, and I would say this. I think he is entitled to present his opinion and his decision in the context of how he saw it and how it was interpreted. You can bring in your witnesses against him, other witnesses against him, whatever you want to do, but I think he is entitled, since he is the first Federal District Court Judge rejected on the floor of the U.S. Senate in 40 years, he is entitled to have his day before this Committee to state his position, and we should make that a record. You can put whatever

rebuttal witnesses you want on at that point, Congressman Hulshof or others, but give this man his opportunity to sit before this Committee and defend himself after what he has been through.

Senator SPECTER. Mr. Chairman, may I respond? And I have great respect for Justice White, but the issue is not what happened to Justice White. The issue is what—his bearing on Senator Ashcroft, and we need to have a procedure which would enable this Committee to find the facts fully.

Now, I think they ought to be together, but perhaps some middle ground would be that if Justice White testifies, and then Congressman Hulshof testifies, and Justice White remains, so that we are able to follow up with Justice White on what Congressman Hulshof has said. That is the only way we can have any conflict, which I anticipate will be present, and to let us find the facts. And the issue is not what happened to Justice White. The issue is what is going to happen to Senator Ashcroft.

Chairman LEAHY. If I might, just so people understand, Congressman Hulshof was invited to appear with a panel tonight. He will have an opportunity to appear. I have not met Congressman Hulshof, but he was kind enough to send me a detailed letter explaining to me how to do my job, and what the Senate should do in carrying out its responsibility. That is very helpful to the Senate, and I appreciate his giving us the benefit of his experience and wisdom from the other body, as I always am. Perhaps I am a slow learner and I have not understood fully what I should do to follow his directions.

But in any event, what I will do as Chairman, I will hear from a congressional panel, those members who are here today. Congressman Hulshof and other members who are unable to be here tonight will also have an opportunity to be heard. I mean, I will try certainly to get them onto a panel during the time when I am Chairman. If I cannot, I am sure that Senator Hatch, during the time he is Chairman, will be able to get them on to a panel. The irony is, in a question of fairness, Congressman Hulshof will get the last word because he will be testifying after Justice White testifies. Now, it may well turn out, and a suggestion was made of having Justice White testify again, maybe for a different reason than what the Senator from Pennsylvania suggested. It may be because he feels he should talk. But the point is, we are not talking about the confirmation of Justice White. We are talking about the confirmation process of Attorney General Nominee John Ashcroft.

Now, he would be able to testify by himself, although we have broken into his testimony several times at the request of Senator Hatch, on behalf of himself and the Bush transition team, to have a long series of senators come in and speak on his behalf. We did that again today. It has been somewhat unprecedented. We have had a Senator from Texas, a Senator from Maine, a former Senator from Missouri. I, in turn though, out of courtesy to the nominee, did not bring, while he was here, did not bring another former Senator from Missouri who is opposed to his nomination I did not bring other Members of Congress who are opposed to his nomination to come in during that time. He was allowed to interrupt any

time Senator Hatch told me he wanted to, to bring in people to speak on his behalf, sit with him at the witness table and do it.

But just so that we are not here all night long talking about what is going to happen, we will go ahead. I will include in the record the kind letter from Congressman Hulshof, explaining how I should do my job I appreciate suggestion of course—I am always open to suggestions, and trust me, I get a lot of them, 17,000 e-mails in 1 day this week. And we will go ahead with our—

Senator SPECTER. Mr. Chairman, did you say you are putting the letter in the record?

Chairman LEAHY. Yes.

Senator SPECTER. OK. Because I think that is important, because this letter does not do what you said. This letter does not tell you how to do your job, and I think it is a disservice to Congressman Hulshof for you to make that statement. It simply does not do that. I want to read the letter.

Chairman LEAHY. Well, the letter was given to the press. I heard about it after he gave it to the press.

Senator SPECTER. I think I have the floor, Mr. Chairman, and I would like to read the letter, because Congressman Hulshof is entitled to not be characterized as doing something as taking on the business of the Senate. This is what he says: “Dear Senator Leahy, As a matter of personal privilege, I respectfully request that I be allowed to testify on the same witness panel as Judge Ronnie White during your confirmation hearings on the nomination of Senator John Ashcroft to be United States Attorney General. My appearance before the Judiciary Committee does not come because I am a sitting member of the U.S. House. My appearance is solely because I was co-counsel in the prosecution of a murder case which became a critical issue during the consideration of Judge White’s nomination to the Federal bench. I believe I can provide significant and unique testimony relevant to the *State of Missouri v. James Johnson* and Judge White’s expected testimony. Your current invitation to have me testify as part of a panel consisting of interested Members of Congress will not provide the Judiciary Committee with a full, fair and accurate account of the *James Johnson* case. I respectfully request that my appearance occur on the same panel as Judge White. Any other invitation would reflect a politicization of the hearing process and would be unfair to the Senate, the incoming administration, and the American people. Sincerely, Kenny Hulshof.”

Now, I believe that is very respectful, but if we are to have a process where these witnesses are not going to testify together and it comes down to the raw power of the Chairman, then my suggestion would be to the incoming Chairman, that we reconvene the hearing on the afternoon of January 20th or Monday, January the 22nd, and call the two witnesses.

Chairman LEAHY. Well, the incoming Chairman, of course, would have that opportunity.

Senator HATCH. I do not intend to do that, but let me just bring this to closure because we have to go to our next—

Senator KYL. Mr. Chairman, I still have not been recognized on this point, and I would like to be as a member of the Committee.

Senator HATCH. Let me just say this, and then of course I will step aside. Both Justice White and Congressman Hulshof are fact witnesses to the Ashcroft nomination. They are not appearing in their official capacities. All I am asking is for basic fairness. Now, the Chairman can do whatever the Chairman wants to do. I am not trying to embarrass him. I just feel deeply about this. And I think I have the reputation of the last 6 years that I have been Chairman of this Committee before now of allowing the Minority to present opposition witnesses. I do not think that is an untoward request. And what it looks like is that if you just have Justice White and no opposition witnesses, a fact witness who is relevant to this on the same panel, then basically it just looks like you are setting aside one person and giving that person a single panel without any opposition, and then throwing a Congressman in the mix with a bunch of very important, but other witnesses who are not at all fact witnesses with regard to the issue in question. So I just respectfully ask the Chairman to think it over, and I hope that you will do this because I think it is the right thing to do.

Chairman LEAHY. What this tends to ignore though, is the fact that because Congressman Hulshof is not here this evening, as we had expected him and several other members—

Senator HATCH. Well, neither is Justice White.

Chairman LEAHY. And several other members of that panel are not here this evening. He actually has an advantage that everybody seems to be overlooking. He gets to appear after Justice White. He gets the last word. I do not know what could be more fair.

Senator HATCH. Will he be on his own panel?

Chairman LEAHY. I am going to recognize—well, if you want to have him next Monday, you can, or you can have him Saturday afternoon as—

Senator HATCH. Frankly, I am asking for fairness. I am not asking for anything else. If you do not want to do it, you are Chairman, and we will live with it. However, I am telling you that we will put him on afterwards, but make him solely at the table then just like Justice White.

Chairman LEAHY. Orrin, you can do whatever you want. Now the Senator from—and we do not need histrionics—but the Senator from Pennsylvania suggested Saturday afternoon. I, like a loyal American, U.S. Senator, will be at George Bush's inauguration Saturday afternoon, but you do what you want.

Let me—and I am going to recognize the Senator from Arizona first, but let me call to the table, so we can at least try to get started—you are after all the one who asked me to move along here—Congresswoman Maxine Waters and Congresswoman Sheila Jackson Lee. Would you please come up and take places.

And I yield to the Senator from Arizona.

Senator KYL. Thank you. Mr. Chairman, for 6 years I have been a Subcommittee Chairman of this Committee, and I have held numerous hearings in which we created panels. And I have been told in every instance, where we had a witness on one side, that of course, we had to afford the Minority the right to have a witness on the same panel to deal with the same issue.

I inquired as to whether that was a rule, and I was informed, no, it is not a rule, but it is a longstanding tradition and practice of the Committee, because of course, it represents the rule of fairness that where you have a particular issue involved, it is fair for the Minority to have a witness on the same panel as the Majority.

I would urge the Chairman to think this over as well, because the Chairman will be setting, I think, a very—if I can have the Chairman's attention on this, because I am actually speaking to you, Mr. Chairman, I do not want to be unkind here—I would urge the Chairman to think this over carefully because the Chairman would be setting a precedent here. We are going to be in the Majority, at least for a while, starting next Monday. And we would then have the right, under the last action of this Chairman, under the precedent that he set, to deny the Minority the right to have members or witnesses on panels that we create. I do not think that is a very good precedent. I think we should stick with the precedent of the Committee. It is longstanding. It is traditional. It is fair, and it is pretty obvious, I think, what the effect of having just one witness on this panel would be, especially if it were not immediately followed by our witness dealing with the same subject, which as I understand it, is not the Chairman's intention.

So while up to now I would consider this process very fair, I think it would be eminently unfair to proceed as the Chairman suggests, but worse, would create a precedent that unfortunately would provide the temptation to those in charge from thereafter to simply do what they wanted, irrespective of the interest of the Minority. So I would urge the Chairman to think this over this evening.

Chairman LEAHY. I appreciate that. The precedent, of course, already exists, certainly has in the 26 years I have been here, three times in the Majority, twice in the Minority, and I have seen the precedent many times.

If Congressman Hulshof is that concerned about appearing with his colleagues from the House, we can arrange a time.

Senator KYL. That is not what we are asking.

Chairman LEAHY. We can arrange a time for him to appear by himself, so he would have the same treatment that Justice White is having, but I told all of you I would try to move these things forward. Senator Hatch and I will talk about that. Let's start with the witnesses who are here today.

Senator HATCH. Let me just make one last comment. Regardless of what your decision is here today, should I become Chairman of this Committee, I am going to practice what I have always practiced, and that is, if the Minority has an offsetting witness, they are going to be able to call that witness. And I do not care what your decision is, that is what I am going to do. But I asked my colleague, and we have gotten along very well, and frankly, I think you have done a very good job in these hearings. I am hopeful that you will think this over, and I would even agree to let Justice White go first if you want, and then call Ken Hulshof, Congressman Hulshof, by himself immediately afterwards. And then if Justice White does not like what he says, you can bring him back. That would be fine with me. But I would like to have this resolved

because it is only fair. If it was not fair, that is another matter, but it is so clear on its face that it is fair.

Now, just to make the record clear, should I become Chairman, the Minority will have the right that I hope we will not be barred from having as the Minority here, and I will just treat it that way. So leave it at that. That is all I can—

Chairman LEAHY. As the Senator from Utah knows, I have stopped this hearing several times to bring in witnesses that I had not been told we were going to have until the very last second. I have accommodated them. I put them in. I have been trying to accommodate everybody there. We could have had a whole other round at his request, and on behalf of Senator—

Senator HATCH. We were prepared.

Chairman LEAHY.—Ashcroft though, we will go into our private conversation. I worked at having senators who might have wanted to ask further questions, not to do it.

Congresswoman Waters.

**STATEMENT OF HON. MAXINE WATERS, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Representative WATERS. Thank you very much, Mr. Chairman and members. I appreciate the opportunity to appear before you this evening. I respect the tremendous responsibility that you have in a matter such as this. It is very serious, and I know that you will do the very best job that you can. I am here because this issue, this confirmation is extremely important to me and to people that I represent.

I have listened very carefully to Senator John Ashcroft yesterday and today. It is clear to me that John Ashcroft is attempting to deny the passion and poor judgment he has displayed on certain critical issues, such as abortion, guns, civil rights and voter rights. He would have us believe that despite his extreme positions, we should trust him to be the Attorney General of the United States of America with the responsibility for enforcing the nation's laws.

I hate to say this, members, but I must share with you, I simply do not trust John Ashcroft. I believe he is simply saying whatever he believes is necessary to be confirmed. John Ashcroft has a record of opposing minorities nominated to key positions by President Bill Clinton, such as Bill Lann Lee, David Satcher, Judge Ronnie White.

And it was the unprincipled attack on Judge White that really caught my attention. Ronnie White has bipartisan support during the Judiciary Committee hearing. He was also supported by Kit Bond, the other U.S. Senator from Missouri. John Ashcroft used Ronnie White as a pawn in his reelection campaign. He manufactured an argument that Ronnie White was soft on crime. After Ronnie White's confirmation had been voted out of Committee, John Ashcroft organized fringe police groups to oppose the confirmation. John Ashcroft then recruited Kit Bond and other Republicans to vote against Judge White on the Senate floor. Ronnie White's career has been seriously damaged by an unusual party-line vote, simply because John Ashcroft misrepresented this African-American man as a poster boy for soft on crime, and portrayed

Judge White as being too liberal and too dangerous to be entrusted with a lifetime tenure to the Federal bench.

All of this was a shameless, cheap political sabotage of a fine judge, who had worked his way out of poverty to obtain an education and serve his country and his state. What John Ashcroft did was not honest. He knowingly distorted Ronnie White's record and misrepresented decisions Judge White had made twisting and distorting his judicial record.

John Ashcroft's position on abortion is extreme. He rabidly opposes a woman's freedom of choice even in cases of incest and rape. In addition, information disclosed by Senator Kennedy during this hearing today, documented the actions John Ashcroft took to thwart voter registration by the people of St. Louis, particularly the black, the poor and the disadvantaged. These revelations are startling and unsettling.

I am particularly concerned about his record in Missouri because I was born in Missouri, attended both segregated schools in St. Louis, Missouri, and I witnessed poverty and exclusion of African-Americans in that city. We had a rough time growing up in St. Louis, Missouri.

I was in St. Louis 4 years ago during an election where there was disenfranchisement, and I called the Justice Department from there.

I know that people like John Ashcroft—now I know that people like him are responsible for dashing the hopes and dreams of poor people and African-Americans because of the kinds of decisions they make in their role as public policymakers.

We have heard no reasonable explanation from John Ashcroft about his obstruction of efforts to educate and train voting registrars from St. Louis. When these disclosures are added to his attempts to block desegregation programs in Missouri, we are left with a nominee who should not and must not be confirmed.

I would be happy to answer any questions you may have.

Chairman LEAHY. I should point out also Congresswoman Waters has been here a great deal, and I know that Congresswoman Jackson Lee has been present throughout these hearings. She is probably as weary as the rest of us, but the Senator from Utah and I see her often in the House Judiciary Committee. She is a respected member of that, and I am glad to have you here.

Congresswoman, go ahead.

**STATEMENT OF HON. SHEILA JACKSON LEE, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Representative JACKSON LEE. Thank you very much, Mr. Chairman. Might I add my appreciation for the fair and impartial way in which you have conducted these hearings, and to Mr. Hatch, the ranking member, let me thank you as well for your graciousness and those of the members, and members who are here, Senator Durbin, and, of course, the members who are here as well that were kind enough to allow us to participate this evening.

If I might, to capture the essence of the nature of concern that many of us have with respect to the nomination of Senator Ashcroft, I think it goes to a statement made by Dr. Martin Luther

King in 1962, "It may be true that law can't make a man love me, but it can keep him from lynching me."

Certainly, many of us in the 21st century would like to think that those kinds of travesties are behind us, and if I was here to contest Senator Ashcroft's conservative views, I would be hypocritical. If I was here to contest his religious vigor, I would be likewise hypocritical, for our democracy allows us to hold a number of different and diverse beliefs, and I am proud of the fact that we live in a democratic society that gives us that privilege.

But I do want to say to this Committee that I am a product of a segregated America. I know what it is to be bussed to a school to integrate that school. I have lived with people who in varying ways have either been hurt or harmed or felt intimidated because of the color of their skin, because someone treated them differently.

I had maybe the privilege to understand what it is like to ride in the back of a train with a brown paper bag with food because I could not go to the car where food was served.

This is an emotional and passionate time for many of us, and we thought that as we crossed the bridge into the 21st century, we might have a time we might not have to look upon those times in our lives when we were treated so differently and distinct and others took it lightly that we should even be concerned.

So the reason I am here as a member of the House Judiciary Committee and representing constituents from a Southern State, the State of Texas, that itself has faced the challenge of integration over segregation, is to tell you that what bothers me and bothers my constituents is what has been shown in Senator Ashcroft's record.

Chairman Leahy, I have spent time in this hearing room, and I have heard a man say quite differently, quite in contrast to his record. He speaks eloquently now of *Roe v. Wade*, but I know as a young woman growing up what it meant not to have the protection of the law, women who lost their lives in back-room alley abortions. *Roe v. Wade* is the law of the land, but it is a life-and-death issue.

I also understand very well this whole question of discrimination because I am a product of watching Martin Luther King be assassinated, and I take very seriously his day of honor, January 15th, the day we honor him and as we honored him this week. Many of us still cry when we hear the words "We shall overcome."

So I come, again, I hope not in the viewpoint of being in opposition to an American who has presented himself to this country for service, nor particularly in opposition to the President's right to choose his Cabinet. I would say to President-elect Bush that I was taught to believe a person's word, and I do believe he indicated that he would seek to find ways of healing this Nation and bringing us together.

I do believe when you reject people because they are different, such as Ambassador Hormel, that you do raise the question of whether you can accept in your spirit, in your heart, and in the practice of law the fact that we all are created equal.

Charlene Hunter, the Little Rock 9, and James Meredith represent the names we somewhat identify with kicking open the doors of opportunity quality in higher education. It doesn't seem

right that just about 20 years ago, Attorney General Ashcroft was in the middle of denying equal opportunity to education. It seems that it was something that did not really have to be done, which is one of the reasons that I come before you.

John Ashcroft as Attorney General, as Governor of the State of the Missouri consistently opposed efforts to desegregate schools in Missouri which for more than 150 years had legally sanctioned separate and inferior education for blacks.

Let me cite for you a report, the Woodstock Report, that talks about the fact that we have not overcome in desegregating our schools. As recently as 1993, it said while there has been significantly an amount of success in school desegregation of the last 25 years, in general, segregation has not decreased significantly since 1970. In fact, in some areas, it has gotten worse. Today, 22 or 23 of the 25 largest central city school districts in this Nation are predominantly minority. What that means to this Committee is that, yes, an Attorney General of this vintage, of this era, of this millennium will still have issues of how do we desegregation.

Missouri had a long and marked history of systematically discriminating against African-Americans in the provision of public education, and during 45 years of slavery, the State forbid the education of blacks. After the Civil War, Missouri was the most Northern State to have a constitutional mandate requiring separate schools for blacks and whites. This constitutional provision remained in place until 1976. For much of its history, Missouri provided vastly inferior services to black students.

After the Supreme Court's ruling in *Brown v. Board of Education*, the Missouri Attorney General's office, rather than ordering the dismantling of segregation, simply issued an opinion that local districts may permit white and colored children to attend the same schools and could decide for themselves whether they must integrate.

Local schools in St. Louis and Kansas City perpetrated segregation by manipulating attendance boundaries, drawing discriminatory bussing plans and building new schools in places to keep races apart.

The St. Louis case that is relevant in this proceeding over these next days was filed in 1972. St. Louis had adhered to an explicit system of racial segregation throughout the 1960's. It took a long time. White students were assigned to schools in their neighborhood, black students to black schools in the core of the city. Black students who resided outside the city were bussed into black schools in the city. The city had launched no effort to integrate. It simply adopted neighborhood school assignment plans that maintained racial segregation. There was a need for healing. There was a need for leadership. There was a need to get outside of the box of the representation that the Senator made that he was only representing the State.

In 1972, Minnie Ladelle and a group of black students filed a class-action lawsuit against St. Louis Board of Education. In contrary to the Senator's testimony, the State was made a party to this action, and the Eighth Circuit ultimately found that the State and the city school board were responsible for maintaining school segregation for many years following *Brown* and that they acted in

violation of the constitutional rights of the plaintiff school children. With this ruling, the Eighth Circuit ordered that a desegregation plan be revised.

In 1980, the parent and student plaintiffs along with the city board amended complaints seeking a metropolitan school to segregation remedy. They did it voluntarily. They worked together. Subsequently, the District Court announced a voluntary inter-district desegregation plan and added that the 22 St. Louis County school districts as defendants—or added them as defendants.

Senator Ashcroft, then Attorney General, challenged the desegregation plan. He argued that there was no basis for holding the State liable and that the State had taken the necessary and appropriate steps to remove the legal underpinnings of the segregative schooling as well as affirmatively prohibiting such discrimination. The courts rejected the attempts. They characterized his acts as dilatory.

In 1983, the city school board and the 22 suburban districts all agreed to a unique and comprehensive settlement, implementing a voluntary 5-year school desegregation plan for both the city and the county. Importantly, the plan was voluntary. It relied on voluntary transfers by students rather than so-called “forced bussing.” The District Court approved the plan, and, again, Attorney General Ashcroft representing the State was the only one that did not join the settlement. He opposed all aspects of the settlement. In fact, he sought to have it overturned.

The Eighth Circuit upheld, however, most of the provisions of the plan and emphasized that three times over the prior 3 years, it had specifically held that the State was the primary constitutional violator. Not satisfied then, Senator Ashcroft sought review in the Supreme Court and was denied his request, and even after his unsuccessful appeal, Senator Ashcroft continued to obstruct the operation of the settlement leading the District Court to conclude if it were not for the State of Missouri and its feckless appeals, perhaps none of us would be here at this time.

And when he became Governor, Governor Ashcroft continued to obstruct the desegregation plan of the State’s educational institutions well into the 1990’s. Judge Stephen Linbaugh who was appointed by President Reagan actually stated that the State was ignoring the real objections of this case, a better education for city students and public schools.

Might I say to you this. I wanted to chronicle the history of this desegregation order and plan not because this Committee is not really in its own way in securing its own information, but I personally needed to add to you a very disheartened voice.

I don’t know how long I can continue, maybe, without feeling a real deep pain. I would hope that Senator Ashcroft’s representation before this Committee were absolutely true, that he could vigorously defend the laws whether it is *Roe v. Wade*, affirmative action, as it is in the Federal law. It is mend it, don’t end it. It still exists, the Voter Rights Act of 1965 which has to be reauthorized.

But there is another key element to being the Attorney General of the United States of America. It is the perception that vulnerable people have about what the Federal Government does, and I am reminded of what happened in Little Rock. They called Presi-

dent Eisenhower. They called President Kennedy. They called President Lyndon Baines *Johnson*, and the men that had to act at that time, since it was not women, were the Attorneys General of the United States of America, and when they acted, they acted sometimes out of the realm, not out of the rule of law, but out of the realm that what was popular or what was standard or what was the basis or maybe what was even centennial law in order to ensure that vulnerable people were protected. Every single day, more so than Health and Human Services or Commerce, more so than the Secretary of State, the Department of Justice is called upon to work for the vulnerable, Alabama, Ohio, Utah, Vermont, Illinois, California, Texas, and elsewhere.

What disturbs me, Mr. Chairman, and why I ask this Committee to consider the record of Senator Ashcroft is the fact of whether or not he can be the protector that needs to be for the people of the United States.

I will close by simply saying this. I know that Judge White will present himself tomorrow. I, however, believe that temperament of words is a key element as well. All of us will live by what we say, and I believe that words that will suggest a jurist has a pro-criminal bent based upon one case or cases that are a bare minimum, if you will, of the cases that he decided shows some question of an individual's temperament for protecting the vulnerable.

I thank the Committee for their kindness and the opportunity to make my testimony this evening.

Chairman LEAHY. Thank you very much to both Congresswoman Waters and Congresswoman Jackson Lee. I think your testimony is extremely important, and I can't begin to summarize either the eloquence to the depth of your statement.

Let me touch, both of you, on three points. There is a discussion of *Roe v. Wade*. I remember the days of the back-alley abortionists. I prosecuted one of the worst people I ever knew. We first found out about what he was doing when I was called to the emergency room of our local hospital. A young woman in her teens, a college student in the area of her school nearly died from a botched abortion. She lived, sterile as a result.

This particular person who I then prosecuted as doing this would be found that he had arranged this back-room program. He would bring young pregnant women to Montreal. The abortions would be conducted by a woman who learned how to conduct abortions while working for the SS at Auschwitz. He would then blackmail these women for money or for sex.

Now, I was a young prosecutor, a father of three children, in my twenties. I prosecuted him. I convicted him, but I went a step further. I arranged a case which became *Beecham v. Leahy* in Vermont. It was a precursor of *Roe v. Wade*, and basically Vermont took the same position as *Roe v. Wade* and said that abortions under appropriate mediate circumstances and all would be legal. I had already arranged that in our county because I made it very clear there not be prosecutions within the hospital, period. It is now the law in Vermont, anyway. First, it was case law. Now it is statutory law. So I understand that.

You had spoken of Justice White, and I understand how easy it is to condemn a judge who usually cannot respond, but I know and

I had spoken about this on the floor of the Senate how terrible it is when there is condemnation because one disagrees with a judge who said not that I want to release a person who has been charged with a heinous crime and by all accounts was guilty of a heinous crime. He never said I wanted to release him. He said, "I want to make sure he is guaranteed a fair trial."

I mean, to condemn him for that is almost like condemning an attorney who is assigned to represent a criminal. They are fulfilling and upholding our Constitution to do.

Now, some may agree or disagree in the law that he applied, but what he was saying is not release a criminal but guarantee that all of us have a fair trial, because that guarantees that the guilty are punished, the innocent remain free.

Now, how anybody can condemn that—and I was both a defense attorney and a prosecutor—I don't know. He has been labeled a number of things. He voted to uphold convictions 95 percent of the times that the Justices of the Missouri Supreme Court appointed by then-Governor Ashcroft. So I understand that.

The one area that your experience, both of you—and I have known you both for years—that really touches me that I can't know—I come from a State which is 98, 99 percent—I haven't got the latest census records—white. I think probably—when we talk about ethnic groups or minority groups in Vermont, we are talking about recent immigrants to our State either from Canada or other countries, like my grandparents or my parents-in-law. The relationships between whites and blacks I have learned in my years of going to law school here or on the first trip that I made as an 18-year-old, which would be 1958, to Washington with my parents, sightseeing, and seeing segregated water fountains. Inconceivable in our State of Vermont. I mean, we wouldn't know what you'd do with them. Seeing that here in Washington, D.C., the capital.

Now, what I have learned, though, in my years here, I think, a depth of the feeling that you have expressed far more eloquently than I ever could. And what I have learned is that all of us, white, black, or whatever, who serve in positions of trust in the government of this country or the government of our State have a responsibility to everybody. That is not just to say I have no bias, I have no prejudice or anything else, but to make sure you take the steps necessary to demonstrate that it is an inclusive not an exclusive society, a society I want for my children and grandchildren. I want to be inclusive, not exclusive.

We are a Nation of 280 million Americans. It is our inclusiveness that makes us strong. It is our exclusiveness that shatters us and makes us weak.

Now, there are only 100 of us who can vote on a question of a nomination, a Presidential nomination. When we vote, we have to ask, Do we include or do we exclude?

The Senator from Utah.

Senator HATCH. Thank you, Mr. Chairman. I won't keep you long. I want to express my gratitude to both of you for being here today and being here this late this evening and for the eloquent statements that you have made.

I will just say this: I was raised in poverty, and I learned a trade as a young man. I was fortunate enough because my father was a

skilled tradesman, and I was able to join the union. We had three African-American lathers in our local, and they always got the worst work there was. I worked with them, not very much, but I was one of the few who did. I was proud to do it, and that meant on one occasion, if I can remember correctly, climbing with about a 65-pound tool box on one arm straight up five floors up to about the 15th floor of a building, one rung at a time, and then putting floor lath down, which was the most back-breaking work there was, which is what they were given. So I sense very strongly and feel very deeply about your feelings.

Now, I also know Senator Ashcroft very well, and I believe, having watched him very closely, that when he says he will do something, he will do it. He is a religious man. He is a very good man. He has had 30 years of public service—at least 27 to 28 years, I guess. I say about 30 years. And I am sure anybody who has been in public work for that long is going to have a record that can be condemned from time to time by somebody.

But everybody here knows he is a man of integrity, and when he says he will do something, I think he will. But I just wanted to make that point. I don't want to prolong this.

I want to thank you both for being here. I respect both of you, as you know, and I am grateful that you could be here and express your particular points of view.

Chairman LEAHY. Senator Durbin?

Senator DURBIN. Thank you, Mr. Chairman.

To my two friends and former colleagues from the House, thank you for your patience. I have watched you all day sitting there listening as we have gone through this Committee hearing, and it says a lot about your commitment to this issue and this nomination that you would wait here for this opportunity to speak.

And, Congresswoman Waters, I grew up across the river in East St. Louis, and so we come from similar backgrounds.

And, Congresswoman Jackson Lee, thank you, too, for being here.

I am a product of the 1960's. I naively believed as a college student that if we could pass those civil rights laws that my children wouldn't even understand what racism was all about, wouldn't understand what prejudice meant. I would have to sit down and explain that is the way it used to be.

Things have gotten better, and thank goodness for that. But I have come to understand that it just isn't the law that makes it better. You need a government that believes in that law, that enforces that law and implements that law, and doesn't just do it out of duty but does it out of a heartfelt commitment. That government is not an abstract unit. That government consists of people. And the reason why this Committee, this Judiciary Committee, seems to struggle with the question of race so frequently is because the Department of Justice is really the place we turn to when it comes to civil rights.

We want to know that whoever is heading that Department not only understands the law and their legal obligation but has a commitment in their heart to make sure that it works.

I have not accused Senator Ashcroft of racial prejudice, nor will I. I don't believe that is appropriate. But I do question some of the

decisions which he has made which have raised questions in the minds of people who wonder if he has that heartfelt commitment.

What happened to Justice Ronnie White should never happen to anyone. To be pilloried on the floor of the U.S. Senate as being pro-criminal after what that man has gone through in his life, in his professional background, that is why I believe it is appropriate for him to sit in that chair tomorrow by himself with that microphone and defend himself, for the first time in over a year to have a chance to tell his side of the story. The rebuttal witnesses will have their time, too. But he deserves that respect.

And I said it to Senator Ashcroft today, and I will repeat it. I believe what happened to him was disgraceful, and I don't believe the facts back it up. And if Senator Ashcroft disagreed with one decision or another, that is not enough to reject a man who had waited over 2 years for that opportunity.

Congresswoman Jackson Lee, that school desegregation story that Senator Kennedy has returned to time and time again is an important one, and it is, I think, especially important to note that we are talking about a voluntary desegregation plan. The people in St. Louis came together and said put the judges aside for a minute, let's let the parents and teachers and administrators and interested citizens find the solution for our community, and consistently ran into opposition from Senator Ashcroft in his official public positions. That is what causes some concern and questions as to whether he has the heartfelt commitment to make sure that the laws are implemented well.

Thank you both for being here. Your testimony makes a big difference.

Chairman LEAHY. The Senator from Pennsylvania.

Senator SPECTER. Thank you very much, Mr. Chairman. Just a word or two.

Thank you for coming. Thank you for staying. We are in the 11th hour of this hearing today. At 10 a.m., it was standing room only. Now there are plenty of seats. If anybody wants to come and see the hearing, there is easy access to the Russell Senate Office Building.

I appreciate what you Congresswomen have had to say. You are both very, very vigorous advocates. Congresswoman Sheila Jackson Lee is outspoken. She has outspoken me on a number of occasions when we have been on shows together. And with Congresswoman Maxine Waters, just a very short story. I chaired the Intelligence Committee a few years back, and we were having a hearing on whether the CIA was selling narcotics in Los Angeles to finance the contras. And Congresswoman Waters came in to quietly raise a point or two, and I invited her to sit on the panel, made her a part of the Senate panel. I demoted you for a day, Congresswoman Waters.

And I understand your concerns about civil rights, about the issues you have raised, and I won't detail why I understand them, but I do. And I don't have to talk about a record here. We all can't agree on everything, and my vantage point of Senator Ashcroft is a little different, having worked with him very closely, and he has answered a lot of very important questions. And there will be a lot

of Congressional, senatorial oversight. But you are a couple of fighters, and I have great respect for you.

Thank you.

Representative JACKSON LEE. Thank you, Senator.

Chairman LEAHY. I thank the Senator from Pennsylvania.

The senior Senator from New York.

Senator SCHUMER. Thank you, Mr. Chairman, and let me join all of my colleagues here in the Senate in thanking the two Congress Members not only for their testimony but for their diligence and patience. They are both former colleagues of mine, and we both worked together, Maxine and I on the Banking Committee and Sheila and I on the Judiciary Committee. And we had a lot of good times over there.

Let me ask just one question here, and I think this is—I agree with Senator Durbin and all of my colleagues. I do not believe that Senator Ashcroft is a racist. I believe that he has appointed people of color to high office, and I think those of us who are on the more liberal side of the spectrum shouldn't demand that diversity means ideological similarity.

What troubles me here is a certain insensitivity, I guess I would say, to the long and tortured history of race as a problem in America. And to me, that insensitivity deals with the always present or often present double standard. In other words, the way I would look at something is I would try, and I think we all should try, to be very careful. When you are opposing a black person for an office, you ought to make sure that you have imposed the same standard on everybody else. And you wouldn't normally have to do that if we didn't have a history of racism and if we didn't have a history of racial division. Then you would just say let's look at the merits and go for it. And certainly my views on crime issues and the views of both of you are not quite the same, as we learned during the crime bill. But that to me is not the issue. It is not a question of whether Judge White was soft on crime. Senator Ashcroft could well believe in good conscience that he was.

The question is: Did Senator Ashcroft apply the same standard to Judge White's, quote, soft-on-crime stands that he applied to other judges? I can't remember the numbers in his testimony, but he approved, he voted to approve something like, I don't know, 210 out of the 240 judicial appointments that President Clinton put together.

My guess is—I have not researched this, although I hope by tomorrow morning I will—that a good number or some number of the judges that Senator Ashcroft voted for were probably more liberal on crime issues than Judge White. That is the troublesome thing here.

I think as a Senator, as an American, and certainly as an Attorney General, we need somebody who is going to be sensitive to that issue, that because a double standard has existed in America for so long, we have made progress in eradicating that standard over the last 30 or 40 years, but it is still there all too often, that one has to be sensitive to that. And the job of Attorney General demands particular sensitivity.

I understand there was a political campaign going on, and I understand that when you get down to the wire there are lots of

things any human being, all of us included, might do. But I think there are certain areas off limits, and one of them is not being sensitive to that double standard because double standards have been so poisonous to America for our history. And I just wonder if either of you would like to comment on that concept.

Representative WATERS. I certainly would like to comment on that concept, Senator. I want to try and share something with you that may help you to understand our very, very deep feelings about something like this.

First of all, let me just say this: Coming up, having been reared in St. Louis, Missouri, where there was a lot of poverty and segregated schools and parents who were striving very hard to give their children a chance—and, I mean, it was rough. Just as Judge Ronnie White describes how he used to clean up, worked as a janitor as a kid in the White Castle stores, we started working when we were 11 and 12 years old. We didn't work for extra money. We worked because if we didn't work, we wouldn't have any clothes to go to school with. And during the summertime, we took jobs in segregated restaurants. I worked in Thompson's where black people couldn't eat. And at lunchtime, we could not eat in the restaurant. We had to eat in the basement. We did that because we had to have clothes to go back to school in September.

All of the kids in our neighborhood started work at a very early age, and many of us not only bought clothes, but the dollars that we earned helped to feed the other kids. There was no birth control. My mother had 13 children. She had a fourth-grade education. And she worked on the polls. She didn't know a lot. She could not help a lot of the people who wanted to vote. That's why this business about excluding St. Louis in the voter registration training of registrars kind of strikes at me. I watched her work on the polls and do the best that she could. She believed in voting, and a lot of people in our neighborhood did not believe in voting.

And so when you talk about these things, we are not relating to them in abstract. It touches us very, very deeply, and it hurts.

Now, when you talk about the insensitivity, it could be described as that. But, you know, there is something called 1,000 nicks.

Chairman LEAHY. What?

Representative WATERS. A thousand nicks. They add up. And when the nicks continue over a period of time, then you define yourself. You define yourself in ways that many of us who have had to be on the lookout all of our lives for the obstacles, how to get around them, how to keep people from limiting our opportunity. We know it when we see it. And he fits the description.

And I want to tell you that the insensitivity that you describe is even deeper than that, because to be an African-American man who has had to struggle through poverty and struggle through all that he had to go through with, knowing that you have to be better than most in order to get something like an appointment to the Federal bench. There are not many of us who get appointments like that. And you work your way up, and you work hard. You play by the rules. You do everything that you possibly can, and you get the support in the Judiciary Committee, bipartisan support. And you have a lot of supporters with you—only to be stopped on the floor in an unusual and extraordinary way is beyond insensitivity.

You cannot fall back and describe yourself as being a person of high moral character and a person deeply steeped in religion. We know something about religion, too, and it teaches us to be better than that. You don't destroy human beings simply because you have the power to do it. You help people. You don't take this vulnerable African-American man who has worked all of his life against the odds to get to a place where most of us will never get and sandbag him because all of a sudden you have got an election and he becomes the poster boy for your election, and you can only be appealing to a certain element in our society with that kind of argument is beyond sensitivity, Senator.

And I want you to know that that is when he really caught my attention. And I want to tell you, he could sit here and he could say to us over and over again, Well, I did that then, but I am going to be better, yes, I know I have been passionate on this, but I am going to enforce the laws.

It does not ring true. It does not ring true.

And let me close by saying this, and it is kind of a secret I will share with you about what happens in African-American communities and in homes. We fear for our children, and we fear for these black boys. And I can recall when my son was in school in a certain place in the State that was known to have Ku Klux Klan activity. And he met a very nice young white boy who wanted him to go to his house for Thanksgiving. But it was in a community where there were no blacks, and this community had a reputation. And I said to my son, You can't do that, you cannot do that. You cannot be caught in a community where we know there have been some problems in the past, no matter how much you like your friend and no matter how good you think he is. He probably is a very fine person.

But we know that if you get caught at the wrong time and the wrong place, you will become fodder for people whose intentions are not honorable, for people who are racist, for people who would destroy you. And we have to continue to remind our children day in and day out about what they can't do, where they can't be, how they got to be careful. And Ronnie White followed all of the rules and he had to be careful in order to get where he got. And to be treated the way that he was treated, to be sandbagged the way that he was treated, he will never get over it, and his career may have been damaged forever.

And so, yes, I understand what you are saying, Senator, about sensitivity. But let me just tell you, those of us who have to guard against getting sandbagged all of our lives call it something else. It goes a little bit deeper than simply a lack of sensitivity.

Representative JACKSON LEE. Would the Chairman allow me to—
Chairman LEAHY. Of course.

Representative JACKSON LEE. He said one or both of us, and I feel compelled to respond, Senator Schumer, because I think you captured the relationships, the working relationships. We can all work together. You worked with both of us, Congresswoman Waters and myself, and Senator Hatch made a comment as well, along with Senator Durbin, on this whole issue of race. And I want to just refer you—and we ask the question where were we on the day tragically of the assassination of President Kennedy. Many of us

ask the same question of where we were the day Martin Luther King was killed.

This is not an attempt to create hysteria as much as it is an attempt to characterize for you what we hear and see. We still have heroes in the African-American community. We still look to that one judge on the Missouri Supreme Court. It was Ronnie White. He is a hero. It was an honor. You may think that African-Americans do not pay attention to that journey on the floor of the Senate, but they did. And frankly, they viewed the actions of Senator Ashcroft more as a shredding of a man's reputation and his dignity.

I read the transcript when he came to this Committee and he introduced his wife and his son, and he was proud of that, and he had his aide here. I saw the language of Senator Kit Bond, in fact, that said he had the necessary qualifications and character traits which were required for the job.

William Clay, who retired, presented him and mentioned that he went first to Senator Ashcroft to get his blessings and believed that he had it.

I just want to put into the record the numbers as I conclude about this whole issue of the death penalty cases because, whenever you see faces like mine, you immediately box us in. There is a diverse opinion in our communities on crime, on the death penalty. I can assure you that the African-American community are law-abiding. They are intimidated by crime. They want to make sure that those who are convicted fairly of a crime, the crime is addressed, but that is no reason to blanket us and to assume that Justice White could be so tattered and tainted without really looking into his record.

We find that Judge White voted to uphold the death sentence in 41 of the 59 cases that came before him, roughly the same proportion of Ashcroft's court appointees when he was Governor.

In fact, of these 59 death penalty cases, Judge White was the sole dissenter in only three of them. That means that he was joined by other members of the Missouri Supreme Court.

Lastly, what seemed to not get to be part of the record is the 15 cases, and it may be in this record, of course, of which Judge White wrote the majority.

Senator Biden asked the question to Senator Ashcroft that I think was never asked. Justice Scalia wrote an opinion in contrary to what you think his views were as relates to the death penalty which might have been characterized as liberal, meaning that it might have been characterized as an opinion where the defendant was given the right to redress his grievances.

The question is that Senator Ashcroft go to the floor of the House to comment on that decision or maybe other decisions of like-situated individuals or did he single out Justice White, and so the question I have on both the segregation or desegregation order and as well as Justice White, it is not where we stand in times of comfort and calm. It is not the 200 non-controversial appointees that the Clinton administration put forward even in the Foreign Relations Committee or the Judiciary Committee. We all can find common ground on the non-controversial.

It is not the question of whether or not we have friends, that we don't have it in our heart. Senator Hatch, I don't have any reason

to believe that Senator Ashcroft is racist in his spirit, his heart. I only go on his record, on his actions, and when I ask the question—and so I make no accusations here. What I ask the question, the vulnerable need the Attorney General. I need him. My community needs him, and he will have to make decisions in controversy. He will have to make decisions when it is unpopular to do what is right.

My challenge is or the question I raise is why in the voluntary efforts of his community, why he didn't rise to the occasion, a man of faith, a man who loved this country, to heal us, applaud the agreement, bring the agreement to the point of success, use his office to guide the agreement to a successful legal end and a successful end in terms of the communities having it work, and last with Justice White, why did he not in the course of making a decision about Justice White rise in this controversial time that had been created to the point of looking at his holistic record for the greater good, rising above politics and championing Justice White's nomination and successful vote on the floor of the Senate. It is where you stand in time of controversy, and that is what African-Americans, but as well vulnerable Americans, look to the Attorney General position and the Department of Justice, will you help us when we need you.

Chairman LEAHY. Thank you.

The senior Senator from Ohio.

Senator DEWINE. Thank you, Mr. Chairman.

I just want to thank our witnesses for their patience today, and I appreciate their testimony. I don't have any questions.

Chairman LEAHY. The Senator from Alabama.

Senator SESSIONS. I join in thanking the witnesses, and it is good to see you. Congresswoman Jackson Lee, you have been here all day. I kind of wish you could have been on this side and maybe seen John's testimony on the face. I think he was very sincere, and I think you will be very pleased with his service.

Chairman LEAHY. Unless there are further questions, we will stand in recess until 9:30 in the morning.

Representative JACKSON LEE. Thank you so very much.

[Whereupon, at 9 p.m., the Committee was recessed, to reconvene at 9:30 a.m., Thursday, January 18, 2001.]

**NOMINATION OF JOHN ASHCROFT TO BE
ATTORNEY GENERAL OF THE UNITED STATES**

THURSDAY, JANUARY 18, 2001

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:36 a.m., in room SR-325, Russell Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kennedy, Kohl, Feinstein, Feingold, Schumer, Durbin, Cantwell, Hatch, Thurmond, Specter, Kyl, DeWine, Sessions, Smith, and Brownback.

Chairman LEAHY. The Committee will be in order. I would urge those who are attending to please take their seats.

Judge White, I want to thank you for responding to the Committee's request to be here today. As you know, there has been a great deal of discussion about Senator Ashcroft's efforts to defeat your nomination to the United States District Court. Many have said that it was a defining moment of his Senate career. His supporters say it defined him in a way he wanted. Those who disagreed say it defined him in yet a different way. Most importantly, your testimony may help us understand what happened, even why it did happen. And so I thank you for being here.

We will hear your testimony, but first did you have anything you wanted to add?

Senator HATCH. No. I am happy to just proceed. Thank you.

Chairman LEAHY. And you know we have these lights. I think I explained the way they work. We will have your statement, Judge, and then we will do the usual bit, as I explained, going back and forth. You have been in legislative bodies. You are well aware of this. Thank you for being here, sir.

**STATEMENT OF HON. RONNIE WHITE, JUDGE, MISSOURI
SUPREME COURT, JEFFERSON CITY, MISSOURI**

Judge WHITE. Thank you, Mr. Chairman, Senator Hatch, and all members of the Judiciary Committee, for inviting me here to testify today. Thank you for twice voting in favor of my nomination to the Federal district court in 1999 and 1998.

I appreciate this opportunity to tell my story to the U.S. Senate and to reclaim my reputation as a judge and a lawyer.

It will be up to you, members of the Committee, to determine what light this narrative casts on the decision you will make in voting to confirm the next Attorney General of the United States.

I am the oldest son born to teenage parents. When I was born, my mother was 16 years old and my father was 19 years old. My mother dropped out of high school in the ninth grade to take care of me. My father worked in the post office, first as a mail sorter and then as station manager. As I grew up, I watched my mother and father work hard, play by the rules, and never quite make ends meet.

We lived in an unfinished basement of a home with jagged concrete walls and without a kitchen or bathroom. I grew up in a segregated neighborhood in St. Louis.

When I was 10 years old, I was bused to a grade school in south St. Louis where kids would throw milk and food at us and tell us to go back to where we came from. This racism only strengthened my determination. I was not going to let my color, the color of my skin—or the ignorance or hatefulness of others—hold me back. I would get the best education I could, and I would use that education to make a better life for myself and for my family and for my community.

My parents could not afford to pay for my education. Since age 11, I have always worked to earn money. I sold newspapers for a half-cent each, and I worked as a janitor at a fast-food restaurant. I worked my way through high school, college, and law school. Although balancing work and school was not always easy, I struggled through it and made it.

I have earned my good reputation as a lawyer and a judge by earning the respect of my neighbors. I was elected to the Missouri Legislature in 1989, and when I was in the legislature, I was twice selected to be chairman of the Judiciary Committee. As Chair of this Committee, I worked with my legislative colleagues, members of the executive branch, and citizens and law enforcement officials to strengthen the laws and the application of those laws on behalf of the people of my State.

In 1994, I was appointed to the Missouri Court of Appeals by the late Governor Mel Carnahan. One year later, Governor Carnahan appointed me to the Missouri Supreme Court. It is the law in Missouri that State Supreme Court judges are voted on by the people after they have been appointed. I came up for a retention vote in 1996 and received more than one million votes.

I was the first African-American to serve on the Missouri Supreme Court, the first in the 175-year history of the court. Born into segregation, I broke this color barrier.

The high point of my professional life came in 1998 when President Bill Clinton nominated me to the Federal district court at the suggestion of then-Congressman William Clay. What an amazing feeling for a young man from the inner city of St. Louis.

At that moment, I felt that I was living the American dream. If you work hard, no matter your race, class, or creed, you can succeed. This is why my parents—and millions of hard-working families throughout this great country—dream of for their kids.

However, even though the American Bar Association gave me a unanimous qualified rating, my nomination was not confirmed. I was approved twice by this Committee, by votes of 15–3 and 12–6, but I was voted down by the U.S. Senate at the urging of Senator John Ashcroft.

What happened? When I came before this Committee, I was introduced by Senator Kit Bond, who urged my confirmation. Congressman Clay also introduced me and reported to this Committee that Senator Ashcroft had polled my colleagues on the Supreme Court, all of whom he had appointed when he was Governor, and that they spoke highly of me and said I would make an outstanding Federal judge. After the hearing, we received additional follow-up questions from Senator Ashcroft. The other nominees were asked six questions. I was asked those questions and an additional 15. I answered all of those questions in a full and timely manner.

And then I learned that Senator Ashcroft was opposing me. I was very surprised to hear that he had gone to the Senate floor and called me “pro-criminal,” “with a tremendous bent toward criminal activity,” that he told his colleagues that I was “against prosecutors and the culture in terms of maintaining order.”

I deeply resent those baseless misrepresentations. In fact—and I want to say this as clearly as I can—my record belies those accusations.

Senator Ashcroft said on the Senate floor that I had a “serious bias” against the death penalty. According to my records, at the time of my hearing, I had voted to affirm the death penalty in 41 of 59 cases that I had heard. In 10 of the remaining 18 cases, I joined in a unanimous court in voting to reverse. In two other reversals, I voted with the court majority.

These are the facts: I voted with the majority of the court in 53 of 59 death penalty cases. In only six cases did I dissent, and in only three of those was I the lone dissenter.

Senator John Ashcroft has pointed to the case of *State v. Johnson* as the main reason he opposed my nomination. Yet this case did not appear in any of the questions he sent to me. Senator Ashcroft never raised the *Johnson* case with me, never questioned me about my opinion, or asked me to explain my reasoning.

My dissenting opinion in this case urged a new trial, not a complete release. I based my opinion on the sound and settled constitutional law as handed down by the U.S. Supreme Court in *Strickland v. Washington*. I never disregarded the terrible violence that had been done in this case. Senator Ashcroft’s rhetoric left the impression that I was calling for Johnson’s release. This is just not true.

The record of this case—indeed, my entire record—shows that it is not true—a record I am now glad to have the opportunity to explain to the U.S. Senate. My record as a judge shows that the personal attacks made on me were not true. I am proud of my record as a judge. I have lived up to the confidence expressed in me by Governor Carnahan and the people of Missouri. After decades of public service, I come before you today more committed than ever to the rule of law.

When I was 10 years old, I stood up to the bullies who made mean-spirited comments and tried to drive me away. Today, I am here to stand up for my record, my reputation as a judge, and as a citizen.

Thank you for giving me the opportunity to testify today, and I will be pleased to take any questions you may have.

[The prepared statement of Judge White follows:]

STATEMENT OF HON. RONNIE WHITE, JUDGE, MISSOURI SUPREME COURT, JEFFERSON CITY, MISSOURI

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When I was 10 years old, I stood up to the bullies who made meanspirited comments and tried to drive me away. Today, I am here to stand up for my record, my reputation as a judge, and as citizen.

Thank you for giving me the opportunity to testify today. I will be happy to take any questions that you may have.

Chairman LEAHY. Thank you, Judge.

I think the last time I saw you was at your other appearance before the Committee, at your confirmation hearing back in May 1998. As you noted in your testimony today, Senator Ashcroft said that he based his opposition to you on three of your decisions from the hundreds of cases you have heard. He told the Senate that you were pro-criminal, with a tremendous bent toward criminal activity, anti-death penalty, and against prosecutors and the culture in terms of maintaining order, inflammatory charges, and they are charges that have always troubled me. And I was concerned in the 2 days and hours and hours of hearings that Senator Ashcroft never disavowed that language. He had a lot of opportunities to do so in answers to questions by Senator Durbin and a number of others here.

In fact, I went back and reread the three cases in which he convinced his colleagues, his Republican colleagues, to vote against you on October 5th. That was the time when they all came out of the Republican Caucus and in a party-line vote, something I had never seen before in a case like this, voted to not allow you to go on the Federal bench. And I hope all Senators will read those cases themselves or consider the two columns written by the noted conservative columnist Stuart Taylor in National Journal over the last 2 years on these decisions. And I will be inserting those and some other items in the record.

So I thought about this. It has troubled me for really more than a year. I still don’t understand what motivated Senator Ashcroft to fight so hard to have your nomination defeated. I have gone over and over the record. I have talked to him about it. I have found something interesting. Senator Ashcroft inserted a short statement

in our Committee record in May 1998 in which he noted a different reason to oppose your confirmation. He wrote, "I have been contacted by constituents who were injured by the nominee's manipulation of legislative procedures while a member of the Missouri General Assembly. This contributes to my decision to vote against the nomination."

I wasn't sure what he was talking about, so I went back to some of the questions that he had submitted to you, written questions. He asked you about a vote, and so I would ask you about that. That vote that he asked you about was a vote on restrictive anti-abortion legislation that then-Governor Ashcroft was supporting. Is that correct?

Judge WHITE. That is correct.

Chairman LEAHY. And do you recall what happened in that incident?

Judge WHITE. Yes, Mr. Chairman. I was asked this question by Senator Ashcroft regarding that, and here is the answer I gave. The question was: I understand that while you served in the State legislature, you called an unscheduled vote that resulted in the defeat of a measure designed to limit abortions. Could you please provide the details of this incident?

Here was my answer: As chairman of the House Judiciary Committee, I promised to sponsor the legislation, that I would give him a hearing date that was convenient for a majority of the Committee members. On the evening in question, the bill's sponsor repeatedly demanded that we take up his bill. I objected and stated we would hear the bill at a later time after I had had an opportunity to notify all the Committee members. The bill's sponsor continued to disrupt the Committee by speaking loudly without being recognized by the Chair. This conduct persisted for at least 15 minutes.

Finally, I recognized a Committee member who made a motion to bring up the bill. This motion was seconded and a vote was taken, which defeated the measure by a tie vote.

This drastic action only occurred as a result of the unruly behavior of the bill's sponsor. There was no attempt to deceive the Committee members not present by taking a vote behind their backs.

Chairman LEAHY. So the sponsor of the bill, which then-Governor Ashcroft supported, as I understand—

Judge WHITE. I believe that is correct.

Chairman LEAHY. He insisted you bring it up. When you brought it up, he lost on a tie vote. This is something that happened years and years ago in a legislative body where people for and against an issue have voted on it. Do you feel this contributed to Senator Ashcroft's efforts, as it turned out, successful efforts, to derail your nomination to the Federal bench?

Judge WHITE. Senator, I don't know exactly what Senator Ashcroft's concerns were, but it caused me a concern when I received the additional questions and he specifically asked about that legislation in 1992. And what I said to you this morning are the facts surrounding that.

Chairman LEAHY. Judge White, you serve on the bench with a number of justices who were appointed by then-Governor Ashcroft. Is that correct?

Judge WHITE. That is correct.

Chairman LEAHY. You have had a number of death penalty cases that have come before the court. Do you know how often you voted the same way, either to uphold or to remand, death penalty cases in conjunction with those appointed by then-Governor Ashcroft?

Judge WHITE. I don't have the specific numbers, Mr. Chairman, but I believe that it is about 75 percent of the time. As the numbers indicate, there were 41 of 56 or 58 cases where I voted to affirm the death penalty.

Chairman LEAHY. Would it surprise you if I told you that a survey done independently finds that you voted with the Ashcroft appointees 95 percent of the time?

Judge WHITE. Well, not really, because there is not that much variation on those death penalty cases.

Chairman LEAHY. So if you are so completely out of step, they have got to be a bit out of step, too. That is my point. And the fact is on the case we keep hearing about, this gruesome murder case, is it not a fact that you were not trying to release the person charge with murder, you were just trying to make sure he got a fair trial. Is that correct?

Judge WHITE. That is correct. What I was trying to do was to make sure that the defendant had competent counsel before there was any talk of punishment. And in that case, I urged him—I urged a new trial so that he could get competent counsel.

Chairman LEAHY. And in your experience, is there any question that in a case like that, if he was found guilty, a jury would in all likelihood recommend the death penalty and that death penalty would be upheld.

Judge WHITE. I believe so.

Chairman LEAHY. Thank you.

Senator HATCH. Justice White, welcome to the Committee. We are happy to have you back before the Committee.

Judge WHITE. Thank you, Senator.

Senator HATCH. I have a lot of respect for what you went through in your life and how you came up the hard way. Having worked as a former janitor myself, I understand a little bit about that. But let me tell you, I have a lot of respect for you personally.

Senator FEINSTEIN. We can't hear.

Chairman LEAHY. They can't hear you, Orrin.

Senator HATCH. I think they can. I will just do my best.

I just have two questions—

Chairman LEAHY. Senator Feinstein can't hear you.

Senator HATCH. Oh, you can't hear?

Senator FEINSTEIN. It is hard to hear back here.

Chairman LEAHY. I don't know if we are having trouble with the sound system.

Senator HATCH. I don't know how to make it work any better, but—

Chairman LEAHY. Boost it up a bit.

Senator HATCH. I just have two questions that maybe I ought to clear up. To your knowledge, did Senator Ashcroft ever actually state that you were calling for Mr. Johnson's release, this fellow who had killed four people?

Judge WHITE. To my knowledge, he did not.

Senator HATCH. OK. Now, I know that ten lawyers can look at a statute and have ten different opinions and interpret the law in different ways, and that is even true with two-letter words. We can always get into fights among lawyers. But when you said, referring to your dissent in *Johnson*, that “I based my opinion on sound and settled constitutional laws handed down by the Supreme Court in *Strickland v. Washington*,” is it not true that you were the only justice on your court who came to that conclusion in that particularly heinous case, and all other justices, whether appointed by a Republican or a Democrat, disagreed with your interpretation of the Supreme Court settled law?

Judge WHITE. I was the only judge who came to that conclusion, but all of the judges agreed that the defendant had incompetent counsel. Yet those judges in the majority didn’t get to the prejudice part, where I did. And my separation from them was I believed that I was following the probable result standard set out in *Strickland v. Washington* versus the outcome determinative result that they were following.

Senator HATCH. I understand. Those are the only questions I want to ask you, and, again, I am happy to have you before the Committee, and I want you treated fairly, as always.

Judge WHITE. Thank you, Senator.

Chairman LEAHY. Senator Kennedy?

Senator KENNEDY. Justice White, welcome, and I want to thank you very much for agreeing to appear before the Committee. I know it is not easy to continue to relive this long ordeal.

Let me ask you, did Senator Ashcroft ever raise these issues with you prior to the vote in 1999?

Judge WHITE. No, he did not, Senator.

Senator KENNEDY. Did he ever give you the opportunity which you have here today to be able to explain these positions or to discuss these positions prior to the time of the vote? Did he ever call you in and let you know what his problems were and ask you for an explanation, give you a reasonable opportunity to answer these kinds of charges that he made against you on the Senate floor?

Judge WHITE. Senator Kennedy, the only question that he gave me an opportunity to respond to was the question about the anti-choice bill in 1992. I never had an opportunity to discuss the *Johnson* case.

Senator KENNEDY. Do you have any idea why Senator Ashcroft would make these charges about your judicial record that were inaccurate? Do you believe you know the reasons why he opposed your candidacy so vociferously?

Judge WHITE. Senator Kennedy, I don’t know exactly what his reasons were, and I am just trying to lay out the facts and circumstances surrounding the rejection of my nomination as I believe them to be. I don’t know what is in his mind or what is in his heart. So I wouldn’t want to speculate on that.

Senator KENNEDY. Could you just make a brief comment on these kinds of accusations about being pro-criminal, against prosecutors, against maintaining law and order? What is your own view? What is your own attitude? That is an open-ended question, but maybe you could respond and be reasonably brief.

Judge WHITE. I believe that Senator John Ashcroft seriously distorted my record. But I believe that the question for the Senate is whether these misrepresentations are consistent with fair play and justice that you all would require of the U.S. Attorney General. And that would be my position on that.

Senator KENNEDY. Well, I would like to make just a couple more points. We hear a lot of talk these days about what is being called the politics of personal destruction. But what happened to you is ten times worse than anything that has happened to Senator Ashcroft in the current controversy. In my view, what happened to you is the ugliest thing that has happened to any nominee in all my years in the U.S. Senate.

Your record in the Missouri Supreme Court was grossly distorted by Senator Ashcroft. He tried to use your record on death penalty cases to help win his hotly contested Senate seat in Missouri against Governor Carnahan. And most of us have rarely witnessed so much instant genuine public outrage over what happened so unfairly to you.

So it has taken considerable courage for you to come here today, Judge White. I am pleased that you are here because you have helped to put a very personal and very human face on a very serious injustice.

Mr. Chairman, I have no further questions.

Judge WHITE. Thank you, Senator.

Chairman LEAHY. Thank you very much.

The senior Senator from Pennsylvania.

Senator SPECTER. Is it appropriate to call you "judge" or "justice"?

Judge WHITE. It is "judge," Senator.

Senator SPECTER. "Judge"?

Judge WHITE. But I will answer by either one.

Senator SPECTER. In Pennsylvania Supreme Court, those are called "justices," and in the lower courts, they are called "judge." But they call you "judge"?

Judge WHITE. They call us "judge." It sounds a lot more important when you say "justice," but in Missouri we are "judges" and the chief judge is "justice."

Senator SPECTER. OK, Judge White. Thank you for coming here today, and I think it is useful and appropriate that you have had a chance to state your position. The question which we are focusing on here—and I think you put it well when you said whether it is consistent with fair play and justice in evaluating Senator Ashcroft's qualifications to be Attorney General of the United States.

I think at the outset it ought to be noted publicly that the Senate does not deliberate a great deal on United States district court judges. That is an unhappy fact of life because of our workload. And the same applies to the courts of appeals. And these are very, very important positions. When there is a nomination for the Supreme Court of the United States, there is a lot of attention. You sort of sometimes judge the attention by the number of television cameras which show up. And as you probably noted from your own hearing, there were very few Senators present. Customarily there is the presiding Senator and sometimes not even a ranking mem-

ber of the other side. So that unless there is some extraordinary incident, the Senate does not pay as much attention to the specifics on this confirmation process as it should.

And what happened in your case was that the matter came to a head, candidly, at the very last minute and really in sort of surprising circumstances. So I think in a sense the Senate owes you an apology for not having more of a focus. And perhaps in a situation where we are to reject a nominee, there ought to be special attention. It is OK to pass a nominee without a great deal of fanfare. And there are checks. There is an FBI check and an American Bar Association check, and the staff of the Judiciary Committee makes a check. So that I don't want to leave the impression that it is a casual matter to be confirmed, but I do think it ought to be stated expressly and understood that Senators do not participate as much as perhaps we should because of the workload. The question which I come to, Judge White, is whether Senator Ashcroft did anything but exercise his own judgment in the decision he made as to your nomination.

I had a very heated controversy with Senator Ashcroft on a Philadelphia State court judge, Judge Federica Mesiah Jackson, who would have been the first African-American woman to be appointed to the United States District Court for the Eastern District of Pennsylvania, and I studied her record carefully and knew her to some extent and thought she was qualified for the position, and Senator Ashcroft and others on this Committee thought she was not. We had some very heated hearings on her sentencing policies, and I had a very sharp disagreement with Senator Hatch who presided at the hearings because she had gone through 50 cases and answered questions and then came in and was confronted with 30 more cases, and I didn't like the process and I complained about it. It didn't do me any good, but I complained about it. But at the end of that event, I did not question Senator Ashcroft's motives. He thought she was not qualified. I thought she was. I thought he was wrong, and she eventually withdrew.

The story has a somewhat happy ending. She is now the president judge of the Common Pleas Court of Philadelphia, a very distinguished position, perhaps more distinguished than being a Federal district court judge.

So the question that I have for you, Judge White, is, do you think that Senator Ashcroft was doing anything other than expressing his own honesty?

Judge WHITE. Senator, I think he can express his own honest views, but to call me pro-criminal and with a criminal bent and if you look at the record, the record don't support those views.

Senator SPECTER. Well, I would be inclined to agree that characterizations are not helpful and they are hurtful, and we have had a little sparring with Senator Ashcroft on a number of the things he said.

He said people in the middle of the road are either moderates or dead skunks.

OK on time?

Chairman LEAHY. You are out of time, but go ahead and finish your thought.

Senator SPECTER. OK. Well, I saw the red light on, but I want to pursue this a bit.

So let's move ahead that his language was intemperate. Do you think that is a disqualification for being Attorney General of the United States?

Judge WHITE. I don't know what a disqualification would be, Senator. All I am stating to you are the facts, and the fact is that Senator John Ashcroft seriously distorted my record. I believe the question is for the Senate to answer.

Senator SPECTER. Well—

Chairman LEAHY. Senator, we will go back with another round.

Senator SPECTER. Let me just ask one more question at this time.

Chairman LEAHY. I will give extra time for that one, but then the Senator from California will also have extra time.

Senator SPECTER. Senator Bond concurred with Senator Ashcroft. Do you have any reason to question—in opposing your nomination and opposing it forcefully, do you have any reason to question Senator Bond's sincerity on his own judgment?

Well, what I am looking for Judge White is, is the sincerity of John Ashcroft and Kit Bond—they may be wrong, they may be intemperate, but looking at Ashcroft's qualifications, I raise the issue as to whether you think they were less than honest or less than sincere, and I throw Senator Bond into the mix. What do you think?

Judge WHITE. I think the facts of my situation show that Senator Bond came before this Committee and spoke very highly of me.

What happened between the time I was presented to the Committee by Senator Bond and the vote was taken, I don't know.

Senator SPECTER. Thank you. Thank you.

Chairman LEAHY. The Senator from California.

I tried to make sure that the Senator from Pennsylvania had extra time, and he did, but I am going to have to urge Senators to try to keep to the time limit. Both Senator Hatch and I kept actually under our time, and I say that because I know a number of Senators are on other confirmation hearings, as I am and several others are, today, and they are trying to balance their time back and forth. So, in fairness to all Senators, we will try to keep very close to the clock. However, the Senator from California, because of the balance on here, could have a little bit of extra time.

Go ahead.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Judge White, good morning.

Judge WHITE. Good morning.

Senator FEINSTEIN. I would just like to extend to you my personal apology for what happened to you. I have been on this Committee for 8 years. I have never seen it happen before.

I want you to know that many of us, particularly on our side of the aisle, were totally blind-sided by what happened. It came without warning. The letter from the National Sheriffs' Association was distributed on the floor directly with no prior notice to this Committee or members of this Committee, and I, for one, don't feel it is necessary for anyone to go through that kind of personal humiliation.

You have had a good positive career, and there was no reason for this to happen to you. I just want you to have my personal apology for what did happen.

Judge WHITE. Thank you, Senator.

Senator FEINSTEIN. During the floor statement on your nomination, Senator Ashcroft said the following, and I quote from the record, "Judge White has been more liberal on the death penalty during his tenure than any other judge in the Missouri Supreme Court. He has dissented in death penalty cases more than any other judge during his tenure. He has written or joined in three times as many dissents in death penalty cases, and apparently it is unimportant how gruesome or egregious the facts or how clear the evidence of guilt," end quote.

Is this a fair representation of your record? For example, have you written or joined in three times as many dissents in death penalty cases as any other Missouri Supreme Court justice?

Judge WHITE. Senator, I don't have the numbers in front of me, but I don't believe that that's correct.

Senator FEINSTEIN. Well, I do have the numbers. Let me just find them here. I have the percentages.

I think a review of the record shows that you supported death penalty convictions slightly more than the average Missouri Supreme Court justice. You voted over 70 percent of the time to uphold death sentences, and I believe you wrote several majority opinions enforcing a death penalty verdict.

The percentage of votes for a reversal of a death sentence by Missouri Supreme Court justices were: Thomas—and I recognize he is deceased—47 percent; White, 29 percent; Holstein, 25 percent; Price, 24 percent; Benton, 24 percent; and Limbaugh, 22 percent. Would you concur with those figures?

Judge WHITE. Again, Senator, I don't know the numbers, and some of the members of the court have been there a little bit longer than me. So the numbers may be skewed a bit, but I would say this. When judging a case, I try to look at the facts of the case and the standard of law that we must apply, and I try not to run around with a scorecard to determine how many times I am on this side or that side. And in every case that comes before me for a determination, I give my best on that case, and if the numbers show that, then that's what the numbers show.

Senator FEINSTEIN. Let me speak about the Kinder case for a moment. In the floor statement on October the 5th, Senator Ashcroft said the following, "Ronnie White wrote a dissent saying that *Missouri v. Kinder* was contaminated by a racial bias of the trial judge because that trial judge had indicated that he opposed affirmative action and had switched parties based on that." Would you describe that as a fair reading of your dissent in *Kinder*?

Judge WHITE. No, it's not, Senator, but to get an understanding of my dissent, I think it is proper to read the statement that the trial judge made, and if I may?

Senator FEINSTEIN. Please do.

Judge WHITE. In a pertinent part, the judge said, "The truth is that I have noticed in recent years that the Democratic Party places too much emphasis on representing minorities such as homosexuals, people who don't want to work, and people with a skin

that is any color other but white. While minorities needed to be represented, of course, I believe the time has come for us to place much more emphasis and concern on the hard-working taxpayers in this country," and what I said or noted in the opinion was that conduct suggesting racial bias undermines the credibility of the judicial system and opens the integrity of the judicial system to question and I stand by that opinion today.

Senator FEINSTEIN. I believe my time is up. Thank you, Mr. Chairman.

Chairman LEAHY. The Senator from Arizona, Senator Kyl.

Senator KYL. Thank you, Mr. Chairman.

I was prepared to refer to you as "Justice White." That is the way it is done in my State as well, but, Judge White, it is a pleasure to have you here today.

Judge WHITE. Thank you, Senator.

Senator KYL. First of all, I commend you for the success that you have achieved, especially given the humble background that you spoke of. You can rightly be proud of your appointment to the Missouri Supreme Court. I think it says something both about you, and would you also agree about the man who appointed you, the late Governor Mel Carnahan?

Judge WHITE. Thank you, Senator.

Senator KYL. Would it not also say anything about the Governor who appointed the first African-American to the Missouri Court of Appeals?

Judge WHITE. Possible, yes.

Senator KYL. And, of course, you know that is Governor John Ashcroft, the first Governor in the history of Missouri, most of whom, by the way, were Democrats, to appoint an African-American to a higher court in Missouri.

Let me say that I can understand why you are disappointed. I think you have great reason to be disappointed, perhaps even bitterly so, about your defeat in the U.S. Senate, and I personally regret that the vote had to be taken. No one enjoys voting against someone, especially someone who I am sure is trying his or her best to do the best job they can in their office, and I am sure that is precisely what motivates you.

I did want to clear up just one thing. Senator Leahy said something about the opposition coming out of the Republican caucus, and, of course, Republicans did vote against your nomination.

We ordinarily don't discuss what is said within our caucuses, our policy luncheons, but let me just allude to this one occasion. We usually devote a couple of minutes to business that is going to be coming up in the afternoon or the next day or two, and John Ashcroft rose and made very brief remarks. They were subdued. He said, "I am not asking any of you to follow my lead, but since one of the votes is going to be on a Missouri judge, I felt I should at least explain to you why I will be voting no, so as not to blind-side any of you," and he spoke very briefly, primarily focussing on the impact of many law enforcement people in the State of Missouri who based their opposition on what some of them suggested were decisions that suggested that you were soft on crime. That is an appellation, by the way, that I don't think should be used.

No one ever mentioned your race. In fact, I know that many of my colleagues when they voted were not aware of your race until after the vote.

I just want to conclude by saying I think your record can be fairly debated. I am very troubled by some of the things that you have written, but I assure you that I do not believe that you ever intended to misapply the law and I believe that is Senator Ashcroft's belief as well.

Judge WHITE. Thank you.

Chairman LEAHY. I understand the Senator from Wisconsin does not have questions.

Then we will go to the senior Senator from New York.

Senator SCHUMER. Thank you, Mr. Chairman, and thank you, Judge White.

You are obviously a soft-spoken man, a man of judicious temperament. You can see by your statement and the way you offered it. You are not trying to make points here. You are just telling what happened. You don't even really seem like a politician.

So I would like to just ask you how you felt when for the first time you heard that your nomination was being called into question because you were called soft on crime, pro-criminal.

Judge WHITE. I was obviously disappointed and upset about the labeling and the name-calling, but what troubled me the most was the lack of opportunity to come in and at least talk with the Senators about my record and about the cases that were called into question and have the kind of discussion that we are having here this morning where I would be given a chance to speak and you would be given a chance to ask me questions. That was the most troubling aspect of that.

Senator SCHUMER. During your career in Missouri, had that been a common charge used against you when you ran for judge, when you ran for other offices in Missouri?

Judge WHITE. No, Senator, that was not. I had never heard the term "pro-criminal," "criminal bent," until I heard them on the floor of the Senate on August of—on October 4, 1999.

Senator SCHUMER. Let me ask you to comment on something I feel very strongly about here. I don't believe Senator Ashcroft is a racist, and he has appointed African-American judges and things like that, but I do feel this. I feel that given America's long and tortured history in terms of race relations that we have to be ever so careful about applying a double standard, a double standard which has been—well, it was the signature of Jim Crow and everything that has happened since the days of slavery—it is OK for whites to be treated one way, but blacks are treated a different way, and I don't think this is a philosophical issue. I think every person at this table from the most conservative to the most liberal would agree that America must fight hard to avoid a double standard.

What I find so troubling about your nomination is not that someone would call you soft on crime whether it is true or not. That is a legitimate issue to debate when we debate judges, and my views on criminal justice are decidedly moderate, but rather that a different standard might be used in your nomination than for others who were not of your race. If you look at the number of judges that

Senator Ashcroft supported who at least when you talk to some of the people who prepared the documentation for all those judges were clearly more liberal on criminal justice and other issues than you, but who were white, and then were voted for without any raising of any questions, it is extremely troubling. To me, it shows real insensitivity to our long and tortured history of racial relations.

Would you care to comment on that thought? Am I off base here? Do you think it applied to you? Tell me what you think.

Judge WHITE. Senator, first let me say I don't think Senator Ashcroft is a racist, and I wouldn't attempt to comment on what is in his mind or what is in his heart, but the answer I would give to your question is this. There was a lot of outrage about my nomination being rejected, and particularly in the African-American community, and the reason for that outrage, I believe, is that when you have an African-American judge, African-Americans see that as one more step toward true equality.

So, when that judge rules, whatever way it is, there shouldn't be any hint of racism or any underhanded dealing because there is a sense that that person gives it their best. So that would be my explanation for the outrage behind my rejection.

Senator SCHUMER. Do you think there was a feeling that a double standard was used in opposing your nomination?

Judge WHITE. Yes.

Senator SCHUMER. One final question because this whole episode is terribly difficult, I think, for so many of us on both sides of the aisle here. Over the past few days, Senator Ashcroft has spoken at length about his concern for civil rights and his sensitivity to issues of race. Does anything he has said in the last few days here at this hearing give you reassurance?

Judge WHITE. Senator, I have not really watched his—his testimony, but I would just say to you again, I do believe he seriously distorted my record and I am here this morning to attempt to try to set that record straight.

Senator SCHUMER. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

The senior Senator from Ohio, Senator DeWine.

Senator DEWINE. Mr. Chairman, thank you very much.

Judge White, thank you very much for coming in. We very much appreciate your testimony, and, Mr. Chairman, I do not have any questions.

Judge WHITE. Thank you, Senator.

Chairman LEAHY. Thank you.

Let's see. The Senator from Wisconsin, Senator Feingold, was at another hearing, I believe, and he is now here. We will turn to the Senator from Wisconsin.

Senator FEINGOLD. Mr. Chairman, let me just apologize to the witness. I had to introduce the Governor of the State of Wisconsin to the Finance Committee, as did Senator Kohl, and I recognize the tremendous importance of your testimony which I will read and then perhaps ask questions later.

Chairman LEAHY. Thank you.

I have noted for the record that a number of Senators, both Republicans and Democrats, are at a series of confirmation hearings. That is why they are not here.

We would then go to the senior Senator from Illinois, Senator Durbin.

Senator DURBIN. Thank you very much, Mr. Chairman, and, Judge White, thank you for joining us.

I only wish that every member of the Senate could hear your testimony. I only wish that they could hear your life story, even those who voted against you, and reflect on the decision that they made. I hope that they would ask themselves whether the person that they would be listening to is the same person that was described by John Ashcroft on the floor of the U.S. Senate.

We have been asked by President-elect Bush to look into the hearts of his nominees, and during the last 2 days, we have entered the testimony of Senator John Ashcroft about what is really in his heart.

Over and over again, Senator Ashcroft told us that as Attorney General, he would be results-oriented. He would not be results-oriented. He would be law-oriented. In your case, he was clearly results-oriented and not law-oriented because, had he looked at the law and how you applied it, he never would have said the words he did about you on the floor of the U.S. Senate.

I live in Illinois, a neighbor of Missouri, and those of us who followed the Senatorial race know what was going on there in this situation. There was a result that Senator Ashcroft was seeking. He was trying to create a death penalty issue in the Missouri Senatorial campaign. Why? Because the late Governor Mel Carnahan had spared a man in death row after a personal appeal by the Pope when he had visited St. Louis, and you, Judge White, were the victim of this political calculation. Your hard work through a lifetime, your good name, and your reputation were cast aside after the political calculation was made.

That, to me, is a reflection on the heart of the man who wants to be our Attorney General. This position in the Cabinet, more than any other, is entrusted with the testimony of protecting the civil rights of Americans. We count on the law not only being there, but people who will implement and enforce the law with a good heart.

We have a President who will be sworn in, in a few hours, who has pledged to unite us and not divide us, and as we listen to your testimony and as Senator after Senator apologizes for what happened to you and your good name, is there any doubt that what happened was divisive, divisive for you and your family and for America?

Yesterday, when I asked Senator Ashcroft about this, he said, well, the law enforcement organizations were against Ronnie White, soft on crime, not strong on the death penalty. Judge White, when it came to the support of law enforcement organizations for your appointment to the Federal district court, what is the record?

Judge WHITE. That is not true that I was opposed to law enforcement.

Senator DURBIN, I have a brother-in-law who is a police officer in St. Louis. I have a cousin who is a police officer in St. Louis. I have served on boards and commissions with police officers in the St. Louis community, and I also, when I was city counselor for the city of St. Louis, was the lawyer for the St. Louis City Police Department and we defended police officers. As a judge, all I have

tried to do is to apply the law as best I could and the way I saw it.

Senator DURBIN. Judge White, I have noted with interest during the course of this hearing that even though the grizzly details of the *Johnson* case and the *Kinder* case were brought out yesterday, nobody has mentioned them while you are sitting here. No one from the other side has brought them up. Those are grizzly details in the *Johnson* case, and I want you to explain why you dissented in that case.

This man brutally murdered—apparently murdered four or five people, including a sheriff in execution style, and you dissented in the question of whether or not the death penalty should have been imposed. Please explain.

Judge WHITE. The details in any murder case are grizzly. Death in a normal consequence is really bad, but the cornerstone of our criminal justice system is a right to a fair trial, and all I was trying to get to in the *Johnson* case was the lawyers' ineffective assistance to the defendant possibly affected the jury's determination in guilt and sentencing.

I did not say that these facts were not awful. I did not say that family didn't suffer. All I was trying to do was to ensure that Johnson had a fair trial, and in my mind, the only way you can have that is to have competent counsel and then I think the consequences will flow from there.

Senator DURBIN. Did you call for his release in your dissent?

Judge WHITE. No, I did not. I just urged a retrial, but I think that impression was created that since I voted to reverse in the case that Johnson would be released, and if I might say further, when we rule on a death case in Missouri, that case goes to the Federal court system for a review. And in writing my dissenting opinion, I was writing to the next level of review to say, look, there is a difference of opinion on my court about how to apply the standard in *Strickland v. Washington*, help us, tell us who is right, am I right or are they right, and that was all I was trying to get to.

Senator DURBIN. Let me close by saying this. I am very sorry for what Senator Ashcroft did to you and your reputation, and I join with my colleagues in apologizing for what happened to you before the U.S. Senate.

Judge WHITE. Thank you, Senator.

Senator DURBIN. Thank you.

Chairman LEAHY. The Senator from Alabama, Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman, and, Judge White, we are glad to have you here. I think it is good for this Committee to allow you to share your thoughts and concerns about the way the process was for you.

I agree with you that this gaggle of blowhards sitting in this Senate are not particularly good at making their decisions. I have seen a lot of decisions come out of this Committee that I haven't been happy with, but it is a system and they do vote and that is it and we have to live with it, and you are blessed, I think, with the ability to remain as the Justice of the Supreme Court of Missouri, a great and august position. I hope that you will enjoy it, and I hope that you would not succumb to, as some suggested, bitterness or ill feelings. You look like you are not.

Judge WHITE. No, Senator Sessions, I am not bitter at all.

Senator SESSIONS. You have got a great career. You have had a good career, and we validate that.

I have been a prosecutor for 15-plus years. I feel strongly about those issues. John Ashcroft was Attorney General for quite a number of years. John was Attorney General and I was a prosecutor during the time this country began to refigure what we were doing about criminal justice.

It seemed more and more that the law schools were teaching that this was almost like a game. A judge was sort of like an umpire or a referee, and he threw the flag for minor or insignificant offenses by the police calling for retrial so defendants could be released.

There is some intellectual support still alive today for that. People still believe in that, that we are insufficiently protective today since we have changed. I don't. I believe firmly that we need to focus on guilt and innocence, and we ought not to be so focussed on errors that had little or no impact on the outcome of the trial, and for a lot of reasons, I think that was—and I have looked at a number of your opinions, and I think your views may be consistent with quite a body of intellectual and liberal thought on crime in America. It is not what I would want.

John Ashcroft voted for 26 of 27 judges that were African-American that President Clinton put up. His problem was you were his judge, and his sheriffs, 77 of them, had opposed you. A chiefs of police association opposed you, prosecutors.

I feel an obligation. Implicit in my election was that I would watch to make sure that the Federal judges that are appointed were going to be fair to the police officers and sheriffs and prosecutors I served with. Do you think you could understand John's approach that may have been a factor in his thinking?

Judge WHITE. I can understand his approach, but I can't understand his distortion of my record.

Senator SESSIONS. Well, you know, it is a difference of opinion. Like in the *Kinder* case that was alleged here, this judge made some insensitive, maybe at best, remarks. Perhaps this judge may have even been subject to censure. Was he ever censured to your knowledge, subject to censure?

Judge WHITE. No, he was not censured.

Senator SESSIONS. But what troubled me was you reversed his decision in saying that actual fairness of the trial was not sufficient, that even though there was no showing that he made a single error that biased against the defendant, you voted to reverse his case. That troubled me.

Would you like to comment on that?

Judge WHITE. Yes, Senator, because in my mind his comments created a sense of judicial bias from the outset. When he made these statements about 5 or 6 days before trial, then he goes into court and says I can be a fair and impartial judge, and I will say to you, as you know, a judge is a judge all the time, and you don't stop being a judge in once instance and being a judge in the next.

Senator SESSIONS. Well, I would disagree. I believe that if the judge conducted a fair trial, there was not one hint that he did anything to bias that case, the case should not be reversed.

I was aware of some of the programs that were set up. They were set up, put up a sign, “Drug dealers going to be stopped ahead,” and what they found was drug dealers would stop and make U-turns in the street and things like that and police would stop them, and they wouldn’t just search their car based on that. They would make inquiries and sometimes ask the occupant of the car if they could search the car.

You dissented, I believe, that procedure was unfair because the highway traveller would be tricked. That troubled me.

Well, I see my time is up. I will not get into the *Johnson* case except to say those were, would you not agree, some skilled attorneys that were defending him? Those were retained attorneys with Mr. Eng who had 10 years, was a leader in the criminal—10 years of practice, teaches criminal law. Another lawyer, Mr. Bly, was an active litigator with having won awards and done some teaching. It was a pretty good group of retained attorneys, was it not?

Judge WHITE. Well, one of the lawyers was basically a solo lawyer, and I think that the public defenders in Missouri have substantial experience, probably more experience than private attorneys in handling death penalty cases because they handle many more.

Senator SESSIONS. Well, Mr. Eng teaches criminal practice skill courses for the Criminal Law Section of the Missouri Bar Association. He received an award from the Criminal Defense Bar, the Host Award from the Missouri Association of Criminal Defense Lawyers. He was a member of the Association of Criminal Defense Lawyers for 14 years, sat on the board of directors, internally served as vice president of the Missouri Association of Criminal Defense Lawyers. This was a quality civil attorney. He was a good partner, I would suggest, plus a third attorney, Christine Carpenter, who apparently has good skills.

Chairman LEAHY. Could I—

Senator SESSIONS. I don’t think they were—

Judge WHITE. And that is why these errors don’t make any sense. I mean, you had all that skill and record there when all he had to do was pick up the phone, contact the witnesses, and try to figure it out.

Senator SESSIONS. My view was they just simply put on a defense that was proven unfounded, and the jury found—

Chairman LEAHY. I don’t mean to—we have gone considerably over time, and I am trying, again, at the request of Senators on both sides—I have been trying to keep on time.

The Senator from Wisconsin, Senator Feingold.

Senator FEINGOLD. Thank you very much, Mr. Chairman.

Justice White, again, thanks for being here. I now have had an opportunity to read your statement. I am told by my colleagues that hearing it is even more moving than certainly simply reading it is, and I want to join Senator Durbin in the apology.

Judge WHITE. Thank you.

Senator FEINGOLD. The rejection of your nomination was unjustified, and I particularly regret that it was an entirely partisan vote. I think we were all shocked, and the more I, of course, read about some of the facts, it is a regrettable moment in the Senate, and at

a minimum, I am glad that you have an opportunity here to get the record straight on some of these points.

In fact, just as a brief response to Senator Sessions' characterization of the comments of the trial judge in the *Kinder* case, the notion that these remarks here are insensitive at best is something I would take issue with. A direct contrasting of minorities with the hardworking taxpayers in this country to me is beyond insensitive, and I simply wish to make on the record the remark I think that these were shocking remarks for a trial judge to make.

Senator SESSIONS. Mr. Chairman, may I correct myself?

Chairman LEAHY. Yes.

Senator SESSIONS. I think insensitive—I meant to say insensitive at worst. They were very bad comments that—

Senator FEINGOLD. Excuse me. I should have said—I stand corrected.

Senator SESSIONS.—Were subject to possible censure, and I did misspeak.

Senator FEINGOLD. You said they were insensitive at worst. I think they go—

Senator SESSIONS. I didn't say that, and I apologize—

Senator FEINGOLD. I think they go well beyond that.

Senator SESSIONS.—For being inaccurate.

Senator FEINGOLD. Mr. Chairman?

Chairman LEAHY. Yes.

Senator FEINGOLD. My apology for getting that wrong.

I find it hard to imagine these words simply being called insensitive at worst. The hardworking people of Wisconsin found them to be far beyond insensitive.

Mr. Chairman, one item that I assume you would like to set the record straight on is that in opposing your nomination to the Federal bench, Senator Ashcroft was highly critical of your dissent in a case called *State v. DeMass*. This was a Fourth Amendment case that the Missouri Supreme Court decided in 1996, and you authored the dissenting opinion. The case addressed the constitutionality of drug interdiction checkpoints in two Missouri counties. Police officers dressed in camouflage were stopping motorists in the dark of the night at the end of a lonely exit ramp and looking for evidence to allow them to search the vehicles for drugs.

The majority of the Missouri Supreme Court decided that these stops were constitutional, but you dissented. You agreed with you and your colleagues that trafficking in illegal drugs is a national problem of the most severe kind, and you agreed that traffic stops such as these could be conducted in a reasonable way, but you found that these particular checkpoint operations were not conducted in a reasonable way and were, therefore, unconstitutional.

Then, just a few months ago, a case with facts very similar to the Missouri case made its way to the United States Supreme Court. In the *City of Indianapolis v. Edmond*, the U.S. Supreme Court found that drug interdiction checkpoints like the ones that were upheld by the Missouri Supreme Court are unconstitutional. The *Edmond* case makes clear that the police may not set up roadblocks in the hope of interdicting drugs or detecting some other criminal wrongdoing.

In fact, the United States went even farther in protecting the rights of motorists than you were prepared to go in your dissent, but I don't think anybody really considers the Rehnquist court to be pro-criminal.

In light of the recent U.S. Supreme Court decision, would you agree that the majority decision in *DeMass* would now be considered bad law?

Judge WHITE. That is correct, Senator. In fact, I was vindicated by the United States Supreme Court by their decision when they said those kind of checkpoints were unconstitutional.

Senator FEINGOLD. Thank you again, and thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Feingold.

The Senator from Kansas, Senator Brownback.

Senator BROWNBACK. Thank you, Mr. Chairman, and welcome, Justice White. We are delighted to have you here at the Committee.

I heard your opening statement. I was watching it, and it was very powerful, a real success story of pulling yourself up by the bootstraps in very difficult circumstances and conditions, and I applaud that. I applaud what you have attained and what you are doing and what you continue to do. I appreciate as well your willingness to come here and testify in a difficult circumstance and condition that we have got as we are trying to review and to look at one of the former members of our body making a move from a legislative branch to an executive branch position from one that makes decisions voting on judges to one on enforcing the law, and there are different qualifications and criteria that people look at in those sorts of shifts.

John Ashcroft was in your State and was Attorney General for two terms in your State. There are no allegations that he didn't enforce the law and bring it forth with equal justice, head of the Attorneys General Association, National Attorneys General Association in enforcing the law. So, while there are points, I think, that have been validly made, I think we are looking at now what would a person do in enforcing the law and would they do that equally and fairly.

While I think you raised legitimate points about your confirmation, there were also concerns that were being raised at that time about support for you from the law enforcement community, or lack of support, really, thereof. Here is a key area where the law enforcement community needed to have comfort as well in your abilities as a judge in that particular condition.

So I appreciate very much your background of words and the information you bring in front of us. There were challenges, legitimate ones, I think at that time, ones that can be questioned, but when you look at a lifetime appointment to the bench, you really weigh those carefully and look at them cautiously when considering that lifetime appointment, and I have no doubt that you are going to continue in a great role in public service, and the difficult circumstances. After today, we will all move on forward, and you will serve well and serve with distinction. But those questions being raised at that time on a lifetime appointment, I think, caused a number of people pause.

Thank you for being here today.

Mr. Chairman, I have no questions.

Chairman LEAHY. Thank you, Senator.

I will put into the record an editorial in the St. Louis Post Dispatch in which they quote Charles Blackmark, a retired Supreme Court judge who called Senator Ashcroft's attack on Judge White "tampering with the judiciary."

I will put in the record from the National Journal an article by Stuart Taylor in which he says that Senator Ashcroft smeared Judge Ronnie White for his own partisan political purposes.

I will also put into the record a strong letter of endorsement from the Chief of Police of the St. Louis Metropolitan Police Department for Judge White, during his confirmation.

I will also put a letter in the record from the Missouri State Lodge of the Fraternal Order of Police which indicated on behalf of 4,500 law enforcement officers in Missouri, that they view Justice White's record as "one of a jurist whose record on the death penalty has been far more supportive of the rights of victims than the rights of criminals."

Judge White, I listened to the Senators here. I feel, as Senator Durbin and Senator Kennedy and so many others have said, that this was not a question of your rulings on cases, rulings which appear to be well in the mainstream. In fact, your ruling in one case presupposed or predated a similar ruling made by the conservative U.S. Supreme Court, the Rehnquist court. Rather, you became a political pawn.

Now, I disagreed with Senator Ashcroft on the floor of the Senate when this happened. I disagreed with him in our personal meetings, and I have disagreed with him in these hearings. I won't go into that further, but I still disagree with him even more so, having heard you.

You have sterling credentials. You have had a career that is exemplary by any standards and one that so many people, white or black, would want to emulate, but I think your career was besmirched. I believe your career was besmirched not on a question of your legal abilities because your legal abilities are golden. They have been proven. But they were besmirched to aid Senator Ashcroft's political fortunes. That, sir, is wrong. I am sorry to have seen that happen. It will be an issue in his confirmation, as will others, but as a U.S. Senator, it disturbs me greatly.

Judge WHITE. Thank you, Senator.

Senator HATCH. If I could just add one comment myself.

Judge White, I called you "Justice White." As far as I am concerned, that is good enough.

Judge WHITE. That is fine.

Senator HATCH. Both are good.

But let me just say I think you have been more gracious here toward Senator Ashcroft than some of our colleagues, and I just want to compliment you for it—

Judge WHITE. Thank you.

Senator HATCH.—And let you know that I respect you for it, and I appreciate you being here and accept your testimony.

That is it.

Judge WHITE. Thank you, Senator Hatch.

Chairman LEAHY. There are no further questions. The Committee will—

Senator SPECTER. Mr. Chairman?

Chairman LEAHY. I'm sorry.

Senator SPECTER. Are we going to have a second round?

Chairman LEAHY. I just asked the ranking member, and he said he did not want any more.

If there are no further questions, the Committee will stand in recess for a few minutes to allow the staff to set up the tables for the next panel.

Thank you.

[Recess from 10:50 a.m. to 11:05 a.m.]

Chairman LEAHY. I do not want to start until the ranking member is here. So we will also use this time as a chance for the Committee room to get in order.

I should note while we are waiting for Senator Hatch to come that I had a good discussion this morning with Congressman Hulshof and cleared up any misunderstanding I might have had about his letter to me, and I appreciate the letter. I don't know if the Congressman is here right now, but I appreciate that conversation. It was very helpful.

Now that Senator Hatch is here, we will begin. We have a large and distinguished panel. We have Hon. Edward "Chip" Robertson, a lawyer and former Justice of the Missouri Supreme Court; Ms. Harriet Woods, whom I know, the former Lieutenant Governor of Missouri; Jerry Hunter, a lawyer and former Labor Secretary of Missouri; Mr. Frank Susman, a lawyer from Gallop, Johnson, and Neuman, in St. Louis; Ms. Kate Michelman who is the president of NARAL here in Washington; Ms. Gloria Feldt who is the president of Planned Parenthood Federation of America; Ms. Marcia Greenberger who is the co-president of the National Women's Law Center, Washington, D.C.; Ms. Collene Campbell, member of Memory of Victims Everywhere, from one of the prettiest areas there is, San Juan Capistrano, California. If I have misstated the names of the organizations, trust me, we will get it right before the day is over.

What I am going to do, each witness will testify. Because there are so many, we are going to have to run the clock pretty strictly. Your whole statement, of course, will be part of the record. In my experience, if there is something you really want us to remember the most, you may want to emphasize that, but I will leave it any way you want to go.

So, Judge Robertson, we will start with you and move from my right to the left.

STATEMENT OF EDWARD D. ROBERTSON, JR., ESQ., ATTORNEY, BARTIMUS, FRICKLETON, ROBERTSON & OBETZ, FORMER JUSTICE OF MISSOURI SUPREME COURT

Mr. ROBERTSON. Thank you, Mr. Chairman.

Mr. Chairman and members of the Committee, my name is Edward D. Robertson, Jr. I am a partner in the law firm of Bartimus, Frickleton, Robertson & Obetz, and we have offices in Kansas City and Jefferson City, Missouri.

I appear before you today to speak on behalf of John Ashcroft's nomination to become Attorney General of the United States.

Chairman LEAHY. Would you pull the microphone just a little bit closer, please, Mr. Robertson?

Mr. ROBERTSON. Yes, sir.

I do so from the vantage point of one who served as the Deputy Attorney General of Missouri from 1981 until 1985 at a time when John Ashcroft was Attorney General.

On March 4, 1801, Thomas Jefferson addressed the people of the United States in his first inaugural address. He acknowledged the rancor that marked his election, but he stated every difference of opinion is not a difference of principle.

If press accounts are accurate, it appears that some of the members of the Senate may disagree with John Ashcroft's opinions. I trust, however, that none of you disagrees with the principle upon which he will found every decision he makes as Attorney General of the United States, should you confirm him. That principle requires that the rule of law established by Congress and interpreted by courts will prevail, must prevail, as he carries out his duties as Attorney General.

As Attorney General of Missouri, John Ashcroft issued official opinions, concluding, for example, that evangelical religious materials could not be distributed at public school buildings in Missouri, and you have heard a number of those opinions discussed previously in this hearing, and I will not list them for you now.

If one believes Senator Ashcroft's critics, each of these opinions should have reached a different result, but they did not for one overriding reason. Then-Attorney General Ashcroft let settled law control the directives and advice he gave Missouri government.

Now, I do not intend to take much more of the Committee's time with these prepared remarks as there are so many of us, and I am sure you have questions for all of us.

I have known John Ashcroft for nearly a quarter of a century. If we could boil him down to one single essence, we would find a man for whom his word is both a symbol and a revelation of his deepest values. This means one thing to me, one thing to which nearly a quarter of a century has failed to provide a single contrary example. When John Ashcroft gives his word, he will do what he says, period.

Those who are with me at this table have opinions, some of them, that differ from Senator Ashcroft's opinions, but they, like the members of this Committee, of the Senate, and every American, can count on John Ashcroft's word. When he tells you that he will follow the settled law, he will follow the law.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Robertson follows:]

STATEMENT OF EDWARD D. ROBERTSON, JR., LAWYER, BARTIMUS, FRICKLETON,
ROBERTSON & OBETZ, KANSAS CITY AND JEFFERSON CITY, MISSOURI

Mr. Chairman and members of the committee. My name is Edward D. Robertson, Jr. I am a partner in the law firm of Bartimus, Frickleton, Robertson & Obetz with offices in Kansas City and Jefferson City, Missouri.

I appear before you today to speak on behalf of John Ashcroft's nomination to become Attorney General of the United States. I do so from vantage point of one who served as the Deputy Attorney General of Missouri from 1981 until 1985, when John Ashcroft was Attorney General.

On March 4, 1801, Thomas Jefferson addressed the people of the United States in his first inaugural address. Acknowledging the rancor that marked his election, Jefferson reminded the American people that “every difference of opinion is not a difference of principal.”

If press accounts are accurate, it appears that some of the members of the Senate may disagree with John Ashcroft’s opinions. I trust, however, that none of you disagrees with the principal upon which he will found every decision he makes as Attorney General of the United States. That principal requires that the rule of law established by the Congress and interpreted by the courts will prevail, must prevail, as he carries out his duties as Attorney General.

How do I speak so confidently? I have had the privilege of sitting with John Ashcroft as decisions were made regarding legal policy for the state of Missouri. He never—I repeat never—allowed his opinions about what the law ought to be to overrule what the law was as he gave direction to Missouri government.

As Attorney General of Missouri John Ashcroft issued official opinions concluding that evangelical religious materials could not be distributed at public school buildings in Missouri; that public funds could not be used solely for the purpose of transporting pupils from parochial schools to the public school; that Missouri law prohibited public school personnel from teaching children at sectarian schools; that the strict separation of church and state mandated by the Missouri constitution prohibited public school districts in Missouri from using federal funds available to them under the Elementary and Secondary Education Act of 1965 to provide services to a parochial schools; that hospital records relating to abortion procedures remain closed.

If one believes Senator Ashcroft’s critics, each of these opinions should have reached a different result. But they did not for one overriding reason. Then-Attorney General Ashcroft let settled law control the directives and advice he gave Missouri government.

I do not intend to take much more of the Committee’s time with these prepared remarks.

I have known John Ashcroft for nearly a quarter of a century. If we could boil John down to a single essence, we would find a man for whom his word is both a symbol and revelation of his deepest values. This means one thing to me—one thing to which nearly a quarter of a century has failed to provide a single contrary example—when John Ashcroft gives his word, he will do what he says. Period.

Those who are with me at this table have opinions that differ from Senator Ashcroft’s opinions—but they, like the members of this Committee, of the Senate and every American, can count on his word. When he says he will follow the settled law, he will follow the law.

Chairman LEAHY. Thank you very much.

Ms. Woods?

**STATEMENT OF HARRIET WOODS, FORMER LIEUTENANT
GOVERNOR OF MISSOURI, ST. LOUIS, MISSOURI**

Ms. WOODS. Mr. Chairman, Senator Hatch, members of the Committee, I am here to provide information I hope will help you to decide whether to confirm John Ashcroft as Attorney General, and I have to say, “Which John Ashcroft?”

I have listened to these hearings and heard him say that he will conform to *Roe v. Wade*, he will support mandatory trigger locks.

You understand that in Missouri, over and over, he has shown an absolute dedication to the overturn of *Roe v. Wade*, campaigned for concealed weapons. I will try to sample in my very brief remarks a number of cases where I feel that he has pushed particular agenda or ideological values rather than administer justice in an evenhanded manner, but I also have to ask is this—in his testimony, he was proud of having set records for appointing women and minorities. He had an abysmal record in appointing women, so much so that he was cited for having the lowest number of executive appointments of any Governor in this country, one, and he never reached any more in his whole term.

He appointed exactly 10 women out of 121 judicial appointments and didn't appoint the first one until he was more than halfway through his first term as a result of really heavy publicity, even on the front page of the newspapers, condemning him in the record of Missouri.

For the minority appointments, I am sure other people will talk about them, but when he says he created a record, I have to point out that the two previous Governors—one had appointed no black judges, and the other, three. So that he set a record of eight, I really applaud, but the next administration appointed 30. So we have to put this all in perspective.

Governors love to say, well, he could only appoint people as they were presented by the panels. They never say that the Governors appoint the members of the commission, at least two out of the five, and in at least one case, Governor Ashcroft appointed a minister on the commission in Kansas City who was quoted in the newspaper as saying he didn't believe women belonged on the bench. You would not be surprised that not many women applied. So this is a lot more complicated.

You know, I respect Governor Ashcroft—Senator Ashcroft. He has lifted his hand and said he swears to uphold the law. He swore to uphold the law in Missouri, also.

In 1985, when both of us were sworn in, one as Governor and one as Lieutenant Governor, the odd couple, of course—I am a Democrat, he is a Republican—he said to me, “I could find useful things for you to do, but in return, you will have to give up the authority to serve as the Governor in my absence when I leave the State.” I was really stunned. I said, “Well, why? I certainly would do nothing in any way to misuse that power. I want to cooperate with you. I have every motive to cooperate with you. I can't unilaterally give up a constitutional duty.” He said, “That's not the way I read the law,” and he left the State without notifying me or the Secretary of State.

He didn't at that time contest this in the courts. He didn't say let's get this law changed. Ultimately, it was ridiculous, and the only recourse I had was clearly to go to the press, and I said so. Finally, they slipped a note under my door that he was leaving the State, and we had no further problem, but he raised the same thing with my successor, Mel Carnahan, poisoning the atmosphere with him, ultimately did go to court. The court said his authority did extend when he was outside the State, but the judge added he really ought to work with the Lieutenant Governor to better serve the people of the State.

I am sure you will hear about a 1978 case in which he chose to under the antitrust laws to prosecute the National Organization of Women who were conducting boycotts of the State for failing to ratify the ERA. He was turned down at the district court. He was turned down at the appellate court. The Supreme Court rejected it. It is very unclear to me whether the fact that he opposed the ERA was more a motivation than whether he was really properly using the laws of the State to uphold the law.

In 1989, very quickly, after the Webster decision, he appointed a task force on women's health care and children in which he named only people who were opposed to abortion. The leaders of

the legislature were so outraged that they said they wouldn't participate, how could this reflect all the interests of the State, and this was not the only case where he had done something like this.

In 1999, distinguished Republican, a former Supreme Court Justice, Charles Blackmark, who said in a footnote in a law journal article about Senator Ashcroft's hearings on judicial activism, "I wrote Senator Ashcroft several times requesting information on the hearings and offering to testify to provide a written statement. I received no reply. The witness list seemed to consist of individuals whose views harmonized with those of the Senator."

The case has been cited that he followed the law in not having Bibles distributed in the public schools. What they do not say is that Missouri became, I think, the final State that provided no licensing for church-run day care centers, even when they very carefully amended it to say we will not interfere with what is said there, but there has to be some minimum health and safety for children. John Ashcroft was protecting those church-run schools and said that to the very end.

I have obviously no more time. I hope that if there are any questions particularly about the myths about why the 2001 election—or overriding that, the racial issues in Missouri, which I think are so important, I would be glad to respond.

[The prepared statement of Ms. Woods follows:]

STATEMENT OF HARRIETT WOODS, FORMER LIEUTENANT GOVERNOR OF MISSOURI

Many Missourians were shocked and dismayed when they learned of the nomination of Senator John Ashcroft for U. S. Attorney General. Americans elsewhere, including some former Senate colleagues, probably know him less well than we do. They need to be informed about instances where he used public office to push particular ideological views rather than administer justice in an evenhanded manner. They need to learn more about his temperament and values.

I observed Senator Ashcroft fairly closely as a state senator and as lieutenant governor for four of the eight years John Ashcroft served as Missouri's governor. (We were the "odd couple"—a liberal Democrat and a conservative Republican.) President-Elect Bush described him as "a man of deep conviction" who would be dedicated to "the impartial administration of justice." He is indeed a man of deep conviction, but in Missouri, he increasingly has been seen as an extremist who can be ruthless for political ends. Former U. S. Senator Tom Eagleton reacted to the nomination by saying: "John Danforth would have been my first choice. John Ashcroft would have been my last choice."

I'm constantly asked to give any example when he administered the law differently because of ideology. In 1989, the Supreme Court decision in the case of *Webster v. Reproductive Health* opened up regulation of abortion to the states. Governor Ashcroft immediately named a "Task Force for Mothers and Unborn Children" to come up with recommendations. He was quoted in the press as setting for his ultimate goal prohibiting all abortions. He named only the most dedicated pro-life advocates. The Speaker and Senate Pro Tern of the General Assembly—both of whom had voted pro-life—publicly protested. They said the task force would be "slanted to one side" and would not provide "the necessary balance that reflects the feelings of the state" nor all necessary expertise to look at health issues for mothers and children. They refused to participate because the governor insisted that all task force members oppose abortion. The proposal turned into controversy. Whatever benefit a task force might have had was lost and the group produced little that was usable.

This kind of insistence on rigid conformity to preset values may please his supporters, but it makes Missourians very uncomfortable. It should concern the U.S. Senate. It was under Governor Ashcroft's watch in 1989 that state troopers were deployed to prevent a father from removing his daughter to another state for further medical opinions on whether to maintain her on life support. The father had a court order in hand issued by a judge after a full hearing that included supportive testimony from doctors and a Catholic ethicist. Yet he was denied the right even to visit his child alone. "Right to Life" forces had pressed the state to keep the young

woman alive even though doctors described her as being in a vegetative state. They insisted the state enforce their views on the family.

Missouri obliged. The family was dragged through emotional hell for years until the 1992 election brought in a new administration that declared the state should stop interfering.

Governor Ashcroft also was willing to flout the law when he didn't like its interpretation. In 1985, shortly after Senator Ashcroft and I were separately elected to the top two statewide offices, he called me to a private meeting and said he would be glad to give me useful things to do, but in exchange I must agree not to serve as interim governor in his absence from the state. This struck me as political paranoia. It suggested I was not to be trusted. I assured him I had no intention of misusing executive power in his absence and wanted very much to work with him. But I could not accede to his unilateral decision. The Missouri constitution was very clear. Not only does it provide that the lieutenant governor assumes office upon death or disability of the governor, but a separate provision provides for the lieutenant governor to act as governor on the governor's "absence from the state."

Governor Ashcroft said he did not accept that interpretation; he withdrew his offer to include me in state activities, and shortly afterward left the state without notifying either my office or that of the Secretary of State as always had been customary. The situation was ridiculous; if he thought the provision no longer necessary, the proper course would be to propose a change in the law, or seek a court ruling. As tension increased, we hired our own counsel, warning that we would go to the media if necessary. At the last minute before his next trip, a proper notice was slipped under our door, and there were no further problems. But he renewed the confrontation with Mel Carnahan, who succeeded me as lieutenant governor, poisoning the relationship. This time, he did seek the opinion of the state courts. The judge affirmed the governor's powers, but recommended that he should use his discretion to work with the lieutenant governor to keep state business running smoothly. That didn't happen until he left office.

That story may seem far removed from weighty issues of civil rights, abortion and church-state relationships that will be debated in this nomination, but Senator Ashcroft's behavior raises worrisome questions about his temperament as the leader of a department that inevitably is going to be involved in controversy. What will be his willingness to follow a law he considers wrong, or one that he says he is following but interprets differently than prevailing view?

In 1978, when John Ashcroft was Missouri Attorney General, he sued the National Organization for Women because it conducted a boycott of Missouri (and other states) for failing to ratify the Equal Rights Amendment. What was notable about this use of the anti-trust laws to control speech was his persistence in appealing all the way to the Supreme Court, using major state resources, even when he lost in the federal district court and the 8th U. S. Circuit Court of Appeals, and even though legal scholars discouraged the effort. His spokesperson denied he acted because of his personal opposition to the Equal Rights Amendment, but it must be noted that in 1977, Janet Ashcroft appeared to testify against ratification of the ERA at a hearing in the Missouri Senate, a very conspicuous action for the wife of the attorney general of the state.

Senator Ashcroft views government and public service as vehicles for achieving certain ideologically shaped goals. He is a man of deep convictions. I respect him for that. But conviction that fails to respect the convictions of others can be dangerous. He has stated that "You can legislate morality." This is not a majority viewpoint in Missouri. Missourians expressed concern in 1999 when Senator Ashcroft gave the commencement speech and received an honorary degree at Bob Jones University. Many were embarrassed when he compounded the problem by denying he was aware of certain intolerant positions of that institution. His 1999 Christmas card listed the Bob Jones appearance as a highlight of his year. Other politicians have spoken at this university, but it is difficult to conceive that someone bragging about such a connection would be named to head the Justice Department. Especially not when nerves are so raw over alleged voting irregularities involving minorities.

In 1988, while he was governor, John Ashcroft was one of only two members of a 40 member federal commission studying the plight of minorities in America who refused to sign the panel's final report. Members included former Presidents Carter and Ford and Coretta Scott King. Ashcroft was quoted as saying he believed the findings were too negative. I cannot judge his reasons for abstaining, but his action in isolating himself from majority opinion is bound to set off alarms among those most likely to need a Justice Department ready to intervene on their behalf. It's not enough to say that one will enforce the letter of the law; the spirit can be a major determinant of whether anything really happens.

Governor Ashcroft and I were two of the three members of Missouri's Board of Public Buildings which approves construction contracts. It was obvious in dealing with the proposals that minority and female contractors were not getting an adequate share of business from the state, despite existence of many small contractors seeking to participate. It seemed worthwhile to look for ways to improve the situation. Governor Ashcroft was not interested. So long as we met minimum requirements, he was satisfied. The lieutenant governor's office finally acted on its own, refusing to sign one contract that had bundled together many small jobs until the contractor agreed to institute a minority training effort.

It sometimes seems, listening to conflicting testimony, that there are two John Ashcrofts. I understand this. Senator Ashcroft was unfailingly polite in our personal exchanges. He maintained an amiable, open countenance with the public and his peers, but he could be fierce when angered and had a reputation for "getting even" with those who crossed him. A sense of righteousness and ordained destiny can make it hard to brook criticism; On at least one occasion, the governor lashed out with such anger at a critic that he had to be dragged away. I mention this not to engage in personal attack, but because this temperament spilled over into his conduct when opposing presidential nominees. The senators surely are aware that too often this turned into unnecessary vilification and petty picking at minor items, rather than focusing on issues of competence. (Judge Margaret Morrow, Dr. David Satcher, James Hormel, Dr. Henry Foster, Clarence Sundram, among others).

It is unfortunate that Governor Ashcroft has antagonized a majority of African-Americans and women. Despite recent claims, Governor Ashcroft did *not* have an outstanding appointment record in this area. In eight years, out of 121 judicial appointments, he appointed 12 women, or 10%, and 8 African-Americans, or 6.6%. His successor would triple those percentages in short order. It must also be noted that Governor Ashcroft did not appoint his first woman to the appellate court until September 1987, more than halfway through his first term, and only then after a major onslaught of negative publicity about his poor record. As for women in appointed executive positions, in 1986 Governor Ashcroft tied with George Wallace of Alabama in having the fewest women in his cabinet—just one. He never increased that number.

The issue isn't just appointments. Women and minorities have been disproportionately at odds with Senator Ashcroft because those rising from their midst often have policy differences with him, which shouldn't be surprising given that their life experiences are so different. He is wedded to the values of the Assembly of God church and has little tolerance for these differences. He is not a racist in the usual sense. It's just that he is so locked into the rightness of his views that he sees spokespersons for those who differ as enemies to be destroyed rather than opponents to be debated. Senator Ashcroft is constantly described as a man of integrity, but what does that mean if it leaves him free to use government office to destroy the reputation of others for political expedience.

That is what many Missourians believe he did to Ronnie White. It wasn't just African-Americans who were offended. He blocked a highly respected Missouri Supreme Court judge from a federal position through deliberate misrepresentation and character assassination in order to create a law and order issue for his race against Mel Carnahan. He played the race card with court-ordered desegregation to advance his prospects to become governor. Someone rooted in religious values should set an example. Instead, his actions worsened race relations in a state that continues to struggle to improve interracial understanding. They diminished respect for justice and the courts at a time when more than ever we need to restore confidence in the law and the courts. They lowered the tone of debate between candidates and political parties. John Ashcroft polarized Missourians; his appointment will do the same for the country.

Missourians gave Senator Ashcroft a majority of their votes many times. Clearly he was a popular politician. Attitudes began to change in the past couple of years as he moved farther and farther out of the mainstream. The common wisdom about the 2000 senatorial race in Missouri is that it turned on a sympathy vote for a dead governor. Not so simple. Mel Carnahan won because Senator Ashcroft had alienated moderate Republicans and independents long before the tragedy occurred. They rejected views and actions they considered to be increasingly extreme. There was a clear choice between Carnahan values and Ashcroft positions. He had lost the support of Missourians.

So it boils down to this. What does it really mean when a nominee with this record promises to enforce the law? In 1999, Senator Ashcroft campaigned in Missouri for a losing statewide initiative to permit carrying of concealed weapons. He told us over and over that he wants to make abortion a crime even in the case of rape and incest. He did his utmost to impede family planning and availability of

contraceptives. He has blocked confirmation of qualified moderate judges. What priorities will he choose, what court cases will he support; what judicial nominees will he promote? Will he fairly serve all of us in this most important position? Senator Ashcroft says he will. His record in Missouri suggests otherwise.

Senator Ashcroft has a long record of service in public office. It would be appropriate for the new administration to make use of his abilities. But not as attorney general of the United States.

Chairman LEAHY. Thank you.
Mr. Hunter?

**STATEMENT OF JERRY HUNTER, ESQ., FORMER LABOR
SECRETARY OF MISSOURI, ST. LOUIS, MISSOURI**

Mr. HUNTER. Mr. Chairman, Senator Leahy, Ranking Member Senator Hatch, and members of the Senate Judiciary Committee, it is indeed a pleasure and honor for me to be here today to testify in support of President-elect George W. Bush's nomination of John Ashcroft to be Attorney General of the United States.

Based upon my personal knowledge and relationship with Senator Ashcroft, I believe he is immanently qualified to hold the position of Attorney General. I have known Senator Ashcroft since 1983, and I have had the pleasure to work with him as an advisor, a subordinate during the period I was director of the Missouri Department of Labor from 1986 to 1989, and as a friend and supporter.

During that period that I have known Senator Ashcroft, I have always known him to be a person of the utmost integrity and an individual who is concerned about others. Contrary to statements which you have just recently heard and will hear from others during this hearing, I do not believe Senator Ashcroft is insensitive to minorities in this society, and I think the record which has been laid out by Senator Ashcroft clearly contradicts these allegations.

Like President-elect George W. Bush, Senator Ashcroft followed a policy of affirmative access and inclusiveness during his service to the State of Missouri as Attorney General, his two terms as Governor, and his one term in the U.S. Senate.

During the 8 years that Senator Ashcroft was Attorney General for the State of Missouri, he recruited and hired minority lawyers. During his tenure as Governor, he appointed blacks to numerous boards and commissions, and my good friend, Ms. Woods, referred to that, but I would say to you on a personal note, Senator Ashcroft went out of his way to find African-Americans to consider for appointments.

In fact, it was shortly after then-Governor Ashcroft took office in January 1985 that I received a call from one of the Governor's aides who advised me that the Governor wanted me to help him to locate minorities that he could consider for appointments to various State boards and commissions and positions in State government.

At the time, I was employed in private industry in St. Louis as a corporate attorney. I certainly was pleased that the Governor had asked me to assist his administration in helping him to locate and recruit African-Americans that he could consider for appointments.

During his tenure as Governor, John Ashcroft appointed a record number of minorities to State boards and commissions, including many boards and commissions which had previously had no minor-

ity representation. Governor Ashcroft also appointed eight African-Americans to State court judgeships during his tenure, including the first African-American to serve on a State appellate court in the State of Missouri and the first African-American to serve as a State court judge in St. Louis County.

Governor Ashcroft did not stop with these appointments. He approved the appointment of the first African-Americans to serve as administrative law judges for the Missouri Division of Worker's Compensation in St. Louis City, St. Louis County, and Kansas City.

When Governor Ashcroft's term ended in 1993, January 1993, he had appointed more African-Americans to State court judgeships than any previous Governor in the history of the State of Missouri.

Governor Ashcroft was also bipartisan in his appointment of State court judges. He appointed Republicans, Democrats, and Independents. One of Governor Ashcroft's black appointees in St. Louis was appointed notwithstanding the fact that he was not a Republican and that he was on a panel with a well-known white Republican.

Of the nine panels of nominees for State court judgeships which included at least one African-American, Governor Ashcroft appointed eight black judges from those panels, and in appointing African-Americans to the State court bench, Governor Ashcroft did not have any litmus test and none of his appointees to the State court bench, be they black or white, his or her position on abortion or any other specific issue, and I know this because I talked to many of the black nominees prior to their interview and talked to many of the black nominees after their interview.

Governor Ashcroft's appointment, in fact, of the first black to serve on the bench in St. Louis County was so well received that the Mound City Bar Association of St. Louis, one of the oldest black bar associations in this country, sent him a letter commending him.

As an individual who was personally involved in advising Governor Ashcroft on appointments from 1985 through 1992 and as one who served as the director of the Missouri Department of Labor under Governor Ashcroft from 1986 through 1989, I can unequivocally state that the regard which he was held in the minority community during his tenure as Governor was the highest regard.

Mr. Ashcroft's record of affirmative access and inclusiveness also includes his support of and the later signing of legislation to establish a State holiday in honor of Dr. Martin Luther King during 1986. Since 15 years have passed since the passage of the legislation in Missouri which created the holiday in honor of Dr. King, many individuals here today probably have forgotten the opposition which existed in the legislature to the establishment of Dr. King's birthday as a State holiday. The King bill had been introduced in the legislature for numerous years, and many of those years the bill never got out of Committee. In most years, it never—it certainly didn't pass either house of the legislature. It was not until 1986, after then-Governor Ashcroft announced his support for the King holiday bill, that the legislation sailed through the legislature and was ultimately signed by Ashcroft. And following the conclusion of the ceremony where Governor Ashcroft signed the King holiday bill, I went into the Governor's office and privately thanked

him for signing the bill. And Governor Ashcroft responded to me by saying, "Jerry, you do not have to thank me; it was the right thing to do."

Because of his sensitivity to the need for role models from the minority community, then-Governor Ashcroft established an award in honor of African-American educator George Washington Carver. He also signed legislation making ragtime composer Scott Joplin's house the first historic site honoring an African-American in the State of Missouri.

Mr. Chairman, I see my time is up. I would like to make one final point and would be happy to respond to any questions.

When Governor Ashcroft sought re-election in the State of Missouri as Governor during 1988, he was endorsed by the Kansas City Call newspaper, which is a well-respected black weekly newspaper in the State of Missouri. And in that election, he received over 64 percent of the vote in his re-election campaign for Governor.

Thank you, Mr. Chairman, and I would be happy to respond to any questions.

[The prepared statement of Mr. Hunter follows:]

STATEMENT OF JERRY M. HUNTER, ESQ., FORMER LABOR SECRETARY OF MISSOURI,
ST. LOUIS, MISSOURI

Mr. Chairman, Senator Leahy, Ranking Member, Senator Hatch, and Members of the Senate Judiciary Committee, it is a pleasure and indeed an honor for me to be here today to testify in support of President-elect George W. Bush's nomination of John David Ashcroft to be Attorney General of the United States. Based upon my personal knowledge of and relationship with Senator Ashcroft, I believe that he is eminently qualified to hold the position of Attorney General. I have known Senator Ashcroft since 1983 and I have had the pleasure to work with him as an advisor, a subordinate during the period that I was Director of the Missouri Department of Labor from 1986 to 1989, and as a friend and supporter. During the time that I have known Senator Ashcroft, I have always known him to be a person of the utmost integrity and an individual who is very concerned about others. Contrary to statements which you have heard or may hear during these hearings that Senator Ashcroft is somehow insensitive to the involvement of African-Americans and other minorities in the American political process and our society, I can state to you that there is no support for any such contentions. In fact, the evidence is totally to the contrary.

AFFIRMATIVE ACCESS

Like President-elect George W. Bush, Mr. Ashcroft followed a policy of affirmative access and inclusiveness during his service to the State of Missouri as an elected official which included two terms as Attorney General, two terms as Governor, and one six year term as United States Senator. During the eight years that Mr. Ashcroft was Attorney General for the State of Missouri, he recruited and hired minority lawyers including lawyers of African-American descent. Mr. Ashcroft continued his practice of affirmative access and inclusiveness after he was elected Governor of the State of Missouri during 1984. Unlike Mr. Ashcroft's critics who rely upon hearsay, innuendo, and unsubstantiated allegations to the effect that he is somehow insensitive to minorities, I rely upon personal knowledge which I gained as a result of working directly with then Governor Ashcroft to help him recruit minorities including African-Americans for possible appointment to positions in state government. The fact that Mr. Ashcroft took affirmative steps to seek out African-Americans for positions in state government make the charges that he is insensitive to racial matters that more outrageous.

It was shortly after Governor Ashcroft took office in January, 1985 that I received a call from one of the Governor's aides who advised me that the Governor wanted me to help him to locate qualified minorities that he could consider for appointment to various state boards and commissions and positions in state government. At the time, I was employed in private industry in St. Louis as a corporate attorney. I certainly was pleased that the Governor had asked me to assist his administration in

helping him to locate and recruit African-Americans that he could consider for appointments. During his tenure as Governor, former Governor Ashcroft appointed a record number of minorities to state boards and commissions including many boards and commissions which previously had no minority representation. Governor Ashcroft also appointed eight African-Americans to state court judgeships during his tenure as Governor including Fernando Gaitan who was appointed as a Judge on the Missouri Court of Appeals for the Western District of Missouri. Mr. Gaitan was the first African-American to serve on an Appellate Court in the State of Missouri. Governor Ashcroft also appointed Sandra Farragut-Hemphill as a Judge on the St. Louis County Circuit Court. Judge Hemphill was the first African-American to serve as a state court Judge in St. Louis County. Governor Ashcroft did not stop with these appointments. He approved the appointment of the first African-Americans to serve as Administrative Law Judges for the Missouri Division of Worker's Compensation in St. Louis City, St. Louis County and Kansas City. When Governor Ashcroft's second term as Governor ended in January, 1993, he had appointed more African-Americans as state court Judges than any previous Governor in the history of the State of Missouri. Governor Ashcroft was also bipartisan in his appointment of state court Judges. He appointed Republicans, Democrats and Independents. One of Governor Ashcroft's black appointees, Judge Charles Shaw, was appointed notwithstanding the fact that he was on a panel of nominees which included a well-known white Republican. Of the nine panels of nominees for state court judgeships which included at least one African-American, Governor Ashcroft appointed eight black Judges from those panels. And in appointing African-Americans to the state court bench, Governor Ashcroft did not have any litmus test and none of his appointees to the state court bench, white or black, were asked his or her position on abortion or any other specific issue.

Governor Ashcroft's record of appointing African-Americans to state court judgeship was so outstanding that the Mound City Bar Association of St. Louis, one of the oldest African-American Bar Associations in the country, commended him in a letter dated April 1, 1991 as follows: "Your appointment of [African-American] attorney Hemphill demonstrated your sensitivity, not only to professional qualifications, but also to the genuine need to have a bench that is as diverse as the population it serves. . . ."

[T]he appointment that you have just made, and your track record for appointing women and minorities, are certainly positive indicators of your progressive sense of fairness and equity. We commend you. . . ."

As an individual who was personally involved in advising Governor Ashcroft on appointments from 1985 through 1992 and as one who served as the Director of the Missouri Department of Labor under Governor Ashcroft from 1986 through 1989, I can unequivocally state that the letter sent to then Governor Ashcroft by the Mound City Bar during April, 1991 reflects the high regard that he was viewed by the minority community during his two terms as Governor.

Mr. Ashcroft's record of affirmative access and inclusiveness also includes his support of and the later signing of legislation to establish a State Holiday in honor of Dr. Martin Luther King during 1986. Since fifteen years have passed since the passage of the legislation in Missouri which created a Holiday in honor of Dr. King, many individuals have forgotten the opposition which existed in the legislature to the establishment of a King Holiday in Missouri prior to 1986. The King Holiday bill had been introduced in the Missouri legislature for the previous ten years or more. In many of these years, the legislation never got out of committee. Prior to 1986, the King Holiday bill did not pass either house of the legislature. It was only in 1986 after then Governor Ashcroft announced that he supported the King Holiday bill that the legislation sailed through the legislature and was ultimately signed by Ashcroft. Following the conclusion of the ceremony where Governor Ashcroft signed the King Holiday bill, I went into the Governor's office and privately thanked him for supporting and signing the legislation. Governor Ashcroft responded to me by saying "Jerry, you do not have to thank me; it was the right thing to do."

Because of his sensitivity to the need for role models from the minority community, then Governor Ashcroft established an award in honor of African-American educator George Washington Carver. He also signed the legislation establishing ragtime composer Scott Joplin's house as Missouri's first and only historic site honoring an African-American. And when Lincoln University, a historically black University which was founded by African-American Union soldiers after the Civil War, became financially-strapped as a result of mismanagement, Governor Ashcroft led the fight to save Lincoln University and he opposed efforts to close the University or merge it with the University of Missouri system which efforts involved many influential individuals in central Missouri including a significant number of members of the Missouri legislature.

As Governor, Mr. Ashcroft also signed Missouri's first hate crimes bill and fought to protect victims' rights. He also made education reform a priority during his tenure as Governor. Mr. Ashcroft also consulted and met with members of the black clergy in St. Louis and Kansas City. I attended these meetings with Governor Ashcroft where he sought to obtain the input of the black clergy on the policies and programs of state government which impacted the community as a whole and the black community specifically.

As Senator, Mr. Ashcroft supported 26 of the 28 African-Americans nominated to the Federal Courts by President Clinton. All 26 nominees that Senator Ashcroft supported were confirmed by the United States Senate. Of the two nominees that Senator Ashcroft did not support, one nomination was withdrawn and the other was defeated by the Senate.

When he sought reelection as Governor during 1988, Mr. Ashcroft was endorsed by the *Kansas City Call*, a well respected black weekly newspaper in Kansas City, Missouri. Mr. Ashcroft went on to win reelection as Governor with 64% of the vote.

A CASE OF REVISIONISM

Many of those who now denounce Senator Ashcroft as allegedly being insensitive to racial issues expressed no such view during Senator Ashcroft's tenure as Missouri Governor. It is not Senator Ashcroft who has changed his views; it is his critics who have done so. And in spite of his record of having appointed an unprecedented number of African-Americans to positions in state government and having supported legislation at the state and federal levels to recognize achievement by citizens of African-American descent, he is being unfairly labeled as being insensitive to racial issues without any support for such allegation. By placing such a label on Senator Ashcroft, his opponents hope to attack the very character traits which qualify him to be Attorney General and to somehow place him outside of the mainstream of American political thought. It is indeed sad and unfortunate that Senator Ashcroft's critics have decided that they would rather destroy his reputation as being a person of the highest integrity and someone who is honest and fair minded rather than having an intelligent discussion on the issues which they disagree with him including the size and the role of the federal government in issuing mandates to the states and the American people in the areas of education, civil rights, crime prevention and many other facets of American life. As Mr. Ashcroft's record during his years as Missouri Governor clearly shows, he is not only not insensitive to matters of race, he appointed more blacks to positions in Missouri state government than any of his democratic predecessors.

As far as the issue of Senator Ashcroft's willingness and commitment to enforcing the law is concerned, during the period that I was Director of the Missouri Department of Labor and Industrial Relations, Governor Ashcroft not only did not discourage our efforts to enforce the various laws which came under the jurisdiction of the Department, but rather he encouraged reasonable enforcement of the laws which included the prohibition against employment discrimination, the wage and hour laws, and health and safety requirements. Shortly before I assumed the position of Director of the Department of Labor, Governor Ashcroft removed several managers in the Division of Labor Standards because they failed to process requests for wage determinations in an expeditious fashion and failed to set the prevailing wages in a number of counties, which resulted in the delay of the commencement of construction on numerous publicly funded projects.

During my tenure with the Department, Governor Ashcroft's budget usually included a request for increased funding for each of the Divisions within the Department including the Missouri Commission on Human Rights, which responsibility included enforcing Missouri laws prohibiting employment and housing discrimination.

As an African-American who has had the opportunity to know and work with Senator Ashcroft, I certainly hope that this Committee will take the time to learn firsthand about Mr. Ashcroft's commitment to affirmative access and inclusion of African-Americans and other minorities in all facets of American life. If this Committee and the United States Senate give him the opportunity, I believe Senator Ashcroft will do an outstanding job as Attorney General and will enforce the laws of the United States without regard to his personal beliefs.

Chairman LEAHY. Thank you, Mr. Hunter, and you are correct, you did go over time. I am trying to be as flexible as I can, but there are a lot of other witnesses, and we hope that by late tomorrow night we might have this hearing finished.

Senator HATCH. We are hoping by late tonight to get this hearing over, and there is no reason—

Chairman LEAHY. I think they told all Federal employees to go home at 2 o'clock this afternoon because President-elect Bush and Ricky Martin are having a party down the Mall.

Senator HATCH. We know how hard you work, Senator, and we know you are willing to—

Chairman LEAHY. But I don't want to interfere with the President-elect and Ricky Martin.

Senator HATCH. Well, I do if it is going to put us into tomorrow—

Chairman LEAHY. You think the show here is better than Ricky?

Senator HATCH. This is a good show.

Chairman LEAHY. All right. Mr. Susman, please go ahead.

Mr. SUSMAN. If you would be kind enough to reset the clock, I will—

Chairman LEAHY. I am looking at the clock myself, and I am saying—here we go. Well, it is almost there. Go ahead.

STATEMENT OF FRANK SUSMAN, ESQ., ATTORNEY, GALLOP, JOHNSON, AND NEUMAN, L.C., ST. LOUIS, MISSOURI

Mr. SUSMAN. Mr. Chairman, Senator Hatch, members of the Committee, I appreciate your invitation and this opportunity to share my thoughts on the pending nomination of John Ashcroft as Attorney General of the United States.

Up front, let me state I strongly oppose this nomination. I am a practicing attorney in Missouri, with a long history of handling matters involving health care, particularly as they relate to women, contraception, and abortion.

Although a minor part of my law practice, I have been counsel in at least six cases involving these issues before the United States Supreme Court, three additional cases before the Missouri Supreme Court, as well as numerous other cases in courts throughout the United States.

Domestically, the Cabinet position of Attorney General is the most powerful of any. The Attorney General has the ability to shape the future of the Federal judiciary through his or her involvement in judicial appointments to the 641 district court positions, the 179 circuit courts of appeal positions, and the nine Supreme Court positions.

The Attorney General does much more than merely enforce the laws of this land. The Attorney General is able to influence legislation merely by the persuasive powers of the office. It is myopic to believe that the office possesses no discretion in interpreting the laws of the land, particularly on legal issues neither previously nor clearly decided by the Supreme Court. The Attorney General has the discretion to select which laws are to be given priority in enforcement through control of the purse and the assignment of other resources.

Based upon the nominee's consistent public statements and public actions over many years, I have no doubt that he would use the powers of the office to shape the judiciary and the law to his own personal agenda at the great expense of women, minorities, and our current body of constitutional and statutory law.

History is, indeed, a reliable precursor of the future.

While Missouri's Attorney General, the nominee issued a legal opinion seeking to undermine the State's Nursing Practice Act. He opined that the taking of medical histories, the giving of information about, and the dispensing of condoms, IUDs, and oral contraceptives, the performance of breast exams, pelvic exams, and Pap smears, the testing for sexually transmitted diseases, and the providing of counseling and community education by nurse practitioners constituted the criminal act of the unauthorized practice of medicine.

Each of these services were at the time routine health care practices provided by Missouri nurses for many years and, in fact, were being provided by nurses within the State's own county health departments.

As directly related to the case of *Sermchief v. Gonzales*, filed by impacted physicians and nurses, these nursing activities were being provided in federally designated low-income counties, in which there was not a single physician who accepted as Medicaid-eligible women patients for prenatal care and childbirth because of the low-fee reimbursement schedules established by the State of Missouri.

This opinion by the nominee provided the impetus for the State's Board of Registration for the Healing Arts to threaten the plaintiff physicians and nurses with a show-cause order as to why criminal charges should not be brought against them.

Implementation of the nominee's opinion would have eliminated the cost-effective and readily available delivery of these essential services to indigent women who often utilize county health departments as their primary health care provider and would have shut and bolted the door to all poor women who relied upon these services as their only means to control their fertility.

In *Sermchief*, a unanimous Missouri Supreme Court struck down the nominee's interpretation of the Nursing Practice Act.

During the nominee's term as Governor of Missouri, family planning funding was limited to the lowest amount necessary to achieve matching Federal Medicaid funds. And during this same period of time, teenage pregnancies in Missouri increased.

The nominee vigorously opposed the Snowe-Reid amendment to the Federal Health Benefits Plan, seeking to extend Federal health care coverage to include contraceptives.

The nominee cosponsored unsuccessful Congressional legislation seeking to impose upon all Americans a Congressional finding that "life begins at conception," which would have eliminated the availability of many common forms of contraception and legislation requiring parental consent for minors to receive contraception.

Throughout his political career and at every opportunity, the nominee has sought to limit access to and require parental consent for not only abortion but for contraception as well, although parental consent has never been suggested as a prerequisite for a minor to engage in sexual intercourse or to bear children. Although the nominee has continually sought to give these decisional rights of a minor to her parents, he has never suggested that these same parents have any financial or other responsibility for the minor's child once born.

The nominee's involvement with Bob Jones University, with the nominations of Dr. Henry Foster and of Dr. David Satcher as Surgeon General, with the nominations of Ronnie White as Federal district court judge, his tireless opposition to court-ordered desegregation plans, his support of school vouchers and of school prayer, all portray a person of deep personal convictions—an admirable quality in other contexts.

But when these convictions are starkly at odds with existing law and public sentiment in this country, then a person with such convictions should not be asked to ignore them in an effort to carry out faithfully the oath of office. Nor should we ever place any nominee in such an untenable dilemma.

In conclusion, I implore you to send a message to our President-elect: to submit to this Committee a nominee for Attorney General in whom an overwhelming majority of our citizens can admire, take comfort, and have confidence in to administer the office of Attorney General in a fair and just manner for all Americans, rather than an individual who has devoted his political career opposing the laws of this land on a wide variety of issues affecting the everyday lives and the will of the people.

Thank you.

[The prepared statement of Mr. Susman follows:]

STATEMENT OF FRANK SUSMAN, ESQ., GALLOP, JOHNSON, AND NEUMAN, L.C., ST. LOUIS, MISSOURI

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History is, indeed, a reliable precursor of the future.

While Missouri's Attorney General, the nominee issued a legal opinion seeking to undermine the state's nursing practice act. (No. 32, Jan. 2, 1980). He opined that the taking of medical histories, the giving of information about and the dispensing of condoms, LuAs and oral contraceptives, the performance of breast exams, pelvic exams and pap smears, the testing for sexually transmitted diseases and the providing of counseling and community education, by nurse practitioners, constituted the criminal act of the unauthorized practice of medicine.

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As directly related to the case of *Sermchief v. Gonzales*, 660 S.W.2d 683 (Mo. banc 1983), filed by impacted physicians and nurses, these nursing activities were being provided in federally designated low income counties, in which there was not a single physician who accepted as Medicaid eligible women patients for pre-natal care and childbirth, because of the low fee reimbursement schedules established by the State of Missouri.

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I implore you to send a message to our president-elect—to submit to this committee a nominee for Attorney General, in whom an overwhelming majority of our citizens can admire, take comfort and have confidence in to administer the office of Attorney General in a fair and just manner for all Americans; rather than an individual who has devoted his political career opposing the laws of this land on a wide variety of issues affecting the everyday lives and will of the people.

Chairman LEAHY. Ms. Michelman, we welcome you to this Committee. You have been a witness here before, and we appreciate having you here today.

**STATEMENT OF KATE MICHELMAN, PRESIDENT, NARAL,
WASHINGTON, D.C.**

Ms. MICHELMAN. Thank you, Mr. Chairman, Senator Hatch, and members of the Committee. I appreciate the invitation to testify—

Chairman LEAHY. Pull the microphone just a little bit closer, would you, please?

Ms. MICHELMAN. Sorry.

A decade ago, I spoke here of my experience as a struggling young mother of three, again pregnant by the husband who had abandoned my daughters and me, as a woman forced to endure

humiliating interrogation by a hospital Committee, confronted with laws that made abortion a crime.

Since then I have met thousands and thousands of women who depend on this Nation's right to choose and the survivors of those women who died because they did not have that right.

I have also spoken to women facing legal hurdles today. Desperate women call NARAL to ask whether the laws that restrict and stigmatize abortion forbid them from obtaining the services they need. Women without the money to diaper their children; women who cannot travel for hours to get an abortion; young women who fear they will be battered if they tell their parents they are pregnant.

The right to safe, legal abortion hangs by a slender thread. That threat could be cut by just one Supreme Court Justice or by an Attorney General not committed to its protection. The women NARAL represents all across this country cannot afford to have that thread severed.

I will discuss our opposition to this nomination in the context of three dominant themes:

First, Senators must choose between John Ashcroft's unmitigated quarter-century attack on a women's right to choose and his promise to this Committee to preserve *Roe v. Wade*, the basis of the right he has long sought to undermine.

Second, this nomination is so far outside the bounds of our National consensus regarding fundamental civil rights that it must be rejected, notwithstanding the President's prerogatives and senatorial courtesy.

And, third, John Ashcroft's record speaks volumes. It shows that he would use the vast powers of the Department of Justice to bend the law and undermine the very freedoms it took American women a century to secure. His promise to enforce existing law is obvious and necessary, but is woefully insufficient.

John Ashcroft's record includes the following, and I will note some of those that have already been mentioned:

He cosponsored the Human Life Act which would have virtually outlawed all abortions and common contraceptive methods like birth control pills.

In his support for banning abortion procedures, he has called preserving the woman's life "rhetorical nonsense."

As Attorney General, he tried to stop nurses from providing contraceptive services, an effort the State Supreme Court unanimously rejected.

As Governor, he supported a bill outlawing abortion for 18 different reasons, almost all abortions, and women would have had to have signed an affidavit revealing the most intimate details of their personal lives.

As Attorney General, Ashcroft testified in favor of Federal legislation declaring that life begins at conception, which would have allowed States to prosecute abortion as murder. Throughout his career, Ashcroft had worked to undermine, not respect, existing law.

Senator Ashcroft's goal has been to criminalize abortion, even in the cases of incest and rape, and to limit the availability of contraceptives. He has used every single tool of public office to attack women's reproductive rights. Merely committing not to roll back

our constitutional freedoms is not enough. To be confirmed, his record and his goals should be consistent with this commitment.

Senator Ashcroft's convenient conversion on the road to confirmation is simply implausible. His conversion has been timely, but it will be too late for millions of American women if he does not live up to his surprising promise to protect their right to choose.

Now, I know that when a colleague sits before you, the confirmation process is particularly sensitive. And within reasonable bounds, a President indeed should be able to pick his closest advisers. But those bounds have been exceeded here. It would be unthinkable to confirm an Attorney General who built a career on dismantling *Brown v. Board of Education*. By the same standard, by the very same standard, a person should be disqualified if he has sought over decades and by repeated official acts to annul the rights of women. A career built on attempts to repeal established constitutional rights is not only sufficient reason to vote against John Ashcroft's nomination, it should compel rejection.

John Ashcroft has told you that he will enforce the law. I did not expect him to say anything different. Remember, though, the duties of the Attorney General are far greater. He will advise the President on new legal initiatives. He will be charge with interpreting the law. He will be a strong voice in the appointment of every United States attorney and Federal judge. The Solicitor General will work under his discretion, and I believe that Senator Ashcroft will have a very keen eye to the opportunities new cases and new statutes present.

May I say that NARAL expected the President to nominate a conservative, but John Ashcroft's record is indeed uncompromising. Millions of women who stand with me cannot afford the risk of your giving John Ashcroft the awesome powers of the Attorney General.

Thank you.

[The prepared statement of Ms. Michelman follows:]

STATEMENT OF KATE MICHELMAN, PRESIDENT OF NARAL, WASHINGTON, DC

Thank you, Senator Leahy and Members of the Committee, for inviting me to testify. Almost ten years ago before this Committee, I spoke of my experience as a struggling young mother of three, again pregnant by the husband who had abandoned my family and me. I testified as a woman forced to endure humiliating interrogation by a hospital committee and confronted with laws that made abortion a crime.

I have spent the decade since that testimony fighting for the rights of women, traveling around our country. I have spent these years meeting thousands of women who depend on this nation's constitutional protection for a woman's right to choose and the survivors of those women who lost their lives because they didn't have that right.

I have also spoken to women facing legal hurdles today. Desperate women call NARAL to ask whether the laws that restrict and stigmatize abortion forbid them from obtaining the services they need. Women without the money to diaper their children; women who cannot travel for hours to get an abortion; young women who fear they'll be battered or thrown out of the house if they tell their parents they are pregnant; women pregnant by abusive relatives.

The right to safe, legal abortion is not secure. The Supreme Court has recognized that the right to choose is fundamental to women's equality, our dignity, and our freedom. Yet that right hangs by a thread. That thread could be cut by just one Supreme Court justice, or by an Attorney General uncommitted to its protection. The women NARAL represents cannot afford to have that thread severed. Their futures, their families, and sometimes their very lives, depend upon the right.

I will discuss our opposition to the nomination of John Ashcroft in the context of three dominant themes relating to this nomination:

- First, Senators must choose between John Ashcroft's unmitigated quartercentury attack on a woman's right to choose versus his initial remarks before this Committee, in which he vowed to preserve *Roe v. Wade*, the very case he has long sought to undermine.
- Second, this nomination is so far outside the bounds of our national consensus regarding fundamental civil rights and civil liberties that it must be rejected, notwithstanding the President's prerogatives and Senatorial courtesy; and
- Third, John Ashcroft's obvious and necessary promise to enforce existing law is woefully insufficient to warrant his confirmation. His record speaks volumes. That record indicates that John Ashcroft would indeed use the full panoply of powers available to the Attorney General to shape the law, to rescind the freedoms it took American women a century to secure.

John Ashcroft's record, spelled out in more detail in my written submission, includes the following:

- He cosponsored the Human Life Act of 1998, which declared that life begins at fertilization. If enacted, this Act would have the effect of banning common contraceptive methods like birth control pills that millions of women rely upon.
- In his support of abortion procedure bans, he has called preserving the woman's life "rhetorical nonsense."
- He likened safe, common forms of contraception to abortion in opposing insurance coverage of contraception.
- As Attorney General of Missouri, he took action to limit nurses from providing vital contraceptive services. Fortunately, the Missouri Supreme Court unanimously rejected that effort.
- As Governor, he supported a bill in Missouri that would have outlawed abortion for 18 different reasons, encompassing almost all abortions. Women seeking reproductive health services would have had to sign an affidavit, revealing the most intimate details of their personal decision.
- In 1981 as Attorney General, Ashcroft came to Washington to testify in favor of the Helms/Hyde bill declaring that life begins at conception, thus allowing states to prosecute abortion as murder. The legislation was flagrantly unconstitutional but Ashcroft testified that he wanted to present a challenge to the courts, rather than having Congress respect established law.

These and other actions John Ashcroft has taken as a public servant to criminalize abortion—even in cases of rape and incest—and to limit the availability of contraceptives demonstrate that he uses every tool of every public office to attack women's rights. The Attorney General-designate must commit not to take any action to roll back our constitutionally protected rights. But that's not all. His or her experience must demonstrate that such a commitment can be trusted, and John Ashcroft's late conversion on the road to confirmation is implausible. For the women whose lives, health and futures depend upon reproductive rights, it will be too late if Senator Ashcroft does not live up to his surprising promises to protect the right to choose.

Many say the President is entitled to have his nominees confirmed, short of some violation of the law or an ethical lapse. And I know that when a colleague sits in front of you, the confirmation process is particularly sensitive and difficult. Within reasonable bounds, a President *should* be able to pick his closest advisors. But those reasonable bounds have been exceeded with this appointment. It would be unthinkable for the Senate to confirm an Attorney General who built a career on dismantling *Brown v. Board of Education*. By the same token, a person should be disqualified from being Attorney General if he has sought, over decades and by repeated official acts, to annul women's rights, as John Ashcroft has. *A career built on attempts to repeal established constitutional rights is not only sufficient reason to vote against his nomination; it should compel rejection.*

Integrity of course demands that the Senate not sacrifice women's rights for the friendship of a colleague. The Reverend Dr. Martin Luther King, Jr. said, "The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy." If you understand that women's equality hinges on the right to choose, you must vote against the confirmation of John Ashcroft.

John Ashcroft has told you that he will enforce the law. What else would he or any nominee say? Remember, though, that the official duties of the Attorney General go far beyond enforcing the clear and specific dictates of existing law. And *through every one of those duties and powers, including as the President's legal advisor as to what the law should be, John Ashcroft poses a threat to women's reproduc-*

tive rights and equality. No case will ever present the same facts as decided cases such as *Roe*, *Casey*, or *Stenberg*. John Ashcroft will have a keen eye for the small differences new cases and new statutes present, and he will argue that these differences fall outside the protections of the established law he has newly promised to uphold. For example, would the Department argue in the Supreme Court that requiring parental consent for contraceptives is unconstitutional? *Roe v. Wade*, which was always more than just a legal case, has been hollowed out already. John Ashcroft's long record suggests that he would maintain only those protections the Court has already explicitly said cannot be taken away.

NARAL did not expect the President-elect to nominate anyone other than a conservative to be Attorney General. But John Ashcroft—notwithstanding the remarkable assurances he has offered over the past two days—is far beyond the margin of tolerance. Millions of women who stand with me cannot afford the risk of confirming John Ashcroft to the awesome position of Attorney General.

NARAL REPRODUCTIVE FREEDOM & CHOICE

JOHN ASHCROFT: A CHRONOLOGY OF ASSAULTS ON WOMEN'S REPRODUCTIVE RIGHTS

The designee to be the next Attorney General is a man whose record demonstrates a commitment to roll back established constitutional rights, a man who opposes abortion even in cases of rape and incest, a man who would legislate against common forms of contraception.

In the quotes and acts cited below, John Ashcroft declares that *Roe v. Wade*, the case that guarantees a woman's right to choose, was built "on the quicksand of judicial imagination." He ennobles the drive to end legal abortion by likening it to the civil rights movement of the 1960's. He declares that fetuses should be protected fully by the 14th Amendment, a position that would effectively criminalize as murder all abortions except those to preserve the woman's life. This record illustrates that John Ashcroft is so far out of step with the views of Americans—and such a threat to established constitutional rights—that he should not be confirmed as Attorney General.

Ashcroft's Public Career

1973–1975	State Auditor of Missouri
1975–1976	Assistant Attorney General of Missouri
1976–1985	Attorney General of Missouri
1985–1992	Governor of Missouri
1995–2000	U.S. Senator from Missouri

1979—Attorney General

- Ashcroft defended a Missouri regulation that prohibited poor women from obtaining public funds to pay for medically necessary abortions to reserve their health. He appealed the case all the way to the U.S. Supreme Court.¹

- Ashcroft defended a 1974 Missouri law requiring physicians under pain of criminal penalties to inform women seeking an abortion that if the infant is delivered alive, it will become a ward of the state. The Supreme Court affirmed a decision that struck down the law.²

- Ashcroft brought suit against the National Organization for Women (NOW) for exercising their first amendment right to sponsor a boycott of states that had not ratified the Equal Rights Amendment (ERA), alleging that the organization had violated federal anti-trust laws. So entrenched was his opposition to the ERA that Ashcroft appealed the case all the way to the U.S. Supreme Court.³

1980

- Ashcroft participated in an anti-abortion rally entitled "Pilgrimage for Life" in St. Louis, Missouri.⁴

1981

¹*Reproductive Health Services v. Freeman*, 614 F.2d 585 (8th Cir.), vacated, 449 U.S.

²*Ashcroft v. Freiman*, 440 U.S. 941 (1979); Morton Mintz, Mo. *Seeking Review of its Ward-of-State Abortion Law Clause*, WASHINGTON POST, Mar. 4, 1979, A7. 3

³*Missouri v. National Organization for Women*, 467 F.Supp. 289, 291 (W.D. Mo. 1979), *aff'd*, 620 F.2d 1301 (8th Cir. 1980), *cert. denied*, 449 U.S. 842 (1980).

⁴*Anti-Abortion Rally in St. Louis Draws Thousands*, ASSOCIATED PRESS, Oct. 27, 1980.

- Ashcroft testified before Congress alongside anti-choice activist John Willke, in support of a bill sponsored by Senator Helms and Representative Hyde that stated that life begins at conception and that would have allowed states to prosecute abortion as murder. Ashcroft stated, “I would regard this bill as an important but insufficient step in the protection of human life. I personally have an opinion and belief that the human life amendment would remain necessary.” He also called *Roe v. Wade* an “error-ridden decision” and said, “I have devoted considerable time and significant resources to defending the right of the State to limit the dangerous impacts of *Roe v. Wade*, a case in which a handful of men on the Supreme Court arbitrarily amended the Constitution and overturned the laws of 50 states relating to abortions.”⁵

1983

- In *Planned Parenthood v. Ashcroft*, Ashcroft defended an anti-abortion Missouri law before the U.S. Supreme Court. Commenting on the Court’s decision to uphold a provision of the law requiring a second physician to be present during post-viability abortions, Ashcroft said this was “a victory for Missouri’s law.” In response to the Court’s decision to invalidate a part of the law that would have required all abortions after 12 weeks to be performed in a hospital, Ashcroft stated that Missouri may need more stringent abortion clinic regulations as a result.⁶

- As Attorney General, Ashcroft attempted to block nurses in Missouri from providing basic gynecological services—including providing oral contraceptives, condoms, and IUDs, and providing PAP smears and testing for gonorrhea—by intervening on behalf of the respondent in a Missouri Supreme Court case. The suit was based on an Attorney General opinion by Ashcroft.⁷ According to Susan Hilton, who was involved in the suit, if the medical board (known as the Board of Registration for the Healing Arts) had been able to carry out its threats against doctors who worked with nurse practitioners, it would have stopped the delivery of health care in the family planning system dead in its tracks.⁸

- According to the *Jefferson City News & Tribune*, Ashcroft told the Missouri Citizens for Life annual convention that “he would not stop until an amendment outlawing abortion is added to the constitution.” He said, “Battles (for the unborn) are being waged in courtrooms and state legislatures all over the country. We need every arm, every shoulder and every hand we can find. I urge you to enlist yourself in that fight.”⁹

1985—Governor

- Ashcroft designated the 1985 anniversary of *Roe v. Wade* a “day in memoriam” for aborted fetuses and issued a proclamation that stated, “the people of Missouri and their elected official respect God’s gift of life.”¹⁰

1986

- Ashcroft signed a bill that, among other things: stated that life begins at fertilization, prohibited abortions at publicly funded facilities and prohibited public employees from performing or counseling about abortions. Ashcroft said, “This bill makes an important statement of moral principle and provides a framework to deter abortion wherever possible.” The bill was challenged all the way to the *U.S. Supreme Court in Webster v. Reproductive Health Services*.¹¹

1989

- Ashcroft issued a proclamation declaring the 16th anniversary of *Roe v. Wade* “a day in memoriam” for aborted fetuses, stating, “the protection of the Constitution of the United States ought to apply to all human beings . . . including unborn children at every state of their biological development.”¹²

⁵ Bernard Weinraub, *Senate Hearings on Abortion Close on Emotional Note*, NEW YORK TIMES, June 19, 1981, A16; Hearings on S. 158 Before the Subcomm. on Separation of Powers, Senate Comm. on the Judiciary, 97th Cong. 1105–1116 (1981) (statement of Att’y Gen. John Ashcroft, Mo.).

⁶ Scott Kraft, *Supreme Court Decision Hailed as “Most Significant in Decade”* ASSOCIATED PRESS, June 15, 1983; *Planned Parenthood Assoc. of Kansas City, Mo. v. Ashcroft*, 462 U.S. 476 (1983).

⁷ *Sermchief v. Gonzales*, 660 S.W.2d 683 (Nov. 22, 1983); Op. Att’y Gen. No. 32 (Jan. 2, 1980).

⁸ Susan Hilton, Personal Communication with Elizabeth Cavendish, Vice President of the NARAL Foundation and NARAL Legal Director (Jan. 10, 2001).

⁹ *Ashcroft Urges Support for Right-to-Life Amendment*, JEFFERSON CITY NEWS & TRIBUNE, Mar. 1983.

¹⁰ Associated Press, *Backers, Opponents of Court Decision Express Views; Abortion Ruling Anniversary Observed*, LOS ANGELES TIMES, Jan. 23, 1985, 12.

¹¹ 1986 MO HB 1596; Christopher Ganschow, *Missouri Limits Funds for Abortions*, CHICAGO TRIB. June 28, 1986, 3; *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989).

¹² Office of the Governor, State of Missouri, *Proclamation Declaring January 22, 1989 a Day in Memoriam for Unborn Children* (Jan. 17, 1989).

- Immediately after the Webster decision, Ashcroft announced that he “would appoint a panel of legal and medical experts to ‘consider further changes in Missouri’s laws regulating abortion,’” including “additional measures the state could enact within the framework of [the Webster] decision.” Ashcroft subsequently established a Task Force for Mothers and Unborn Children consisting of seven people tied to the anti-abortion movement and no obstetricians. When asked whether he would appoint people who support abortion rights, Ashcroft responded, “It would not be appropriate to have groups that recommend abortion on the panel.” Task force member and Missouri Citizens for Life leader Loretto Wagner commented, “What did you expect the governor to do? . . . The governor is very clear—he wants to stop abortion. You’re not going to put people on who will try to scuttle that.” In early 1990, the task force issued a report calling on legislators to pass a law to challenge *Roe v. Wade*.¹³

Governor Ashcroft described abortion as “an atrocity against the future.”¹⁴

- Speaking at the National Right to Life Committee’s annual convention, Ashcroft said that abortions contributed to a “vacuum of values” among American youth. “What kind of signal are we as a society sending them about the value of life? We need to send an unmistakable message that there is a fundamental value in life itself The Roe decision is simply a miserable failure And I hope that the Supreme Court announces it is overturning the Roe decision and giving back to the states the right to make public policy.”¹⁵

- Praising the U.S. Supreme Court decision in Webster, Ashcroft commented, “By beginning the dismemberment of *Roe vs. Wade*, the Supreme Court gives the American people greater ability to save innocent lives. That’s something Missourians take very seriously.”¹⁶

1990

- Ashcroft urged legislators to prohibit women from obtaining more than one abortion in their lifetimes.¹⁷ He stated, “History someday is going to say, ‘This butchering of women and children is the wrong way to manage family size.’ . . . A vast, overwhelming majority of Missourians—even if they do not all feel the same about all abortions—feels strongly that the use of abortions has gone much too far and that many abortions are now performed for reasons that are unacceptable.”¹⁸

- Ashcroft refused to intervene on behalf of activists who were denied access to retail stores while seeking signatures for an abortion rights ballot initiative, even though he personally requested that the stores give special permission to petitioners for an ethics initiative that Ashcroft sponsored.¹⁹

- Ashcroft vetoed nearly \$1 million in appropriations for Missouri’s overburdened foster-care system, even though he supports tight abortion restrictions, which make such care all the more necessary.²⁰

1991

- At a Clergy for Life Dinner, Ashcroft boasted of Missouri, “No state has had more abortion related cases that reached the United States Supreme Court and be decided by the Supreme Court.”²¹

- Ashcroft supported a bill that would have outlawed abortions performed for 18 different reasons, including:

- to prevent multiple births from the same pregnancy;
- to prevent the loss or deferment of an educational or employment opportunity;
- because of nonuse or failure of birth control;

¹³State of Missouri, Task Force for Mothers & Unborn Children, Final Report, Appendix C, p. 10 (Jan. 11, 1990); Virginia Young, *Abortion Panel’s Report Less Forceful than Expected*, ST. LOUIS POST-DISPATCH, Jan. 14, 1990, 7C; Karen Ball, *Missouri Law Won’t Have Much Impact on Availability of Abortions*, ASSOCIATED PRESS, July 4, 1989; Virginia Young, *Abortion Task Force is Told to Work Fast*, ST. LOUIS POST-DISPATCH, Aug. 9, 1989, 1 C.

¹⁴Sharon Cohen, *Anti-Abortion Forces: “Best Sign of Hope We’ve Had in 16 Years,”* ASSOCIATED PRESS, Apr. 11, 1989.

¹⁵*Congressmen Warn Against Complacency In Anti-Abortion Movement*, ASSOCIATED PRESS, July 2, 1989.

¹⁶Lori Dodge, *Abortion Clinic Officials Call Court Ruling an “Outrage,”* ASSOCIATED PRESS, July 3, 1989.

¹⁷Ethan Bronner, *US States Face Flood of Bills on Abortion; Aftermath of Webster Ruling*, BOSTON GLOBE, Jan. 29, 1990, 1 P.

¹⁸Jim Mosley, *Ashcroft Would Ban 2nd Abortion, Challenge All Others*, ST. LOUIS-POST DISPATCH, Jan. 20, 1990, 1 A.

¹⁹Mark Schlinkmann, *Area Stores Bar Petitions on Abortion*, ST. LOUIS-POST DISPATCH, June 28, 1990, 3A.

²⁰Marcee Frontenac, *Missouri’s Children Get Mixed Signal*, ST. LOUIS POST-DISPATCH, May 19, 1990, 313.

²¹Virginia Young, *Sponsor Shelves Anti-Abortion Bill*, ST. LOUIS POST-DISPATCH, May 1, 1991, 14A.

- to avoid the expense or legal responsibility for childbearing or rearing;
- to prevent having a child not deemed to be wanted by the woman or “father”;
- because of financial reasons;
- because of cosmetic reasons;
- because of a change in life-style or to maintain any particular life-style;
- to avoid single parenthood;
- to avoid perceived damage to reputation;
- to prevent the birth of a developmentally handicapped child;
- to avoid marital difficulty;
- to limit family size; and
- for a reason of social convenience.

The bill, which carried criminal penalties, would have required the physician to obtain an affidavit from the woman stating the reasons she is seeking an abortion. Ashcroft called state Senator Marvin Singleton, the swing vote on the committee considering the bill, to urge him to support it, but Singleton voted against the legislation because it lacked an exception for cases of rape and incest.²²

1992

- Ashcroft refused to appropriate funds for family planning services in Missouri beyond those required by federal law.²³

1994

- Missouri Right to Life praised Ashcroft for help[ing] Missouri become one of the premier states in the battle for the sanctity of life.²⁴

1995-Senator

- During Senate debates on banning so-called “partial-birth” abortion, Ashcroft called talk of preserving the woman’s life “rhetorical” nonsense.²⁵
- Ashcroft voted against the repeal of the discriminatory Hyde amendment that bans Medicaid coverage for abortion services for low-income women except in cases of rape, incest, or life endangerment.²⁶
- During the hearings for the nomination of Dr. Henry Foster for Surgeon General, whose nomination never received a floor vote, Ashcroft said, “Very frankly, the optimal candidate for this responsibility should not be someone who has committed abortions because there is a large group of individuals in this country for whom a person who has committed abortions cannot be a real leader.”²⁷

1996

- Ashcroft stated, “Does my religious belief affect the way I do politics and government? It affects virtually everything I do, I hope.”²⁸

1997

- As in 1995, Ashcroft again cosponsored legislation to criminalize safe abortion procedures used prior to fetal viability.²⁹
- Ashcroft voted to ban access to abortion services except in cases of rape, incest, or life endangerment for those enrolled in a new children’s health program, writing into permanent law for the first time the discriminatory Hyde Amendment.³⁰
- Ashcroft opposed the confirmation of Dr. David Satcher as Surgeon General in part because Satcher opposed a ban on so-called “partial-birth” abortion. Ashcroft said, “It is shocking that the nominee for surgeon general . . . would associate himself with partial-birth abortion In so doing, he chooses . . . barbarity over the judgment of medicine.”³¹
- At a Christian Coalition convention, Ashcroft said, “To the so-called leaders who say abortion is ‘too politically divisive,’ let me be clear Confronting our cul-

²² 1991 MO SB 339; Virginia Young, *Key “No” Vote is Just One Obstacle to Passing 1991 Anti-Abortion Bill*, ST. LOUIS POST-DISPATCH, Mar. 28, 1991, 1 C.

²³ Martha Shirk, *Urban Families: How They Have Fared Under Ashcroft*, ST. LOUIS POST-DISPATCH, Mar. 1, 1992.

²⁴ Missouri NARAL and Planned Parenthood of the St. Louis Region, John Ashcroft Fact Sheet (on file with NARAL).

²⁵ Ellen Debenport, *Senate Postpones Vote on Abortion*, ST. PETERSBURG TIMES, Nov. 9, 1995, 3A.

²⁶ Nickles motion to waive the Chafee point of order and Smith motion to instruct Senate conferees to adopt House-passed language to the Balanced Budget Reconciliation Act of 1995, S 1357, 10/27/95.

²⁷ Keith White, GANNETT NEWS SERVICE, May 11, 1995; NARAL, 1995 Congressional Record on Choice.

²⁸ Deborah Mathis, *Religion-But Not Religious Groups-Drive Ashcroft*, GANNETT NEWS SERVICE, July 17, 1996.

²⁹ “Partial-Birth” Abortion Ban Act of 1997, S 6; “Partial-Birth” Abortion Ban Act of 1995, S 939.

³⁰ Kerrey amendment to the Balanced Budget Act of 1997, S 947, 6/25/97.

³¹ John Godfrey, *Rush to Adjournment Precludes Satcher Vote; Lott Expects Confirmation Next Year*, WASHINGTON TIMES, Nov. 14, 1997, A12.

tural crises is the true test of our courage and true measure of our leadership. It is time for us to reacquire our party with the politics of principle. We must not seek the deal, we seek the ideal.³²

- In a speech on “judicial despotism,” Ashcroft said:³³
- “[C]onsider 1992 when the court challenged God’s ability to mark when life begins and ends. Three Reagan appointees joined the majority in *Planned Parenthood of Southeastern Pennsylvania v. Casey* to uphold a ‘woman’s right to choose.’ So much for recapturing the court. Together, Roe, Casey and their illegitimate progeny have occasioned the slaughter of thirty-five million children, thirty-five million innocents denied standing before the law.”
- “As Judge Bork asserts, the abortion rulings represent ‘nothing more than the decision of a Court majority to enlist on one side of the culture war.’”

1998

- When asked, “. . . [O]ne choice, cut taxes or outlaw abortion-what would you do?” Ashcroft replied, “Outlaw abortion.”³⁴
- Ashcroft, along with Senators Helms and Smith, cosponsored a resolution calling for an amendment to the U.S. Constitution to ban abortion even in cases of rape or incest.³⁵ The amendment also would outlaw several of the most common contraceptive methods.
- Ashcroft co-signed a letter expressing opposition to a Senate amendment to require that the Federal Employee Health Benefits Plan (FEHBP) cover the cost of FDA-approved contraceptives, citing concern that it would fund abortifacients.³⁶
- Ashcroft, along with Senators Helms and Smith, cosponsored legislation that declares that life begins at fertilization and would therefore outlaw abortion-as well as some of the most common contraceptive methods except in cases of life endangerment.³⁷
- Ashcroft proposed the Putting Parents First Act of 1998, which would require minors to obtain parental consent for abortion referrals or contraceptives in any facility receiving federal funds.³⁸ In promoting the bill, Ashcroft said, “When federal dollars fund programs that provide children with contraceptives or refer them to abortionists the critical role of parents must be recognized and respected These critical life decisions are the business of parents, not bureaucrats. Parents must not be reduced to the status of mere bystanders when their children are facing these difficult decisions. The law must put parents first.”³⁹ Ashcroft also stated, “How disturbing that a child’s only source of advice can be a bureaucrat or abortion clinic employee.”⁴⁰
- On the 1998 anniversary of *Roe v. Wade*, Ashcroft marched with Missouri Right to Life in the National March for Life.⁴¹ In a speech entitled “*Roe v. Wade*: Has it Stood the Test of Time?” Ashcroft said:⁴²
- “As a legal matter, the absence of any textual foundation for the ‘trimester’ framework established in *Roe* has resulted in an abortion jurisprudence that is marked by confusion and instability. It demonstrates the dangers of building a legal framework on the quicksand of judicial imagination, rather than the certainty of constitutional text.”
- “The current constitutional standard permits restrictions on abortion only if they do not place an ‘undue burden’ on the right to an abortion. Tragically, it is a standard which gives the Court discretion to authorize the destruction of innocent human life.”

³²David Goldstein, *Ashcroft Mixes Religion, Action in Pitch to Christian Coalition*, KANSAS CITY STAR, Sept. 14, 1997, A24.

³³Senator John Ashcroft, Speech to the Conservative Political Action Conference Annual Meeting, “On Judicial Despotism,” Mar: 6, 1997, <http://www.reagan.com/HotTopics.main/HotMike/document-4.18.1997.6.html>.

³⁴Meet the Press (NBC television broadcast, Apr. 19, 1998).

³⁵SJ Res. 49, 1998.

³⁶Letter signed by Senator John Ashcroft et al., to Senator Ben Nighthorse Campbell, Subcomm. on Treasury, Postal Service and General Government (Sept. 4, 1998) (on file with NARAL).

³⁷Human Life Act of 1998, S 2135.

³⁸Putting Parents First Act of 1998, S. 2380.

³⁹Government Press Release, Federal Document Clearing House, *Ashcroft Proposal Affirms Role of Parent, Requires OK for Abortions, Contraceptives* (July 16, 1998).

⁴⁰Government Press Release, Federal Document Clearing House, *Ashcroft Bill Affirms Parents’ Role in Critical Choices by Children* (July 30, 1998).

⁴¹Government Press Release, Federal Document Clearing House, *Ashcroft Announces Events for Week of March for Life* (Jan. 15, 1998).

⁴²Senator John Ashcroft, Prepared Remarks, *Roe v. Wade*: Has it Stood the Test of Time? (Jan. 21, 1998) (congressional testimony).

- “Regrettably, the damage that Roe has wrought on the culture and the Constitution has not been confined to the realm of abortion. To buttress Roe as constitutional law, the courts have created exceptions to individual rights that—unlike abortion—are constitutionally protected.”

- “The poetry springs from the growing network of crisis pregnancy centers giving women alternatives to the destruction of fragile life. Millions of Americans have heard the silent cries for help, and are responding.”

- Ashcroft received an award from the American Life League, an extremist anti-abortion and anti-contraception group.⁴³

- During Ashcroft’s bid for the Republican nomination for the presidency:⁴⁴

- “Ashcroft carried a Missouri Right to Life banner at a meeting with abortion opponents.”

- Ashcroft likened the fight to end legal abortion to the civil rights movement of the 1960s. “We have the most noble and worthy objective that we could have.”⁴⁵

- Ashcroft suggested that American leaders should pursue a religious agenda, stating, “if only our government had a heart closer to God’s.”⁴⁶

- Ashcroft said, “They say you can’t legislate morality. . . well, you certainly can.”⁴⁷

- Ashcroft stated, “Throughout my life, my personal conviction and public record is that the unborn child has a fundamental individual right to life which cannot be infringed and should be protected fully by the 14th Amendment.”⁴⁸

- Ashcroft said, “On moral issue after moral issue, the Congress has cut and run, when we needed to stand and lead . . . We must start by voting to defend innocent human life. God’s precious gift of life must be protected in law and nurtured in love.”⁴⁹

1999

- Ashcroft voted in favor of overturning *Roe v. Wade* and denying a constitutional right to safe and legal abortion services.⁵⁰

- In reference to so-called “partial-birth” abortion, Ashcroft said, “. . . this procedure is never necessary to save the life and preserve the health of the unborn child’s mother.”⁵¹

- Ashcroft co-signed another letter expressing opposition to a Senate amendment to require that the Federal Employee Health Benefits Plan (FEHBP) cover the cost of FDA-approved contraceptives, citing concern that it would fund abortifacients.⁵²

- Ashcroft voted against an amendment to prevent persons who commit acts of violence or harassment at reproductive health care facilities from using bankruptcy proceedings to avoid paying the damages, court fines, penalties, and legal fees levied against them as a result of their illegal activities.⁵³

2000

- In response to Ashcroft’s nomination for Attorney General, Jim Sedlack, director of public policy for the American Life League (ALL), commented, “We are very pleased . . . He is one of the people who consistently supports our positions.” ALL

⁴³ American Life League, Press Release, *Big Abortion Group Seeks to Defame ALL*, Jan. 3, 2001, <http://www.all.org/news/010103.htm>; American Life League, *Birth Control: The Abortion Connection*, <http://www.all.org/issues/bcOO.htm> (last visited Jan. 12, 2001).

⁴⁴ Bill Lambrecht and Patrick Wilson, *Abortion Activists Vow to Stress Moral Issues*, ST. LOUIS POSTDISPATCH, Jan. 23, 1998, A4.

⁴⁵ Lambrecht and Wilson, *Abortion Activists Vow to Stress Moral Issues*.

⁴⁶ Liz Szabo, *Senator Focuses on Themes of Faith, Family and Politics*, VIRGINIAN-PILOT & LEDGERSTAR, May 10, 1998, B1.

⁴⁷ *Who is John Ashcroft? And Why are Leaders of the Christian Right Saying Such Nice Things About Him?* CULTURE WATCH (June 1998), <http://www.igc.apc.org/culturewatch/issue53.html>.

⁴⁸ Terence Jeffrey, *Ashcroft Affirms He is 100% Pro-Life*, HUMAN EVENTS MAGAZINE, May 29, 1998.

⁴⁹ Ed Anderson, *Quayle Slams Clinton at State GOP Convention*, TIMES-PICAYUNE, Mar. 8, 1998, A13.

⁵⁰ Harkin/Boxer non-binding resolution to “Partial-Birth” Abortion Ban Act of 1999, S 1692, 10/21/99.

⁵¹ Senator John Ashcroft, *Barbaric Practice*, CONGRESSIONAL PRESS RELEASES, Oct. 21, 1999.

⁵² Letter signed by Senator John Ashcroft et al., to Senator Ben Nighthorse Campbell, Subcomm. on Treasury, Postal Service, and General Government (June 21, 1999).

⁵³ Schumer amendment to Bankruptcy Overhaul (Senate Judiciary Committee), S 625, 4/27/99. Although he voted for the amendment on the floor, 80 Senators did so, and the vote may not have been fully reflective of some Senators’ opposition to clinic violence. Vice President Gore had arrived to break any tie vote, and Republican leaders counseled an “Aye” vote so as to avoid public embarrassment, on the promise that the amendment would be killed later.

calls the Freedom of Access to Clinic Entrances Act “preposterous” and believes birth control pills are abortifacients, calling them “baby pesticides.”⁵⁴

2001

• Over 100 conservative organizations endorsed Ashcroft for U.S. Attorney General, including: American Conservative Union, Americans United for the Unity of Church and State, Center for Reclaiming America, Christian Coalition, Citizens for Traditional Values, Concerned Women for America, Eagle Forum, Family Research Council, Focus on the Family, Human Life Alliance, and Young America’s Foundation.⁵⁵

Chairman LEAHY. Thank you, Ms. Michelman.

Ms. Feldt, you are one not unaccustomed to testifying before the Congress. Good to have you here.

STATEMENT OF GLORIA FELDT, PRESIDENT, PLANNED PARENTHOOD FEDERATION OF AMERICA, NEW YORK, NEW YORK

Ms. FELDT. Thank you very much, Chairman Leahy and Senator Hatch, and all Senators. I am really honored to be here, particularly to follow upon the testimony of Ronnie White, I must say, very relevant to what we are talking about now.

I also have a little confession to make. Yesterday, Mr. Ashcroft disclosed to you that he and I—yes, I was the one who had talked with him about armadillos and skunks.

The real point of that exchange, however, was to say that I agree with him that it is very important to act upon your convictions. And he and I have both spent over 25 years of our lives acting upon our convictions. But can you just wash away 25 years of passionate activism? I know I certainly could not.

I want to believe Mr. Ashcroft when he says he accepts *Roe v. Wade* as the law of the land, but his career stands in sharp contrast to his statements this week. Since past behavior is the best predictor of future performance, I am very worried.

John Ashcroft’s beliefs are his own private business, but what he does about his beliefs are everybody’s business. His career in government is noteworthy for his crusade to enact into law his belief that personhood begins at fertilization. This belief defies medical science.

As a U.S. Senator, you know that he sponsored the most extreme version of the anti-choice human life amendment which would have written his belief into the Constitution. As Governor of Missouri, he signed the legislation declaring his belief to be the policy of the State. And he opposed contraceptive coverage for Federal employees because some of the contraceptives would have acted or could have acted after fertilization. Indeed, he never voted to support family planning at all.

The fundamental right to choose declared in *Roe* stands on the earlier *Griswold v. Connecticut* decision, which protected the right

⁵⁴ David Lightman, Ashcroft Satisfies GOP Right; Attorney General Choice Known for Conservatism, HARTFORD COURANT, Dec. 23, 2000, A1; American Life League, Press Release, Big Abortion Group Seeks to Defame ALL, Jan. 3, 2001, <http://www.all.org/news/010103.htm>; American Life League, Birth Control. The Abortion Connection, <http://www.all.org/issues/bcOO.htm> (last visited Jan. 11, 2001); American Life League, Press Release, ALL Campaigns to Stop Wal-Mart’s Abortion Referral Service, June 9, 2000, <http://www.all.org/news/000609.htm>.

⁵⁵ Free Congress Foundation, Press Release, Grassroots Endorsements of Senator John Ashcroft’s Nomination to be United States Attorney General (Jan. 5, 2001), http://freecongress.org/press/releases/01_0105-list.htm.

to contraception. Both are based on the fundamental human and civil right to privacy in making child-bearing decisions.

Mr. Ashcroft's crusade would not only outlaw abortion but most common methods of contraception as well, and unless Mr. Ashcroft is prepared to walk away from the keystone of his entire political career, then as Attorney General he would be in a unique position to impose his definition of personhood as fertilization. This could not only strike at the right to abortion but also contraception. An anti-choice President plus John Ashcroft plus a Supreme Court they help shape equals a recipe for disaster.

You have asked whether Mr. Ashcroft would enforce the Freedom of Access to Clinic Entrances Act. He says that he will enforce the law, and that is necessary but not sufficient. It takes leadership and prevention, and here is the difference: In the late 1980's, hordes of demonstrators repeatedly stepped over the lines of legal protest at our centers. I personally received a long series of telephone death threats, both at home and at work. Our doctors were stopped day and night. Our health centers received numerous bomb threats. I went to the chief of police, and he said, "Close the clinic."

There was a sea change after FACE, and with an Attorney General committed to vigorous enforcement. It is not just about enforcing the law after violence has occurred, you see, because all around the country U.S. attorneys brought together various law enforcement agencies. Collaboration and cooperation became expectation. U.S. Marshals not only answered our phone calls, they started calling us to ask if they could help with preventive measures. Murders and violent acts nationwide were cut in half as a result.

Paula Gianino, CEO of our St. Louis Planning Parenthood affiliate, tells me that in John Ashcroft's tenure as the Attorney General and as the Governor of Missouri, he did not once take a public leadership stand against clinic violence. Her staff could not find in the media nor any individual who remembers Mr. Ashcroft speaking out on clinic violence, even when Reproductive Health Services was firebombed, causing \$100,000 worth of damage in 1986.

Senator Ashcroft has said that he is proud Missouri brought more anti-abortion cases to the Supreme Court than any State. He said that outlawing abortion is more important to him than cutting taxes and that if he could only pass one law, it would be to outlaw abortion. How can he turn that spigot off? And if he can, what does that say?

I want to close by talking to you not as Senators but as men and women—none of the women are here today, I am sorry to say—who care deeply about the Nation and its people. This nomination represents something bigger than Presidential discretion, bigger than senatorial courtesy, bigger even than your personal friendships. This is about a fundamental human and civil right, to determine whether you believe women have the moral authority to run their own lives, to make their own child-bearing decisions. So I ask you to listen to your inner voices and think about what you will say to your daughters and your granddaughters.

How will you explain to future generations if John Ashcroft uses the power of his office to deny the women you know and love reproductive the choices, the right to our own lives?

Thank you very much.

[The prepared statement of Ms. Feldt follows:]

STATEMENT OF GLORIA FELDT, PRESIDENT OF PLANNED PARENTHOOD FEDERATION OF AMERICA

Good morning. My name is Gloria Feldt. I am president of Planned Parenthood Federation of America, the nation's largest and most trusted provider of reproductive health care and education. Each year, nearly five million women, men, and teenagers receive reproductive health services at the 875 centers operated by the Planned Parenthood network of 127 affiliates, serving communities in 48 states and the District of Columbia.¹

Planned Parenthood is widely recognized as one of the country's major providers of abortion services, including both surgical and medical abortion, and we are proud of the important role we play in making abortion accessible to the women who need it in settings that are dignified and compassionate. However, as our name indicates, at the core of Planned Parenthood is family planning, comprising more than 90% of the services we provide.² By family planning, I mean contraception and accompanying health care, including annual physicals and cancer screenings, and counseling and information that give people the means to make their own responsible choices. Each year, we prevent an estimated half-million unintended pregnancies through these services, and it should go without saying that preventing unintended pregnancies also prevents abortions.³ And remember, that number just represents Planned Parenthood. Nationwide, family planning services prevent millions of unintended pregnancies a year⁴, and also help prevent sexually transmitted infections and a wide range of other health problems. Taken together, family planning services have a profound positive effect on the lives and health not only of the women of this country, but their families, their children. . . in fact, just about every one of us.

For a woman to be able to determine her own destiny requires that she be able to control the timing and extent of her childbearing and the integrity of her own body. The ability to make these decisions without government interference and regardless of geography, economic circumstance, or political considerations, is the most fundamental civil and human right. That's why Planned Parenthood is so deeply concerned about Senator Ashcroft's record of attempts to interfere with the right of Americans to make these decisions, and by the genuine threat his confirmation as attorney general would represent to the rights of all Americans.

As a senator, John Ashcroft failed to cast a single vote in favor of family planning services.⁵ And remember, I'm not talking about abortion here; I'm talking about preventive care. More significantly, his actions and statements over time with regard to choice and family planning represent no mere commentary on policy decisions of the day, but rather illustrate deeply held beliefs that put him at odds with the overwhelming majority of Americans who want and need reproductive health and family planning services free from government interference.

Taking one of the most extreme positions among those who oppose a woman's right to make her own reproductive choices, John Ashcroft actually believes that personhood begins *before pregnancy*, at the moment that sperm meets egg, the moment of fertilization. He holds this belief in spite of the fact that it contradicts the medically accepted definition of pregnancy as the time when a fertilized egg is implanted in the uterine wall—the moment of conception.⁶

Planned Parenthood does not oppose Senator Ashcroft's appointment because of his personal beliefs; we oppose him because of his record of using his positions of governmental authority to enact his views into law, and thereby to impose those views on all citizens. Cases in point: John Ashcroft has sponsored the most extreme version of the so-called "Human Life Amendment,"⁷ which would have given his personal ideology based definition of pregnancy the force of law by declaring that

¹ Planned Parenthood Federation of America. January 2000. This is Planned Parenthood [Brochure].

² Ibid

³ Ibid

⁴ AGI—The Alan Guttmacher Institute. (1999, accessed 2000, January 16). Contraception Counts: State-by-State Information [Online]. <http://www.wagi-usa.org/pubs/ib22.html>.

⁵ NARAL—National Abortion and Reproduction Action League. (Accessed January 16, 2001). "John Ashcroft: A Chronology of Assaults on Women's Reproductive Rights." [Online] <http://naral.org/mediareources/fact/ash—chron.html>

⁶ Cunningham, G., MacDonald, p., Gant, N., et.al, eds. (1997). Williams Obstetrics, 20th Edition. Stamford, CT: Appleton & Lange

Hughes, E. (1972). Obstetric-Gynecologic Terminology with Neonatology And Glossary of Congenital Anomalies. Philadelphia, PA: F. A. Davis Company.

⁷ Human Life Amendment of 1998, S 2135.

life begins at fertilization. When he was governor of Missouri, he signed into law legislation declaring that it is the policy of Missouri that life begins at fertilization.⁸ And he was one of eight senators to sign a “dear colleague” letter opposing a Senate amendment requiring that federal employees get the same coverage for contraceptive drugs and devices that they receive for other prescription drugs and devices. In the letter, they said, “We are concerned with what appears to be a loophole in the legislation regarding contraceptives that, upon failing to prevent fertilization, act de facto as abortifacients.”⁹

The practical, and intended, result of these and similar efforts would be not only the criminalization of abortion as we know it, but also of some of the most commonly used and effective methods of contraception, such as the birth control pill, which frequently acts to prevent implantation of the fertilized ovum.

You will hear testimony today about the fear that, as attorney general, Senator Ashcroft would try and perhaps succeed in turning back the clock on Americans’ reproductive rights by eliminating the right to choose abortion. Let us not forget that the fundamental right to abortion declared and protected by *Roe* and *Casey* stands on the earlier *Griswold v. Connecticut* decision, which protected the closely linked and equally fundamental right to contraception.¹⁰ Both are based on the fundamental right to privacy in making childbearing decisions. Senator Ashcroft’s record demonstrates that he will use the power of government to impose on citizens his view that personhood begins at fertilization. To the extent that he is able to do so, he will not only strike at the right to abortion, he will strike at the right to contraception. The attorney general has an unparalleled ability, by virtue of his roles as legal advisor to the U.S. president and head of the Department of Justice, to influence the legislative agenda of the nation. I am truly hard pressed to understand how anyone would voluntarily grant that level of power and influence to an individual who has so single-mindedly pursued a personal ideological agenda, while ignoring not only medical facts but also the rights and health of millions of Americans in the process.

Yes, I am deeply concerned by what Senator Ashcroft might do as attorney general to change laws that now keep family planning and reproductive health services available to the majority of Americans who want and need them. He has demonstrated throughout his career his willingness to go to great lengths to push for laws and court decisions that reflect his personal ideological and religious views even when his views would override the deeply held views of the majority. I respect his right to hold those views, and I would fight for his right to hold them. But he has no right to impose them on the rest of us in this pluralistic democracy.

As concerned as I am about some of the things an Attorney General Ashcroft might do, I am equally concerned about some of the things he might not do.

As the nation’s chief law enforcement officer, the attorney general has the ability and the responsibility to vigorously enforce laws designed to protect both providers and recipients of reproductive health services, while deterring and punishing those who employ criminal means to prevent access to those services.¹¹ Chief among these laws is the Freedom of Access to Clinic Entrances Act, which prohibits persons from using force, threat of force, or physical obstruction to intentionally injure, intimidate, or interfere with persons because they are obtaining or providing reproductive health services. The law also bars persons from intentionally damaging or destroying the property of a facility because the facility provides reproductive health services.

When the law act was passed in 1994, it came not a moment too soon. Those of us involved in the provision of reproductive health services are a hardy lot; we’ve had to be. But there’s a limit to what anyone can or should have to endure, and the stunning litany of violent assaults, arson incidents, bombings and attempted bombings, vandalism, stalking, and physical intimidations that went on before the law was enacted would be enough to petrify the bravest of battle-tested warriors, never mind the innocent young men and women both seeking and providing these services across the country. Make no mistake; the opponents of reproductive choice

⁸NARAL—National Abortion and Reproduction Action League. (Accessed January 16, 2001). “John Ashcroft: A Chronology of Assaults on Women’s Reproductive Rights.” [Online] http://naral.org/mediasources/fact/ash_chron.html

⁹Ashcroft, John (Dear Colleague Letter to Treasury, Postal Service and General Government, September 4, 1998)

¹⁰*Griswold v. Connecticut*, 381 U.S. 479 (1965).

¹¹Federal Bureau of Investigation. (Accessed January 16, 2001). “Freedom of Access to Clinic Entrances.” [Online] <http://www.fbi.gov/programs/civilrights/face.html>

NARAL—National Abortion and Reproduction Action League. (Accessed January 16, 2001). “Freedom of Access to Clinic entrances (FACE).” [Online] <http://www.naral.org/mediasources/fact/freedom/html>

take their business seriously. Individuals have been threatened; people have been injured; people have been killed—many of them employees and volunteers at Planned Parenthood health center and at other providers throughout the country.

The good news is that passage of the Freedom of Access to Clinic Entrances act in 1994 was rewarded by a precipitous fall in the major categories of criminal violence outside health centers compared to the five years previous: the number of murders of medical staff dropped by 40%; attempted murders fell by 45%; arson dropped by 62%; and attempted arson and bombings fell by 48%. Incidents of harassment, disruption, and blockades also showed a decline.¹²

The critical factor in the reduction in violence against health care providers was the active and vigorous pursuit and enforcement of the law by the Department of Justice, under the leadership of the attorney general, in cooperation with local law enforcement. By committing the necessary resources and support essential to apprehending and prosecuting perpetrators, the department sent a zero-tolerance message to would-be arsonists, bombers, and murderers.

To be sure, the most violent incidents, especially those involving the loss of life, are the ones that have garnered the most attention and still stand out in our hearts and minds. We must never forget the names of those who sacrificed their very lives at the hands of extremists—names like Dr. David Gunn, Dr. John Bayard Britton and his volunteer escort, James H. Barrett, Shannon Lowney and Leanne Nichols, two beautiful young women who worked as receptionists; Officer Robert Sanderson, an off-duty police officer killed during the first fatal bombing of a U.S. abortion clinic; and Dr. Barnett Slepian, killed by a sniper's bullet fired through a window of his home in 1998.

We remember each and every one of those individuals, and we remember their families and what they have lost. But it would be a mistake to think that it's just those who commit the most violent of acts who must be pursued using every resource and legal avenue. For the reality is that in almost every case, the perpetrators of arson, bombings, and similar acts of violence and destruction had, at an earlier time, been involved in threats, harassments, and other acts of intimidation, and only later did they "graduate" to the more infamous violent crimes whose victims we now must sadly mourn.

James Charles Kopp, the killer of Dr. Barnett Slepian, is a case in point. Prior to murdering Dr. Slepian in 1998, he was arrested eight times in as many parts of the country for blocking entrances to clinics. And just as Senator Ashcroft has not differentiated between family planning and abortion, "family planning-only" clinics and places where abortions are also performed as targets for his legislative and other activist efforts, neither have the perpetrators of violence. Family planning clinics have been the targets of threats, vandalism, and bombings, too.

And let's be perfectly clear: the law may say that access to family planning and reproductive health services is a basic right; it may say that the provision of these services is legal and protected; and the law may even specify that it is illegal to interfere with access to family planning and reproductive health services. But if those laws are not vigorously enforced by the Department of Justice; and if providers are too scared for their lives to offer the services; and if Americans are too afraid to access them, then all of the laws will be nothing but empty vessels.

As leaders in the public eye, I'm sure you know more than a little bit about what it means to be out there in a world where there's always someone who doesn't agree with you on something, and occasionally that someone has a scary way of telling you so. Like you, I get letters from average Americans on a daily basis expressing their views on our issues. Fortunately, the vast majority of them take a calm tone. In fact, most of the letters we receive are thank-you notes, expressing gratitude for ways in which Planned Parenthood improved the authors' lives through services we provided. Then there are the other letters. I'll readjust a few lines of one.

"You people will pay personally for what you are doing . . . I will support every terrorist possible to end the bloodshed that you have and are bringing upon the white race . . . I won't be as dramatic and sloppy as a Tim McVeigh . . . your money has not prevented those pigs from being killed . . . neither did the laws, or the pig-cops who protect you. . ."

A Department of Justice investigation revealed that John Kelley, the man who wrote the letter I just quoted from, had a past history of both of protesting at clinics and stalking women.¹³ The FBI moved aggressively to identify and arrest him, and in September 1999, he pled guilty to sending threatening e-mail messages to repro-

¹² NAF—National Abortion Federation. (2000, accessed 2000, January 16). NAF Violence and Disruption Statistics: Incidence of Violence & Disruption Against Abortion Providers [Online]. <http://www.prochoice.org/default7.htm>.

¹³ *United States v. Kelly*, (1999).

ductive health care providers in New York and Georgia and was sentenced to 16 months in prison. Believe me when I tell you that I can't help but wonder what he might try next time, and whether he'll be pursued as vigorously as the last time. And there are so many other John Kelleys out there, waiting for their chance, watching what we do. . . watching what you do.

That's why the role of attorney general is so critical in vigorously enforcing the law and pursuing the John Kelleys of this country, and why the possibility of a John Ashcroft as attorney general has me and so many others afraid, not just for our rights, but for our very lives.

The best way to predict how John Ashcroft would act as U.S. attorney general is to look at his performance in Missouri when he held office there. During the time that John Ashcroft was attorney general and then governor of Missouri, he failed to respond to the increase in anti-choice intimidation, harassment, and violence at Missouri reproductive health clinics. A particular example was his reaction to the devastation by arson of a clinic operated by Reproductive Health Services, now part of Planned Parenthood, in June 1986 in Manchester, Missouri. Despite our best efforts to find a single public statement from him at that time, it appears that he said absolutely nothing.

Throughout his career, John Ashcroft has fought hard for the things he believes in. By itself, that is a quality each one of us can and should admire. But he has taken his fight to the point of using his power and positions to impose his beliefs on every one of us, and that we should not and must not accept. He also has failed to fight for the rights of those with whom he disagrees, especially when the disagreement concerns the very nature of human and civil rights. That, too, we should not and must not accept. As attorney general, John Ashcroft would have the responsibility to put aside his personal beliefs and use every resource at his disposal to vigorously enforce the laws that protect the rights, the health, and the very lives of all Americans. Based on his record, we simply do not believe he will do that, and that is why we hope he will not be confirmed. Thank you.

PLANNED PARENTHOOD APPOINTMENTS WATCH

NAME: FORMER SEN. JOHN ASHCROFT

POSITION: ATTORNEY GENERAL

PPFA POSITION: AGAINST

KEY AREAS OF CONCERN

- The Attorney General plays a critical role in the selection of federal judicial nominees. The Justice Department is responsible for selecting, screening and recommending judicial nominees for appointment to federal district and appellate courts throughout the country as well as for the Supreme Court. Given the large number of vacancies on the federal bench, at both the district and appellate level, the Attorney General can have a significant impact on the federal court system for many years.

- As our country's lead prosecutor, the Attorney General is responsible for the enforcement of federal laws protecting women's reproductive freedom, including the Freedom of Access to Clinic Entrances Act (FACE). Besides criminal enforcement of FACE, the Attorney General, along with State Attorneys General, may initiate civil FACE actions resulting in injunctive relief and monetary penalties.

- The Attorney General is the legal advisor to the President and all the executive branches of government. In particular, the Justice Department provides legal advice to the executive branch on all constitutional questions. The Justice Department also reviews pending Congressional legislation for constitutionality. Given Mr. Ashcroft's opposition to *Roe v. Wade*, it is possible that a Justice Department under his direction might consider nearly any ban or restriction on abortion to be constitutional.

- The Attorney General will also represent the Bush Administration's position on issues within the courts—including the Supreme Court. Through the Office of the Solicitor General, the Attorney General represents the United States in the Supreme Court.

ASHCROFT'S LEGISLATIVE RECORD DEMONSTRATES HIS EXTREME POSITIONS

John Ashcroft was one of the fiercest opponents of abortion rights during his tenure in the U.S. Senate. As a Senator, he supported the Hyde Amendment, which prohibits the use of federal funds for abortion services as well as laws that might have banned common and safe forms of birth control. He was one of the few elected

public officials to defend and accept an award from the American Life League, a radical right-wing group opposed to all abortions for any reason.

Planned Parenthood Action Fund gave Ashcroft a 100% anti-choice rating while he was in office. He is extreme, and his positions are out of line with mainstream America. Ashcroft has a clear history of anti-choice positions that demonstrate why he should not be Attorney General:

Ashcroft Opposed Roe v. Wade—As recently as October 1999, Ashcroft voted against an amendment restating the principles of *Roe v. Wade* and declaring that the *Roe* decision was appropriate, Constitutional, and should not be overturned or narrowed. (*Roe v. Wade* Resolution 10/21/99)

Ashcroft Sponsored the Human Life Amendment—In 1998, Ashcroft sponsored S.J. Res. 49, the so-called “Human Life Amendment,” and S. 2135, the so-called “Human Life Act,” which stated that a fetus is a human being from the moment of fertilization and banned abortions (even in cases of rape and incest) “as long as [the law authorizing such procedures] requires every reasonable effort be made to preserve the lives of both of them.” (Human Life Act of 1998)

Ashcroft Sponsored Legislation Potentially Banning the Birth Control Pill—The definition of life as beginning at “fertilization” as used in the “Human Life Amendment” raised the prospect that such a law or amendment would bar the use of many of the most effective and popular means of birth control. The position that birth control pills and IUDs are abortifacients is a primary tenet of the American Life League, an organization from which Ashcroft received an award for his anti-choice activities. (Human Life Act of 1998)

Ashcroft Opposed Legislation Guarantying That Clinic Violators Pay Their Fines—Ashcroft voted against an amendment that would have prevented perpetrators of violence or harassment at reproductive health care clinics from declaring bankruptcy to avoid paying the damages and court fines levied against them as a result of their illegal activities. (Amendment to Bankruptcy legislation (S. 625), in committee)

Ashcroft Opposed Medically Accurate Sex Education—Instead of supporting responsible, medically accurate sexual education programs that provide information about all options relating to reproductive health, including abstinence, so that teens may make informed decisions, Ashcroft voted to earmark \$75 million in fund for abstinence only education. (Vote to allow \$75 million to be earmarked for abstinence only education 7/23/96)

ROLE IN LEGISLATION

The Justice Department reviews pending Congressional legislation for constitutionality. Examples of legislation proposed in the 106th Congress that the Justice Department might have reviewed include the so-called partial birth abortion ban, the Unborn Victims of Violence Act, the Child Custody Protection Act as well as appropriations riders, including bans on research relating to mifepristone, whether women can use their own money on military bases to get abortions, and whether women in prison can use their own money to get abortions.

CONCLUSION: ASHCROFT PUTS WOMEN’S CONSTITUTIONALLY PROTECTED RIGHTS IN JEOPARDY

One only has to understand the scope of the Attorney General’s office to understand why Planned Parenthood Federation of America is opposed to the nomination of John Ashcroft. Planned Parenthood’s nationwide network of more than 500,000 activists is mobilizing to oppose his nomination.

Chairman LEAHY. Thank you, Ms. Feldt.

Ms. Greenberger, good to have you here again, and please go ahead. And we are having some difficulties with some of the sound system, so bring the microphone close.

STATEMENT OF MARCIA GREENBERGER, CO-PRESIDENT, NATIONAL WOMEN’S LAW CENTER, WASHINGTON, D.C.

Ms. GREENBERGER. Thank you. Thank you, Senator Leahy and other members of this Committee, for the invitation to testify today. I am Co-President of the National Women’s Law Center which, since 1972, has been in the forefront of virtually every major effort to secure women’s legal rights. My testimony today is presented on behalf of the center as well as the National Partner-

ship for Women and Families, which, since its founding in 1971 as the Women's Legal Defense Fund, has also been a preeminent advocate for women's legal rights in Washington and nationally.

We are here today to oppose the nomination of John Ashcroft to serve as Attorney General of the United States, and we do so because the Attorney General of the United States, very simply, is responsible for protecting and enforcing the fundamental principles and laws that have advanced and safeguarded women's progress for more than three decades and because, as has been stated here, Senator Ashcroft's record demonstrates that entrusting him with this heavy responsibility would put these precious gains for women at far too great a risk to ask them to bear.

Mr. Ashcroft has testified that he would accept responsibility to execute the laws as they are and not as he might wish them to be. But we have not been reassured by his testimony. The extreme positions that have been a driving and overriding theme of his long public career have repeatedly led him to misread what the laws are, and then to zealously use his public offices to advance his mistaken views.

His assurances in his testimony were too often general in nature, subject to many caveats, and must be considered within the context of the way in which he did discharge his obligations when he was also obligated to enforce and also interpret the laws. I want to mention briefly some of the areas beyond choice and abortion and contraception, so important, and what has been discussed so far this morning, to raise some other issues as well.

We have heard about his opposition to the equal rights amendment which would have given women the highest legal protection against sex discrimination in all areas of life by the government. This stands in stark contrast to his support of other amendments to the Constitution, extraordinary support to so many other amendments. And we know about his vigorous support, or pursuit, rather, of the National Organization for Women, and we know of only one other Attorney General who even mentions support of that kind of suit out of the 15 States that were subject to boycott at that time.

He used his veto power not just in not supporting laws important to women, but actually vetoing laws, including a maternity leave law in 1980 that he vetoed that was far more limited in scope than the Federal Family and Medical Leave Act that he would be charged with upholding, including enforcing as Attorney General. He twice vetoed bills that would have established a State minimum wage in Missouri. Women are the majority of minimum wage earners. And at that time, Missouri was only one of six States without a State minimum wage law.

He twice used his line-item veto in 1991 and again the following year to seek out and strike even small sums of money for domestic violence programs, prompting a local domestic violence advocate to denounce the action as reprehensible in light of the fact that the programs in question were literally struggling to stay afloat.

One of the most critical responsibilities of an AG in administering the Department of Justice programs dealing with violence against women is determining the financial resources that will be committed to that very program.

As a Senator, Mr. Ashcroft's record on issues important to women has been no better, and my written testimony explains why. I will mention two points briefly.

First, as Senator, he repeatedly blocked the confirmation of highly qualified women to the Federal bench. Not one of us sitting here today could have failed but be moved by the extraordinary testimony of Judge Ronnie White, and I want to point out how struck I was by the important notes of criticism that were articulated by members of this Committee about the process that was followed in the Judge Ronnie White case. There have been similar problems with other women nominees. Senator Specter, you identified those problems this morning.

Senator Ashcroft would be screening and evaluating judges, a major responsibility. He would be responsible for setting up and implementing the process he would use to screen and refer judges to the President. He would be doing this behind closed doors. This Senate has seen how he has operated in the open. To give him that vast authority, as I say, behind closed doors is unthinkable.

I want to also say that his promise to enforce the law as it is has not been borne out in practice when he has disagreed with the law as it has been. He has not been able to do so. And I am not questioning his motives. I am for the conviction with which he made the promise to this Committee and to the American public. What I am questioning is his ability to dispassionately, despite his intentions to do so otherwise, but his ability to actually read the law fairly and accurately.

We have heard about what happened with the nurses' case. I want to briefly mention one other case involving—when he was Attorney General of Missouri, where he supported in court going—trying to go all the way up to the Supreme Court, a law that would have automatically terminated parental rights to a child born after an attempted abortion and then making automatically the child a ward of the State.

Judge William Webster, then a judge on the Eighth Circuit, described the provision, and these are in his words in a concurring opinion, as offensive, totally lacking in due process, and patently unconstitutional. We cannot ask the American public to rely upon the promises of Senator Ashcroft that his view of what is constitutional will become the view that then is argued to the Supreme Court, is the subject of advice for discrimination laws across the country and the like.

Thank you.

[The prepared statement of Ms. Greenberger follows:]

STATEMENT OF MARCIA D. GREENBERGER, CO-PRESIDENT, NATIONAL WOMEN'S LAW CENTER

My name is Marcia Greenberger, and I appreciate your invitation to testify today. I am Co-President of the National Women's Law Center, which since 1972 has been at the forefront of virtually every major effort to secure women's legal rights. My testimony today is presented on behalf of the Center as well as the National Partnership for Women & Families, which, since its founding in 1971 as the Women's Legal Defense Fund, also has been a preeminent advocate for women's legal rights in Washington and nationally.

I am here to oppose the nomination of John Ashcroft to serve as Attorney General of the United States. I would like to emphasize that this is a step that we do not take lightly. We do so in the case of this nomination because the Attorney General

of the United States is responsible for protecting and enforcing the fundamental principles and laws that have advanced and safeguarded women's progress for three decades, and Mr. Ashcroft's record demonstrates that entrusting him with this heavy responsibility would put these precious gains for women at substantial risk—a risk too great to ask women of this country to bear.

The Attorney General, as head of the U.S. Department of Justice, is directly responsible for carrying out the President's constitutional charge to "take care" that the laws of the United States are faithfully executed. While Mr. Ashcroft may understand that his responsibility would be to execute the laws as they are, and not as he might wish them to be, the extreme positions that have been a driving and overriding theme of his long public career have repeatedly led him to misread what the laws are and zealously use the public offices he has held to advance his firmly-held views. His record demonstrates that he would use the vast powers of Attorney General to endanger the constitutional guarantees and hard-won federal laws that form the core legal protections for women in this country today.

THE ASHCROFT RECORD IS ONE OF HOSTILITY TO LAWS AND CONSTITUTIONAL PROTECTIONS OF CENTRAL IMPORTANCE TO WOMEN

Much has been said about the fact that Mr. Ashcroft believes *Roe v. Wade* should be overturned, and about his unrelenting pursuit of that goal throughout his public career. Less has been said about the sweeping way he would seek to overturn *Roe*. He would include, in his definition of abortion, commonly-used forms of the birth control pill, IUD's and other methods of contraception.¹ He would make no exception for cases of rape, incest or the very health of a woman.² In overturning *Roe v. Wade*, he would not even leave it up to each state to determine what it would allow women within its borders to choose. Rather, he takes the position that *every state*—from New York to California, from Maine to Florida—should be restricted, by federal statute and by constitutional amendment, in its ability to preserve women's right to choose.³ He has even supported legislation that would bar women from challenging the constitutionality of state restrictions in federal district courts and courts of appeal.⁴

Mr. Ashcroft has made no secret of the central role that his opposition to *Roe v. Wade* has played in his public life. In 1983, he told the Missouri Citizens for Life annual convention that he "would not stop until an amendment outlawing abortion is added to the U.S. constitution."⁵ More recently he said, "If I had the opportunity to pass but a single law, I would fully recognize the constitutional right of life of every unborn child, and ban every abortion except those medically necessary to save the life of the mother."⁶ As he told *Human Events*, "Throughout my life, my personal conviction and *public record* is that the unborn child has a fundamental individual right to life which cannot be infringed and should be protected fully by the 14th Amendment." (emphasis added).⁷

Mr. Ashcroft has stated that he will not compromise on the abortion issue, and has chastised fellow Republicans who took the position that the Republican party should be more accepting of other opinions: "To the so-called leaders who say abortion is 'too politically divisive' let me be clear. Confronting our cultural crises is the true test of our courage and true measure of our leadership. It is time for us to reacquaint our party with the politics of principle. We must not seek the deal, we seek

¹See, e.g., Letter to the Honorable Ben Nighthorse Campbell, September 4, 1998 (Sen. Ashcroft was a signatory to a letter opposing contraceptive coverage for federal employees which stated "[b]ut more importantly we are concerned with what appears to be a loophole in the legislation regarding contraceptives that upon failing to prevent fertilization act *de facto* as abortifacients"); Letter to the Honorable Ben Nighthorse Campbell, June 21, 1999 (Sen. Ashcroft was a signatory to a letter opposing contraceptive coverage for federal employees which stated "[a]s you are aware, some of the contraceptives that were mandated under the Snowe/Reid provision act de facto as abortifacients upon failing to prevent fertilization").

²*Human Events Magazine*, May 29, 1998 (confirming his opposition to a rape and incest exception). Mr. Ashcroft has also supported legislation that would ban abortions and make no exception for pregnancies caused by rape or incest, or a woman's health. See, e.g., the Human Life Amendment, S.J.Res. 49, 105th Cong., 2d Sess., June 5, 1998; and the Human Life Act of 1998, S. 2135, 105th Cong., 2d Sess., June 5, 1998. 2

³Hearings on S. 158 *Before the Subcommittee on Separation of Powers of the Senate Judiciary Committee*, 97th Cong., 15th Sess. (1981) at 1107.

⁴S. 158, "Human Life Bill," 97th Cong., 1st Sess. (1981) (Section 4).

⁵*Jefferson City News & Tribune*, March 13, 1983.

⁶*Human Events Magazine*, May 29, 1998.

⁷*Human Events Magazine*, May 29, 1998.

the ideal.”⁸ Mr. Ashcroft said that he was the only Senator to oppose the Republican National Committee’s decision to continue to fund Republican candidates who support abortion rights and oppose the ban, ultimately struck down as unconstitutional, on so-called “partial birth” abortion. “I think there are certain things we simply don’t fund and stand for and that’s one of the things we don’t,” he said.⁹

Not only has Mr. Ashcroft argued that his party should not financially support candidates in favor of abortion rights, he also has used a rigid abortion rights test in judging Clinton administration nominees. As he stated on his web site, “life and death decisions are often made by non-elected officials—judges, the surgeon general, etc. Those who devalue life must not be placed in authority over policies affecting our most vulnerable. I have repeatedly, and in many instances alone, fought President Clinton’s anti-life nominations and appointments including activist federal judges and Surgeon General nominees Henry Foster and David Satcher.”¹⁰

It is hard to imagine that John Ashcroft, who throughout his career has pledged to ban abortions and overturn *Roe v. Wade*, has used every public service position that he has held to advance that cause, has attacked the legitimacy of the *Roe* decision in the strongest of terms, has decried any compromise on the issue and chastised his colleagues in the Republican party for a “big tent” approach, would protect *Roe v. Wade* as the Attorney General of the United States.

In addition, Mr. Ashcroft has amassed a record of opposition to other core constitutional and legal rights of women, and programs to ensure their health and safety, and has a dismal record of appointing women to high-level government positions and the judiciary. The President of the St. Louis area chapter of the National Women’s Political Caucus said, “Ashcroft’s record on appointments reflects his administration’s general insensitivity and unresponsiveness to women’s issues, such as domestic violence, quality child care, education, reproductive rights and equal rights.”¹¹

While Mr. Ashcroft has been ardent in his support for a string of constitutional amendments on a variety of subjects, as Attorney General of Missouri he opposed ratification of the Equal Rights Amendment to the U.S. Constitution, which would have given women the strongest level of protection against government-based sex discrimination.¹² Indeed, then Attorney General Ashcroft went to extreme lengths to sue the National Organization for Women (NOW) under the antitrust laws for its efforts to persuade the remaining 15 states to ratify the ERA by encouraging an economic boycott. He pursued this litigation all the way to the Supreme Court, even though he was unsuccessful every step of the way, as the courts held that NOW’s activities were protected by the First Amendment.¹³

As Governor of Missouri, Mr. Ashcroft also demonstrated his antipathy to key concerns of women through his repeated use of his veto power to thwart the will of the Missouri legislature on issues of particular importance to women. In 1990, he vetoed a maternity leave law that was far more limited in scope than the federal Family and Medical Leave Act he would be charged with defending as Attorney General.¹⁴ He twice vetoed bills that would have established a state minimum wage in Missouri, despite the fact that Missouri was one of only six states without a state minimum wage law at the time; women comprise the majority of minimum wage earners.¹⁵ He twice used the line-item veto, in 1991 and again the following year, to seek out and strike even small sums of money for domestic violence programs, prompting a local domestic violence advocate to denounce the action as “reprehensible” in light

⁸ *Kansas City Star*, September 14, 1997.

⁹ *Meet the Press*, April 19, 1998.

¹⁰ John Ashcroft’s Spirit of America Website, <<http://www.johnashcroft.org/life/htm>> (last visited on January 17, 2001).

¹¹ *St. Louis Post Dispatch*, February 25, 1989.

¹² Deposition of John Ashcroft, *National Organization for Women v. Ashcroft*, Case No. 81-4094-CV-C-W, 24 (January 7, 1982).

¹³ *Missouri v. NOW*, 620 F.2d 1301 (8th Cir.1980), cert. denied, 449 U.S. 842 (1980).

¹⁴ Veto Letter, Missouri S.B. 542, July 13, 1990. See also, *St. Louis Post Dispatch*, March 3, 1990. The 1990 Missouri bill covered only women employees; it did not cover seriously ill children or other family members, or even adoptive fathers; it did not protect employee’s health insurance during their leave; it guaranteed employees’ jobs for only eight weeks (except in cases of premature births); and it contained an exemption for food service personnel.

¹⁵ *St. Louis Post Dispatch*, March 3, 1990. Less than two weeks after Governor Ashcroft vetoed the state’s minimum wage bill, the Missouri House tentatively approved a bill to place the minimum wage bill before Missouri voters. *St. Louis Post Dispatch*, March 16, 1990. The state legislature then passed a new version of the bill by unanimous vote. *St. Louis Post Dispatch*, April 25, 1990. Finally, threatened by the effort to take the bill directly to voters and facing certain override, Ashcroft signed the bill. *St. Louis Post Dispatch*, May 3, 1990.

of the fact that the programs in question were “literally struggling to stay afloat.”¹⁶ And he vetoed legislation creating 700 new slots of subsidized child care and reportedly killed bills that would have required church-based child care to meet basic fire, safety, and sanitation standards.¹⁷

Reinforcing, and perhaps even partly explaining, his poor record of support for laws protecting women during his eight years as Governor, John Ashcroft had a dismal record on appointments of women to the highest levels of his government and to the courts. In 1989, a survey by the National Women’s Political Caucus revealed that Mr. Ashcroft was the only governor in the country with an appointed cabinet that did not include any women.¹⁸ After serving as Governor for seven years, John Ashcroft had appointed only one woman to his cabinet.

A separate study of Governor Ashcroft’s judicial appointments in his first term showed that only three of his 60 appointments were women.¹⁹ The Women’s Lawyers Association’s judiciary committee in St. Louis charged that questions posed to judicial applicants had the potential for adverse impact on women candidates. Inappropriate question topics included: marital status, number and ages of children, pregnancies and family planning.²⁰

As a U.S. Senator, Mr. Ashcroft’s record on issues important to women is no better. He has been a vigorous opponent of one of the tools that are most effective in remedying discrimination and expanding opportunities for women—affirmative action—and he went to great lengths to attempt to severely weaken it. He voted to abolish a program that ensures that women business owners have a fair chance to compete for business in federally funded highway and transit projects, and mischaracterized the program as one involving quotas and set-asides even though it was not.²¹ He worked to block Senate confirmation of Bill Lann Lee for the position of Assistant Attorney General for Civil Rights on the ground that Mr. Lee supported affirmative action, even though Mr. Lee supported only constitutional forms of affirmative action that are of great importance to women’s progress.²² He also voted against the Hate Crimes Prevention Act, which would add gender-based hate crimes—along with crimes based on sexual orientation or disability—to the categories of heinous crimes prohibited by the federal civil rights laws.²³

As a Senator, he also repeatedly blocked the confirmation of highly qualified women to the federal bench. It is well known that women nominated to the federal bench by President Clinton were subjected to a disproportionate share of delays and opposition by certain senators. Senator Ashcroft featured prominently among them. A leading example is the nomination of Margaret Morrow, a respected Los Angeles corporate attorney, to the federal district court in California. Senator Ashcroft leveled unsubstantiated charges against her (seriously distorting a speech she gave about women in the legal profession) and blocked consideration of her nomination with a secret “hold” he later acknowledged.²⁴ She had strong bipartisan support (from Senator Hatch, among many others), and ultimately was approved twice by this Committee and overwhelmingly by the full Senate, but only after Senator Ashcroft’s obstructionist tactics delayed her confirmation for nearly two years.²⁵

In a similar vein, Senator Ashcroft was only one of 11 Senators to vote against the confirmation of Margaret McKeown to the Ninth Circuit in 1998, after a delay of nearly two years, and he was in the minority voting against the confirmation of Sonia Sotomayor to the Second Circuit after a delay of more than a year, against the confirmation of Susan Oki Mollway to the federal district court in Hawaii after a delay of two and a half years, against the confirmation of Ann Aiken to the federal district court in Oregon, and against the confirmation for Marsha Berzon to the Ninth Circuit after a delay of nearly two years.

¹⁶Veto Letter, Missouri H.B. 1101, June 21, 1990; Veto Letter, Missouri H.B. 1101, June 26, 1992; *Daily Capital News*, June 30, 1992; *Kansas City Star*, June 30, 1992.

¹⁷*St. Louis Post Dispatch*, March 1, 1992.

¹⁸*St. Louis Post Dispatch*, February 25, 1989.

¹⁹*Id.*

²⁰*St. Louis Dispatch*, March 21, 1988.

²¹*Hearing before the Subcommittee on the Constitution, Federalism, and Property Rights of the Senate Judiciary Committee*, 105th Cong., 1st Sess., (September 30, 1997) (opening statement of John Ashcroft).

²²*Hearing before the Senate Judiciary Committee*, 105th Cong., 1st Sess. (November 6, 1997); *St. Louis Post-Dispatch*, October 8, 2000.

²³Kennedy Amendment to S. 2549, June 20, 2000, (57 Yes-42 No).

²⁴*Los Angeles Times*, November 3, 1997.

²⁵*St. Louis Post-Dispatch*, January 11, 2001.

JOHN ASHCROFT HAS MISREAD THE LAW AND USED HIS PUBLIC POSITIONS TO
UNDERMINE WOMEN'S LEGAL AND CONSTITUTIONAL RIGHTS

A major factor in assessing John Ashcroft's fitness to be Attorney General is his ability, as the nation's chief legal officer, to carry out his duties based on a fair and impartial reading of the law, and to put aside his extreme positions and his use of extreme tactics to advance those positions. His record shows that he has not been able to do so in the past, and therefore he should not be entrusted to do so in the future, as Attorney General. His reading of the law has been so colored by his strongly held beliefs that he has been either unable or unwilling to see what the law requires, and he has repeatedly used the public offices he has held to attempt to subvert legal rights and constitutional protections for women.

Senator Ashcroft's blatant misreading of Judge Ronnie White's legal opinions is a prime example of his failing to read the law fairly and impartially. Senator Ashcroft, for example, told the Senate that Judge White's "only basis" for recommending a new trial for a defendant in *State of Missouri v. Kinder*, 942 S.W.2d. 313 (Mo. 1996), on the ground that the trial judge was biased, was that the trial judge opposed affirmative action.²⁶ But Judge White's dissent actually said the opposite—that the trial judge's criticism of affirmative action was "irrelevant" to the issue of the judge's bias.²⁷ Senator Ashcroft was either unwilling or unable to interpret this opinion correctly.

In no area has Mr. Ashcroft been more flawed in his reading of the law than in the area of women's reproductive and other legal rights. For example, as Attorney General of Missouri, he defended a law automatically terminating parental rights to a child born after an attempted abortion and making the child ward of the state. Judge William Webster, then a judge on the Eighth Circuit, described this provision in a concurring opinion as "offensive," "totally lacking in due process," and "patently unconstitutional."²⁸ Judge Webster's opinion was quoted with approval by a unanimous Eighth Circuit panel, which struck down the law.²⁹ Yet Mr. Ashcroft sought review by the Supreme Court, which summarily affirmed the Eighth Circuit.³⁰ When Mr. Ashcroft, as state Attorney General, intervened to support a challenge to the ability of nurses under the State Nurse Protection Law to provide contraception and other basic health services to women, his legal position was rejected by a unanimous Missouri Supreme Court—which noted that the Attorney General and other representatives of Missouri could not cite a single case elsewhere challenging the authority of nurses to perform these services even though at least 40 states had similar nursing practice laws.³¹ There are some who say that as Missouri Attorney General he was required to defend these statutes, but it is well established that no Attorney General is compelled to defend statutes that are patently unconstitutional, or intervene in cases without merit, let alone persist in appeals all the way to the Supreme Court.

Moreover, Mr. Ashcroft has not only defended seriously flawed state statutes, he also has gone out of his way to seize other opportunities to undermine women's legal rights. He used the powers of his office as state Attorney General to pursue a meritless antitrust case against NOW all the way to the Supreme Court. As Missouri Attorney General he also chose to come to Washington to testify in the U.S. Senate in support of an extreme "human life" bill.³² Introduced in 1981, the bill would require states to treat fertilized eggs as human beings under the law, with full due process rights, and would assign states a "compelling interest" in their protection.³³ The bill prompted widespread opposition from medical and religious groups, who called the bill scientifically unsound and potentially damaging to the health of American women, and its patent unconstitutionality under *Roe v. Wade* was decreed.³⁴ In contrast, then-Missouri Attorney General Ashcroft testified in strong support of this clearly unconstitutional bill and stated that "there's more

²⁶ Executive Session—Senate, 106th Cong., 1st Sess., October 4, 1999 (Congressional Record, p. S 11871—82) <<http://rs9.loc.gov/cgi-bin/query/D?r106:2:/temp/erl/062JRvvn:e32247:>>

²⁷ *Kinder*, 942 S.W.2d. at 340.

²⁸ *Freiman v. Ashcroft*, 440 F.Supp. 1193, 1195 (E.D. Mo., 1977) (Webster, J. concurring).

²⁹ *Freiman v. Ashcroft*, 584 F.2d 247, 250 (8th Cir., 1978).

³⁰ *Ashcroft v. Freiman*, 440 U.S. 941 (1979).

³¹ *Sermchief v. Gonzales*, 660 S.W.2d 683 (Mo. 1983).

³² Hearings on S. 158 *Before the Subcommittee on Separation of Powers of the Senate Judiciary Committee*, 97th Cong., 1st Sess. (1981) (Statement of Attorney General John Ashcroft, noting that he was the "chief lawyer in a law office that maintains a . . . caseload of about 5,000 cases").

³³ S. 158, "The Human Life Bill," 97th Cong., 1st Sess. (1981).

³⁴ *New York Times*, June 19, 1981.

than ample precedential legal and policy support for the Courts to uphold this bill.³⁵ The bill was not enacted. As Governor he introduced another patently unconstitutional bill that would have prohibited a woman from ever having a second abortion, except to protect her health. It died quickly, even in the strongly anti-choice Missouri legislature.³⁶ And he supported yet another clearly unconstitutional bill that would have banned abortions in 18 specific circumstances, with no exception for rape or incest. It, too, was unable to garner needed support from anti-choice legislators.³⁷

In short, John Ashcroft has been driven by a set of rigid and radical views, he has read the law through glasses heavily tinted by his own agenda, and he has used his public offices to relentlessly pursue that agenda.

MR. ASHCROFT'S PAST PERFORMANCE AND USE OF PUBLIC OFFICE DEMONSTRATES THAT AS ATTORNEY GENERAL HE WOULD USE HIS VAST POWERS TO SUBVERT WOMEN'S LEGAL RIGHTS

The Attorney General of the United States has a vast array of powers at his disposal. These include advising the President, the executive branch departments, and Congress on questions of constitutional and statutory law; representing the United States and its interests before the Supreme Court, with a degree of influence that is second to none on what cases the Court hears and how it decides them; enforcing a broad range of federal statutes, including the federal civil rights laws, as well as administering and initiating numerous programs related to law enforcement and the administration of justice; and advising and assisting the President on the selection of nominees to serve on the federal courts, including on the Supreme Court. All of these powers are exercised, in some cases largely outside the light of public or judicial scrutiny, and history has shown that they can be used to subvert the office in the service of an extreme agenda. Based on John Ashcroft's record, there is ample reason to fear that if given the opportunity, he will use the powers of the Attorney General to further his extreme agenda in ways that would have devastating consequences to people across the country—and to women in particular—for years to come.

a. *Opinions and Advice.* The Attorney General is charged with the duty to give “advice and opinion upon questions of law” throughout the entire Executive Branch when requested by the President or any executive department.³⁸ This includes rendering advice on the constitutionality of proposed legislation and the legality of executive branch actions. The “advice and opinion” function is widely regarded as quasi-judicial,³⁹ and often it is rendered behind the scenes without any public scrutiny or oversight. Yet the outcome of major policy debates may turn on the Attorney General's advice—that advice can determine whether a bill introduced in Congress receives the backing of the Administration; whether a bill Congress has passed is signed into law or vetoed; or whether a proposed Executive Order is a valid exercise of the President's power, or an executive department's actions are legal. The stakes are large, and the public must have confidence that the Attorney General's advice is honest and balanced and based on a reasonable reading of the law.

b. *Representing the United States in the Supreme Court.* The representation of the United States and its interests before the Supreme Court is a critical duty of the Attorney General, and one that has a huge impact. Historically, the Justice Department has been the most frequent and successful litigator before the Supreme Court.⁴⁰ The Justice Department's institutional standing before the Court allows the Attorney General to influence the Supreme Court in a way that no other litigant can. Issues that appear on the agenda of the Attorney General will, more often than not, be heard by the Supreme Court.⁴¹ So great is the Department's influence in setting the Court's agenda that one Solicitor General wrote, “The power of the Supreme Court is limited to deciding the cases brought before it. It is the Attorney General who decides what the Supreme Court will decide—at least in the area of

³⁵ *Hearings on S. 158 Before the Subcommittee on Separation of Powers of the Senate Judiciary Committee*, 97th Cong., 1st Sess. (1981) (Statement of Senator John Ashcroft).

³⁶ *Kansas City Times*, January 25, 1990.

³⁷ *St. Louis Post-Dispatch*, March 28, 1991 (discussing Missouri SB 339 (January 22, 1991)).

³⁸ Judiciary Act of 1789, 1 Stat. 73 § 35, superceded by, 28 U.S.C. §§ 511–513 (2000).

³⁹ *Nancy v. Baker*, *Conflicting Loyalties: Law and Politics in the Attorney General's Office*, 1789-1990, 5 (1992).

⁴⁰ Cornell W. Clayton, *The Politics of Justice: the Attorney General and Making of Legal Policy*, 60 (1992).

⁴¹ *Id.* at 70.

public issues.⁴² And of the cases decided on the merits, more often than not the Court adopts the position advanced by the Attorney General.”⁴³

c. *Enforcing the Law and Administering and Initiating DOJ Programs.* The Attorney General has the responsibility to enforce a wide range of laws, and administer and initiate a broad array of programs, including many that are central to guaranteeing equal rights and opportunities for women. These responsibilities include enforcing the civil rights laws prohibiting sex discrimination in employment, education, and in many other spheres of life. They include defending constitutional affirmative action programs that are critical to breaking down barriers to opportunity for women business owners and other women in the workplace. They also include administering Justice Department programs and dispensing millions of dollars in grants to address the continuing problem of violence against women through the Violence Against Women Office. And they include enforcing the Freedom of Access to Clinic Entrances Act (FACE), the federal law that has proven highly effective in diminishing acts of violence and obstruction targeted at health care providers that offer reproductive health services to women.⁴⁴

d. *Screening and Evaluating Supreme Court Justices and Other Federal Judges.* The Attorney General carries the major responsibility for screening and evaluating nominees to serve as federal judges at every level, including on the Supreme Court. This role includes identifying potential judicial candidates, thoroughly screening and evaluating all those under consideration, and preparing candidates for appointments.⁴⁵ Before the names of candidates ever surface in the public eye or come before the Senate for confirmation, they have passed through the Attorney General’s vetting process. This responsibility could not be weightier, given that judicial appointments last for a lifetime.

Many of the powers and responsibilities summarized above are exercised in ways that escape public, Congressional, or judicial scrutiny. For example, decisions not to bring enforcement actions are made out of the public eye, and they generally escape judicial review, as the courts are reluctant to second-guess prosecutorial decisions. That means that an Attorney General who has misgivings about a law, or who misreads what is necessary to support an enforcement action, has almost a free hand in deciding whether or when to bring suit, what precise charges to make, or whether to dismiss a proceeding once it has been brought.⁴⁶ The Justice Department can also refuse to authorize litigation by other Government departments and agencies.⁴⁷ This kind of non-enforcement strategy can prevent policies that an Administration disfavors from ever reaching the courts.⁴⁸ Another form of dangerous non-enforcement occurs when the Department refuses to defend, or decides to attack, a statute passed by Congress that has been challenged in the courts. The Attorney General has, as well, virtually unchecked discretion in the manner in which he renders his opinions and advice on legal questions, in the decisions he makes in the course of representing the United States in the Supreme Court, and in his selection of judicial nominees.

History has shown that, given the scope of the Attorney General’s powers, and the large degree of unfettered discretion the Attorney General has in exercising them, there is ample opportunity for an Attorney General to misuse the office if disposed to do so. We saw this all too clearly when William Bradford Reynolds was put in charge of the Civil Rights Division of the Justice Department in 1981. The number of suits brought to enforce disability discrimination, school desegregation, fair housing, and voting rights laws, for example, all plummeted. Disability discrimination suits dropped from 29 in 1980 to zero in 1981, the first year of his tenure, and to only three during the entire next three years.⁴⁹ Voting rights cases dropped from 12 in 1980 to two during the next four years.⁵⁰

In light of Mr. Ashcroft’s long record of hostility to laws and protections of central importance to women, and his record of aggressive actions consistent with that hostility, there is good cause to fear that if he becomes Attorney General, he will use the many powers at his disposal to weaken and roll back advances in the law that

⁴² *Id.* at 67.

⁴³ Between 1925 and 1988, the Justice Department prevailed on average in nearly 69 percent of its cases. *Id.* at 69.

⁴⁴ U.S. General Accounting Office, *Abortion Clinics: Information on the Effectiveness of the Freedom of Access to Clinic Entrances Act* Report to Ranking Minority Member, Subcomm. on Crime, Comm. on Judiciary, House of Representatives, (November 1998).

⁴⁵ *Clayton*, supra at 61.

⁴⁶ *Id.* at 194 (citing *Newman v. United States*, 382 F.2d 497 (1967)).

⁴⁷ *Id.* at 197.

⁴⁸ *Id.*

⁴⁹ *Id.* at 203-04.

⁵⁰ *Id.*

women have fought long and hard to secure. To further his anti-choice, anti-family planning agenda, he could, for example, ask the Supreme Court to overturn *Roe v. Wade* (as the Reagan and Bush Administrations did no fewer than five times)⁵¹; give opinions in favor of the constitutionality of legislation or executive actions that would severely limit abortion or access to contraceptives; refrain from vigorous enforcement of clinic access and clinic violence cases under FACE; curtail the efforts of the Justice Department's Clinic Violence Task Force to guarantee the safety of abortion providers and the unimpeded access of women to reproductive health clinics where abortions are performed; select nominees to the federal courts, including the Supreme Court, that satisfy his litmus test of placing on the bench only those who firmly oppose *Roe v. Wade*; and make appointments to the Department of Justice of individuals who are similarly committed to these actions. Indeed, it is hard to question that Mr. Ashcroft will do exactly these things if he is entrusted with the powers of the office of Attorney General. The concern about Supreme Court appointments is particularly grave in light of the prospect of Supreme Court vacancies during the next four years.

Mr. Ashcroft's track record on issues of importance to women other than *Roe v. Wade* and the right to choose raises equally profound concerns—from his opposition to the ERA and pursuit of NOW in court; to his vetoes of legislation like maternity leave, minimum wage, domestic violence, and child care laws; to his abysmal record on the appointment of women; to his votes in Congress against affirmative action and other civil rights laws; to his obstruction of the confirmation of qualified women to the federal bench. With this record, women of this country simply cannot have confidence that Mr. Ashcroft will support, rather than starve, Justice Department programs in the Violence Against Women Office that protect women from violence in their homes and on the streets; that he will defend valuable affirmative action programs that meet constitutional standards of scrutiny; that he will evaluate women for nomination to the federal judiciary based on a fair reading of their records and qualifications; or that he will strongly enforce the federal civil rights laws that are essential to eliminating discrimination in the workplace, in our nation's schools, in housing, in credit, and in so many other critical areas of life.

CONCLUSION

At stake in this confirmation debate is not only the interpretation and enforcement of fundamental constitutional rights and statutory protections, and not only the selection of judges and Supreme Court justices—as vitally important as those issues are to the future of this country. At stake, as well, in this nomination, is the very ability of the public to have confidence in our system of justice, as embodied in all three branches of government. It is essential, of course, to have confidence that the Justice Department will fairly interpret and enforce the law on behalf of the entire Executive Branch, and to have confidence that the judiciary, including the Supreme Court, is comprised of individuals selected for their capacity to review and apply the law in a fair and reasoned manner. But it is also essential for the public to have confidence that the Senate will carry out its constitutional duty to give advice and consent with as much seriousness of purpose as a position such as this one demands, even when a former colleague's nomination is at issue. In exercising this solemn duty, we urge you to oppose the confirmation of this nominee, for we believe that if John Ashcroft becomes Attorney General of the United States, women of this country will see their core legal rights and constitutional protections stripped away. Thank you.

Chairman LEAHY. Thank you, Ms. Greenberger.

Ms. Campbell, as always, it is good to have you here. Please go ahead with your testimony.

STATEMENT OF COLLENE THOMPSON CAMPBELL, MEMBER, MEMORY OF VICTIMS EVERYWHERE, SAN JUAN CAPISTRANO, CALIFORNIA

Ms. CAMPBELL. Thank you, honorable Senators. This is a tough one for me, but I'm going to get through it.

My only son is dead. He's been murdered because of a flawed justice system. A weak system allowed the release of a lifer from pris-

⁵¹*Planned Parenthood v. Casey*, 505 U.S. 833, 844 (1992) (O'Connor, J.).

on. Yes, the inmate was given another chance, that one more chance, and that opportunity was given to kill my son. We need an Attorney General who will strongly uphold the intent of the law and our Constitution, and help protect the people from crime.

My name is Collene Thompson Campbell. Just last month I completed my second term as mayor in the beautiful city of San Juan Capistrano in California. I am a former chairman of POST; that's the Peace Officer Standards and Training Commission. I also serve on the California Commission on Criminal Justice. I did not buy in to ever being a victim of crime.

Today I have been asked to represent and speak for many people, including my friend, and great crime fighter, John Walsh of "America's Most Wanted." He badly wanted to be here today. I've been requested to represent and speak on behalf of 12 major California crime victims' organizations, and the hundreds of thousands of crime victims that those organizations represent. We strongly and unequivocally support the confirmation of John Ashcroft as the next Attorney General of the United States of America. Throughout his long career he has shown great heart, and he has worked hard to lessen the devastation which victims are forced to endure.

My own journey into hell began with the murder of our only son, Scott. Because we were only the mom and dad, we had no rights. We were forced to sit outside the courtroom on a bench in the hall, like dogs with fleas, and during the 7 years encompassing the three trials of our son's murderers, that's where we sat. We were excluded while the defendants' families were allowed to be inside and follow the trial and give support to the killers.

The murder of our son was brutal, and our treatment at the hands of the justice system was inhumane, cruel and barbaric. Nothing in our life had prepared us for such injustice.

Long ago John Ashcroft realized the need for balanced justice and has worked toward that end. He understands the victims in our country must no longer suffer the indignities that many have been forced to endure. John Ashcroft stands for fairness, law, order and justice. He stands for balancing the rights of the accused with the rights of the victims and the law abiding. He stands for constitutional rights for crime victims.

Throughout this great country we need unselfish courage. We need John Ashcroft's strong conviction in the fight against crime, and we need him to further victims' rights. Victims, God bless them, deserve notice, just like the criminal, the right to be present, and the right to be heard at critical stages of their case. They deserve respect and concern for their safety. They deserve a speedy trial, every bit as much of the defendant. Victims deserve, at the very least, equal rights to the criminal.

My only sibling, my brother, Mickey Thompson, and his wife were also murdered. This case is being actively pursued, and I have great faith that this case will soon be brought to trial. I only hope that our family can endure the justice system again.

John Ashcroft will fight for legal rights and true remedies for crime victims. We urge you to support John Ashcroft's confirmation. No one knows who is going to be a victim.

And with your—and if you'll permit me, my words today are dedicated to the memory of Brian Campbell, my 17-year-old grand-

son who died 9 days ago. And it is really tough to be here, and if this wasn't so darn important, I wouldn't be here. But together Brian and I believed, as long as we have courage, today will be beautiful; as long as we have memories, yesterday will remain; as long as we have purpose, tomorrow will improve.

Thank you, Senators, for allowing me to speak, and I'm sorry I choke up.

[The prepared statement of Ms. Campbell follows:]

STATEMENT OF COLLENE THOMPSON CAMPBELL, MEMBER, MEMORY OF VICTIMS
EVERYWHERE, SAN JUAN CAPISTRANO, CALIFORNIA

Mr. Chairman and Senators:

My only son is dead, murdered, because of a flawed justice system. A weak justice system released a lifer from prison. Yes, the inmate was given "one more" chance, and an opportunity to kill our son. We need an Attorney General who will strongly uphold the intent of the law and our constitution in this ever escalating cycle of violence.

My name is Collene Thompson Campbell. Just last month, I completed my second term as Mayor of the City of San Juan Capistrano in California. I am a former Chairman of POST, (Peace Officer Standards and Training Commission), and I also serve on the California Commission on Criminal Justice.

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My own journey into hell began with the murder of our only son, Scott. Because, we were "only" the Mom and Dad, we had no rights. We were forced to sit outside the courtroom on a bench in the hall all during the seven years, encompassing three trials for our son's murderers. We were excluded, while the defendants' family was allowed inside to follow the trial and give support to the killers. The murder of our son was brutal. Our treatment at the hands of the justice system was inhuman, cruel and barbaric. Nothing in our life had prepared us for such injustice.

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My very good friend, John Gilles, a former police lieutenant, a black man, would have liked to have been here with me today. His daughter was also murdered. The two of us wanted to "point out" that our gender, nor our race, made a difference in this hearing, which should be about justice and fair treatment to all. We victims, feel the hearing should not be about politics and party rhetoric. To be truthful, when one has lost so very much, it hurts to witness that type of behavior at this very important confirmation.

Throughout this great country, we need unselfish courage. We need John Ashcroft's strong conviction in the fight against crime and to further victims' rights. Victims deserve notice, the right to be present and the right to be heard at critical stages of their case. They deserve respect and concern for their safety; they deserve a speedy trial, every bit as much as the defendant. Victims deserve, at the very least, equal rights to the criminal.

My only sibling, my Brother, Mickey Thompson and his wife, Trudy, were also murdered. That case is being actively pursued and I have faith that the case will soon be brought to trial. . . I only hope that our family can again endure the justice system.

John Ashcroft will fight for legal rights and true remedies for crime victims. We urge you to support John Ashcroft's confirmation.

If you will permit me, my words today are dedicated to the memory of Brian Campbell, my seventeen-year-old Grandson who died just nine days ago. Together we believed:

As long as we have courage, today will be beautiful,

As long as we have memories, yesterday will remain,
As long as we have purpose, tomorrow will improve.

Chairman LEAHY. Ms. Campbell, you have no need to apologize for being choked up. A former Senator and mentor of mine when I came here said a person who has no tears, has no heart.

Ms. CAMPBELL. Thank you.

Chairman LEAHY. And so—

Ms. CAMPBELL. They must think I have a lot of tears. They got me the whole box. Thank you for saying that.

Chairman LEAHY. Well, those of us who have been prosecutors have some sense of what victims go through, and it is a terrible thing. I don't think anybody who has been—who has not either been a victim or been intimately involved in the criminal justice system knows how the victims get victimized over and over and over again.

At the request of Senator Hatch, and then following the normal courtesy, he has advised me that Congressman Watts and Congressman Hulshof—I know Congressman Hulshof is here because I spoke to him earlier—are here. This was the panel that was going to be on last night, and because of some miscommunication, some members were able to be here and some were not. And now the further miscommunication, the last member of that panel is not here, but following the normal tradition in the Congress, of putting Members of Congress on as they are available, I am going to ask the panel here to step down, rejoin us after lunch, and we will go back to your questions.

And we will call Congressman Watts and Congressman Hulshof now. When Congressman Clyburn gets back, we will have him, but we will go back to questions after lunch.

[Pause.]

Chairman LEAHY. We have a very large room here, and I know that there are some people who are leaving and some people coming in.

We have two distinguished members of the House of Representatives who deserve to be heard. We will hear first from Congressman Watts, who is a member of the Republican leadership, Majority leadership in the House of Representatives.

As I mentioned earlier, I have received a letter from Congressman Hulshof. While I did not agree to his basic request, I think I misunderstood the tone of the request. I state that not only for the Congressman, but for any member of his family who may be watching, that in 26 years here, I have tried—I believe I have a reputation of always trying to extend whatever courtesy is possible to all members of both the House and the Senate of either party.

Congressman Watts, I understand we will begin with you as a member of the Republican leadership.

**STATEMENT OF HON. J.C. WATTS, JR., A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF OKLAHOMA**

Representative WATTS. Chairman Leahy, Ranking Member Hatch, Senators of the Judiciary Committee, thank you for affording me an opportunity to address the nomination of Senator John Ashcroft to be the next Attorney General of the United States.

Let me say here at the outset that, as I have observed these hearings from time to time over the last two and a half days, that any man or woman, Republican or Democrat, liberal or conservative, who would sit through this process for 3 days and have bombs thrown at him, should be confirmed for whatever.

And, Mr. Chairman, John Ashcroft is a man of the highest integrity. I have worked with him over the last five and a half years in the renewal alliance, putting together legislation targeting poor and under-served communities, the home ownership, savings, job creation, and capital formation. And by the way, President Clinton signed that legislation into law about a month and a half ago, the most comprehensive piece of poverty legislation ever to go through the House and the Senate.

I have campaigned with Senator Ashcroft in St. Louis. I've known him for the past 6 years, and I have never known Senator Ashcroft to be a racist, nor have I ever detected anything but dignity and respect for one's skin color from John Ashcroft.

He's a man of principle. He has been scrupulously put through an inquisition of mammoth proportion, and it is safe to say that this Committee has looked into everything dealing with the career and character of John Ashcroft. We all know that no one is going to please all of you all the time, but John Ashcroft takes defending and upholding the law seriously, and I believe that's what matters the most.

The responsibility of the Attorney General is to defend and uphold the law, not to make the law. It is the responsibility of us, the Congress of the United States, to make the law.

As I said earlier, I have watched bits and pieces of these hearings during the last two and a half days. I haven't watched them all. Believe it or not, Little League, soccer and junior varsity basketball games continue in spite of these very important hearings.

There is not a lot I can say today that hasn't already been said during these proceedings. However, I will say I am delighted that outside groups aren't making the determination on Senator Ashcroft.

I heard Senator Biden say yesterday afternoon that he did not trust many of the interest groups that's gotten involved, and if Senator Biden was here today, I would say to him, "I agree with you. Neither do I." I've been blind-sided by them before, and so many of these groups totally disregard the facts. Not only do they want their own opinion, they want their own facts. So, again, if Senator Biden was here, I would say to him that I can relate to what he was talking about yesterday.

I am delighted that people who know Senator Ashcroft best will make the call on this confirmation, and in your deliberations, I would ask you to consider his qualities, his qualifications and his integrity.

Last Monday, on January 15th, after observing Dr. King's birthday, my 11-year-old daughter and I were watching the Disney movie, "The Fox and the Hound." And I watched the movie for about an hour, and then the movie watched me as I went to sleep on it. However, I've seen it 23 times, and it's must, must-see viewing for everybody.

The story is Copper, the hound puppy, and Tod, the orphaned fox, they became the best of friends. They did everything together. They laughed and they played together to no end. Then 1 day Copper the hound and Tod the fox found themselves all grown up. Tod wanted to get together with Copper to have some more fun and relive the good old days, and Copper's heart seemed to skip a beat when he had to say to Tod, "I can't play with you any more. I'm a hunting dog now." In other words, "I can't be your friend any more. Forget we were the best of friends. Forget we laughed together and played together. Forget all those great times together and all those other things. Forget about all of that. I'm a hunting dog now."

Well, I notice that any time we have a confirmation, the hunting dogs come out. We have them on the Republican side, we have them on the Democrat side. Members of the Committee, I'm not saying that John Ashcroft has been best of friends with all of you. However, over the last 6 years, you've seen his heart. You know him. You've observed him up close and personal. You know he's not a racist as some would suggest. You know he's not anti-woman, as some would suggest.

Yes, you know that just like Senator Lieberman, John Ashcroft's faith is very important to him. They both never want their faith to be offensive to anyone, yet they never apologize for it.

You have observed Senator Ashcroft to be a man of compassion, strength and integrity. He is extremely qualified. He is eminently qualified to be the next Attorney General of the greatest nation in all the world.

Obviously, this decision will rest with you, the Senators, but I encourage your support for Senator John Ashcroft as the next Attorney General to uphold the laws and the Constitution of the United States, so help him God. Thank you very much, Chairman Leahy.

[The prepared statement of the Mr. Watts follows:]

STATEMENT OF HON. J.C. WATTS, JR. A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF OKLAHOMA

Chairman Leahy, Ranking Member Hatch, senators of the Judiciary Committee, thank you for affording me the opportunity to address the nomination of Senator John Ashcroft to be attorney general of the United States.

Let me say here at the outset that any man or woman, Republican or Democrat, liberal or conservative, that would sit through this process for three days and have bombs thrown at him should be confirmed for whatever.

Mr. Chairman, John Ashcroft is a man of the highest integrity. I have worked with him in the renewal alliance, putting together legislation targeting poor and underserved communities for homeownership, savings, job creation and capital formation. (The president signed this legislation into law about a month ago.)

I have campaigned with him in Saint Louis and have known him for six years. I have never known him to be a racist nor have I ever detected anything but dignity and respect for one's skin color from John Ashcroft.

He is a man of principle. He has been scrupulously put through an inquisition of mammoth proportion and it is safe to say this committee has looked into everything dealing with the career and character of John Ashcroft. We all know that no one is going to please all of you all of the time. But John Ashcroft takes defending and upholding the law seriously, and that is what matters most.

The responsibility of the attorney general is to defend and uphold the law—to not to make the law. It is the responsibility of Congress to make law.

I have watched bits and pieces of these hearings during the last two, two-and-a-half days. I haven't watched all of them—believe it or not, Little League, soccer and junior varsity basketball games go on in spite of these very important hearings.

There is not a lot I can say today that hasn't already been said during these proceedings. However, I will say I am delighted that outside groups aren't making the determination on Senator Ashcroft. I heard Senator Biden say yesterday that he did not trust many of the interest groups. Senator Biden, I agree with you. Neither do I. I have been blind-sided by them before and so many of these groups totally disregard facts. Not only do they want their own opinion, they want their own facts. So, Senator Biden, I can relate to what you said yesterday.

I am delighted that people who know Senator Ashcroft best will make the call on his confirmation, and in your deliberations I would ask you to consider his qualities, his qualifications and his integrity.

Last Monday, after observing Doctor King's birthday, my eleven-year-old daughter and I were watching the Disney movie, "The Fox and the Hound." I watched the movie for about an hour—and then the movie watched me as I went to sleep on it. However, I've seen it twenty-three times. This is a must-see movie.

The story is: Copper (Hound Puppy) and Tod (the orphaned Fox) became the best of friends. 'Did everything together. They laughed and played together to no end. Then one day Copper (Hound) and Tod (the Fox) were grown up. Tod wanted to get together with old Copper and Copper's heart missed a beat in having to tell Tod, "I can't play with you anymore, I'm a hunting dog now."

In other words, I can't be your friend anymore. Forget we were the best of friends. Forget we laughed together and played together. Forget all those great times together and all those other things.

Well, members of the committee, I'm not saying John Ashcroft has been best friends with all of you, however, over the last six years you have seen his heart. You know he is not a racist, as some would suggest.

Yes, you know that just like Senator Lieberman, John Ashcroft's faith is important to him. They both never want their faith to be offensive to anyone, yet they never apologize for it.

You have observed Senator Ashcroft to be a man of compassion, strength and integrity.

He is extremely qualified to be the next attorney general of the greatest nation in the world.

Obviously, this decision will rest with the Senate, but I encourage your support for John Ashcroft as the next attorney general to uphold the laws and the Constitution of the United States, so help him God.

Thank you very much.

Chairman LEAHY. Thank you, Mr. Watts. I would state parenthetically that I am 60 years old, quite a bit older than you are. Our children came along before we had VCRs as youngsters. By the time we had them, they were old enough that they did not want me around to see what they were watching, so I did not have the chance to memorize these. I now have a soon-to-be 3-year-old grandson. If you would like me to tell you the whole script of "Thomas the Train", every song, I can do it in my sleep, and often have.

Mr. Hulshof.

STATEMENT OF HON. KENNY HULSHOF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Representative HULSHOF. Mr. Chairman, thank you. I appreciate very much the invitation to be here, and as you alluded to just a moment ago, I'm sure my dear mother back in Missouri appreciates your kind words today, especially in light of the little brouhaha that occurred last night. I do appreciate the change to be with you.

Chairman LEAHY. I assure your mother that you are one of the hardest-working and most valued members of the Congress.

Representative HULSHOF. I appreciate that, Mr. Chairman. That's high praise.

Members of the Committee, as pleased and honored as I am to be here today with my good friend and colleague, J.C. Watts, my

appearance here today is not as a sitting member of the U.S. House of Representatives.

And, Mr. Chairman, if it is permissible, I would like to have my entire written statement submitted into the record, so that I could perhaps address some of the points that have come before this Committee in the last 2 days.

Chairman LEAHY. It will be.

Representative HULSHOF. I sat through and listened very closely to Judge White's testimony today, and I found it very compelling and very sincere, no less compelling and no less sincere than the testimony that you heard from your former colleague, I believe, John Ashcroft over the last 2 days. I do not know Judge White personally. I know him from the pages of the opinions that he has written. I know probably, I presume, that he knows me through the many thousands of pages of court transcripts that I had the occasion to participate in, criminal trials back in Missouri, and I am not here in any respect to cast aspersions. I am a member of good standing in the Missouri bar, and I'm very watchful of my comments toward a sitting member of the Judiciary.

However, as the co-prosecutor in the James *Johnson* case, which has received such national attention, and I think it's received national attention, not because of the gruesomeness of the facts of a convicted multiple cop killer, but because, as my friend J.C. has alluded to, these horrendous charges that John Ashcroft's vote against Judge White was based on other than legal grounds. These comments or insinuations, either overtly or not so overtly, of racial motivations, have me, as John's friend and as a Missourian, deeply troubled. And so let me, if I can, as a fact witness, talk a little bit about this particular criminal case.

I was a special prosecutor for the Missouri Attorney General for a number of years and was assigned to assist the locally elected prosecuting authority, John Kay, in Moniteau County, back in—when these crimes occurred in 1991. Mr. Chairman, you all have talked at length about those facts, and I set them out in my written statement, but I want to just focus on some things perhaps to give you a sense of gravity about what this case meant to this small rural community.

In early December 1991 Moniteau County Deputy Les Roark was dispatched to a disturbance call in rural Moniteau County, and as anyone in law enforcement can tell you, those are some of the most difficult cases to respond to because you never know the situation that you are being injected to.

Well, after Deputy Roark assured himself that this domestic quarrel had ended at the James Johnson residence, and as he turned to retreat to go to his waiting patrol car, James Johnson whipped out a .38 caliber pistol from the waistband of his pants and fired two shots into the back of the retreating officer. Johnson then went back into the home, sat down where he could hear the moans of the officer clinging valiantly to life, laying face down on the gravel driveway outside his home. At that point Johnson then got up from the table, walked outside, pointed his gun over the fallen officer, and pulled the trigger one last time in an execution-style killing.

And the thing about this particular crime that is particularly offensive, is that as they say in the law enforcement business, the officer, though armed, never cleared leather. His gun remained strapped in his holster.

Shortly after that James Johnson got into his vehicle and negotiated 10 or 12 miles of winding road, looking for the sheriff of the county, Kenny Jones. He knew where the sheriff lived, and as luck would have it, Sheriff Jones was not at the residence, but the sheriff's wife, Pam was. And again, as fate would have it on that night, Mrs. Jones was leading a group of her church friends in the Christmas program. And if I can try to, Mr. Chairman, paint a visual picture for you. Imagine a normal living room somewhere in America, with a woman seated at the head, and women on folding chairs around her in the living room, with Pam Jones' 8-year-old daughter, Lacy, at her knee. Christmas decorations adorn the living room, and on a table next to the window, brightly wrapped Christmas packages waiting to be exchanged.

What you cannot see in that picture, however, just outside that window, James Johnson lay in wait with a .22 caliber rifle, and from his perch shot five times inside the house, killing, gunning down Pam Jones in cold blood in front of her family.

If the Chairman would permit, he is not here to testify today, but if I might be permitted to single out Pam Jones' husband, who made the trip here today, Sheriff of Moniteau County, Kenny Jones. And may I ask him to stand, Mr. Chairman?

Chairman LEAHY. Of course.

[Mr. Jones stood.]

Mr. HULSHOF. There is a statement that Sheriff Jones has submitted, and perhaps if time permits at the conclusion, there are a couple of excerpts that I might like to exercise, but, please, I hope you would take time to examine the entirety of Sheriff Jones' written testimony, particularly as it points to the dispute about this letter from law enforcement and who was the initiating body in that regard, and I'll move on in the interest of time.

Chairman LEAHY. I direct the staff to make copies for each Senator, and make sure a copy is given to each member of the panel.

Mr. HULSHOF. Mr. Chairman, without further delving into the facts because I think, as most of you have indicated through these days, that you have read the Supreme Court opinion where Judge White dissented and he was the sole dissenter.

But what I do want to focus on is the record regarding assistance of counsel, because apparently, as I listened to Judge White this morning, that was his sole basis for voting to overturn and reverse this—these four death sentences for these four crimes. Actually, there were two other victims who had fallen victim to Mr. Johnson that night, and a fifth officer who was wounded seriously, who miraculously survived. The jury in that county found four counts of first degree murder, with a corresponding death sentence on each of those counts of murder.

The points I'd like to raise briefly about the qualify of James Johnson's representation is this. He hired counsel of his own choosing. He picked from our area in mid Missouri what we've referred to—as I refer to as a dream team. And, Senator Sessions, as you pointed out earlier, the resumes of these three individuals who

were experienced attorneys in litigation as well as criminal law, attorneys who had tried a capital murder case together. There was a finding by another court that they provide highly skilled representation as they tried to deal with these very unassailable facts, this very strong case that the prosecution had. There was a detailed confession Mr. Johnson had given to local law enforcement officers. There were other incriminating statements that he had made to lay witnesses. We had circumstantial evidence, including firearms identification, a host of other factors.

And against this backdrop of a very tough prosecution case, these three defense attorneys labored mightily to try to provide an insanity defense, post-traumatic stress disorder, commonly referred to as the Vietnam Flashback Syndrome. And without question—and again, perhaps with just a further comment, I defended a capital murder as a court-appointed public defender, and then after I switched sides and became, as you, Mr. Chairman, on the side of law enforcement, became a prosecuting attorney, over the course of my career, I think I prosecuted some 16 capital murder cases in Missouri, and I can tell you without question that this team of defense attorneys were very able, and provided very skilled adequate representation as the law would require.

Finally, regarding the point—and I know the Chairman's been gracious with my time—what I would like to do is read just a couple of the excerpts, as Sheriff Jones is here and will not be called as a witness, but particularly again on this point of the letter from law enforcement authorities.

Says Sheriff Jones: "As you know, much has been said about John Ashcroft and his fitness for this office. I, for one, support his nomination and urge this Committee to support him as well. Last year Senator Ashcroft was unjustly labeled for his opposition to the nomination of Judge Ronnie White to the Federal District Court. This one event has wrongly called into question his honor and integrity. Be assured that Senator John Ashcroft had no other reason that I know about to oppose Judge White except that I asked him to. I opposed Judge White's nomination to the Federal bench, and I asked Senator Ashcroft to join me because of Judge White's opinion on a death penalty case."

Moving the page 3, again Sheriff Jones: "In his opinion, Judge White urged that Johnson be given a second chance at freedom. I cannot understand his reasoning. I know that the four people Johnson killed were not given a second chance. When I learned that Judge White was picked by President Clinton to sit on the Federal bench, I was outraged", says Sheriff Jones. "Because of Judge White's dissenting opinion in the *Johnson* case, I felt he was unsuitable to be appointed for life to such an important and powerful position. During the Missouri Sheriffs' Association Annual Conference in 1999, I started a petition drive among the sheriffs to oppose the nomination. The petition simply requested that consideration be given to Judge White's dissenting opinion in the *Johnson* case as a factor in his appointment to the Federal bench. 77 Missouri sheriffs, both Democrats and Republicans signed the petition, and it was available to anyone who asked."

"Further, I asked", says Sheriff Jones, "I also asked that the National Sheriffs' Association support us in opposing Judge White's

nomination. They willingly did so, and I am grateful that they joined us and wrote a strong letter opposing Judge White's nomination."

And with that, I appreciate the deference of the Chairman, I would be happy to answer questions about this case or others.

[The prepared statement and an attachment of Representative Hulshof follow:]

STATE OF HON KENNY HULSHOF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

I would like to thank Chairman Leahy and Ranking Member Hatch for the opportunity to testify before this committee.

I fully support President-elect Bush's decision to nominate Senator John Ashcroft to the position of Attorney General. His past service to the people of my home state of Missouri as Attorney General, Governor and Senator give him the experience and knowledge to be an effective agent of justice for all Americans.

I am not here today as a U.S. Representative from Missouri's Ninth District. My appearance here is to share with you my unique knowledge of the case of *State of Missouri v. James Johnson*.

From February of 1989 until January of 1996, I served as a Special Prosecutor for the Missouri Attorney General's Office. In this capacity, my duties included the prosecution of politically sensitive or difficult murder cases across the State of Missouri. I handled cases in 53 Missouri counties and have tried and convicted violent criminals in more than 60 felony jury trials. In January, 1992, I was assigned as co-counsel in the prosecution of the Johnson case.

As you know, the *Johnson* case has taken on national prominence, but not because it involves a convicted cop killer. It has become a focal point in this process due to the strong disagreement that John Ashcroft and some law enforcement groups had with Missouri Supreme Court Judge Ronnie White's sole dissent on the appeal of this case.

You are measuring John Ashcroft's ability to be the nation's Attorney General by examining his record. In the same manner, John Ashcroft measured Ronnie White's ability to be a federal jurist by scrutinizing his record and published opinions—not his race as some have charged. John Ashcroft has testified that he had serious reservations about Judge White's opinions regarding law enforcement.

Let me share with you the facts of the *Johnson* case:

In December of 1991, Moniteau County Deputy Sheriff Les Roark responded to a domestic disturbance call at the home of James Johnson in rural Missouri. After assuring himself the domestic quarrel had ended, Deputy Roark turned to return to his waiting patrol car. James Johnson whipped a .38 caliber pistol from his waistband of his pants and fired twice at the retreating officer. Johnson, realizing that Roark was clinging valiantly to life, walked over to the fallen officer and shot him again execution-style.

He next negotiated the dozen or so miles to the home of Moniteau County Sheriff Kenny Jones. Peering through the window, he saw Pam Jones, the sheriff's wife. She was leading her church women's group in their monthly prayer meeting in her family's living room, her children at her knee. Using a .22 caliber rifle, Johnson fired multiple times through the window, hitting her five times. She was gunned down in cold blood in front of her family.

I wish I could tell you that the carnage soon ended. Instead, James Johnson proceeded to the home of Deputy Sheriff Russell Borts. Displaying the methodical demeanor of a calculating killer, Johnson shot Deputy Borts four times through a window as Borts was being summoned for duty via telephone. Miraculously, Borts survived. Cooper County Sheriff Charles Smith and Miller County Deputy Sandra Wilson were not as fortunate. They died in a hail of bullets when Johnson ambushed them outside the sheriff's office.

As a result of Johnson's rampage, three dedicated law enforcement officials were dead, one was severely injured and Pam Jones, a loving wife and mother, had been slaughtered.

Mr. Chairman, I wish to clarify a few of the points raised during yesterday's hearing regarding the quality of James Johnson's representation at trial. Mr. Johnson hired counsel of his own choosing. He chose a team of three experienced defense attorneys who possessed substantial experience in litigation and criminal law. The three litigants had tried a previous capital case together.

The record conclusively establishes that counsel launched a wide-ranging investigation in an effort to locate veterans who had served with the accused in Vietnam. Counsel hired and presented three nationally-renowned mental health experts on the relevant issue of posttraumatic stress disorder.

The evidence of guilt, however, was unassailable. Based on the strength of a detailed confession by the accused to law enforcement officers, incriminating statements to lay witnesses, eyewitness accounts to one of the murders and circumstantial evidence, including firearms identification, James Johnson was convicted by a jury of four counts of murder in the first degree. The jury later unanimously recommended a sentence of death on each of the four counts.

After a lengthy post-conviction hearing on the adequacy of counsel, Circuit Judge James A. Franklin, Jr. found that Johnson's attorneys devoted a significant period of time and expense to his case, including a substantial attempt to develop and present a mental defense. The court found as a matter of law that James Johnson received skilled representation throughout his trial. The case was then automatically appealed to the Missouri Supreme Court, where the convictions and sentences were upheld 4-1. Judge White's lone dissent focused on inadequate assistance of counsel at trial. As I have stated and the record indicates, this is clearly not the case.

I have been deeply troubled during these confirmation proceedings by statements insinuating, overtly or otherwise, that John Ashcroft is a racist. More to the point, there have been allegations made that John Ashcroft's rejection of Judge Ronnie White's nomination to the federal district court was racially motivated. As a Missourian, I am offended by these baseless claims.

It is my belief that members of this distinguished panel and members of the entire Senate take the constitutional role of "advice and consent" very seriously. It is an integral part of our system of checks and balances.

It is my humble opinion that no individual took that responsibility more seriously than your former colleague, John Ashcroft. As evidence of that fact, I cite to you the October 5, 1999, Congressional Record:

[Mr. Ashcroft] Confirming judges is serious business. People we put into these Federal judgeships are there for life, removed only with great difficulty, as evidenced by the fact that removals have been extremely rare. There is enormous power on the Federal bench. Most of us have seen things happen through judges that could never have gotten through the House and Senate. Alexander Hamilton, in Federalist Paper No. 78, put it this way:

"If [judges] should be disposed to exercise will instead of judgement, the consequence would equally be the substitution of their pleasure to that of the legislative body."

Alexander Hamilton, at the beginning of this Nation, knew just how important it was for us to look carefully at those who would be nominated for and confirmed to serve as judges.

Former Senator Ashcroft then elaborated on the dissenting opinions by Judge White in a series of criminal cases, including *State of Missouri v. James Johnson*. He acknowledged an outpouring of criticism levied against Judge White's nomination by respectable law enforcement groups. His ultimate rejection of Judge White's nomination was based on his judgement and legal reasoning. As you know, a majority of the Senate voted to reject the nominee.

Reasonable minds can differ on John Ashcroft's conclusion regarding Judge White's fitness as a federal jurist. These differences should be vigorously debated and considered. That is the hallmark of our republic. But branding a good man who has devoted his professional life to one of public service with the ugly slur of "racist without justification or cause is intolerable."

I know John Ashcroft. He is an honorable man of high integrity and morals. His commitment to his family, his state and his country are beyond compare. His experience and public service make him very qualified to be the next Attorney General of the United States. You have his assurance that he will faithfully execute the law in a way consistent with the will of Congress, in accordance with the rulings of our judicial system and in a manner that protects the liberties of all Americans.

Again, I would like to thank Chairman Leahy, Ranking Member Hatch and this distinguished panel for allowing me testify.

HON. KENNY HULSHOF
Committee on Ways and Means
Washington, DC 20515

Hon. Patrick J. Leahy
 Chairman
 U.S. Senate Committee on the Judiciary
 223 Hart Building Washington, D.C. 20510-0001
Washington, DC 20510-001

Dear Senator Leahy:

As a matter of personal privilege, I respectfully request that I be allowed to testify on the same witness panel as Judge Ronnie White during your confirmation hearings on the nomination of Senator John Ashcroft to be United States Attorney General.

My appearance before the Judiciary Committee does not come because I am a sitting Member of the U.S. House. My appearance is solely because I was co-counsel in the prosecution of a murder case which became a critical issue during the consideration of Judge White's nomination to the Federal bench. I believe I can provide significant and unique testimony relevant to the *State of Missouri vs James Johnson* and Judge White's expected testimony.

Your current invitation to have me testify as part of a panel consisting of interested Members of Congress will not provide the Judiciary Committee with a full, fair and accurate account of the James Johnson case.

I respectfully request that my appearance occur on the same panel as Judge White. Any other invitation would reflect a politicization of the hearing process and would be unfair to the Senate, the incoming Administration, and the American people.

Sincerely,

KENNY HULSHOF
Member of Congress

Chairman LEAHY. I thank you. I thank both members. And I do appreciate Sheriff Jones being here. I repeat part of what I said on the Senate floor about Sheriff Jones on October 21st, 1999. I said I certainly understand and appreciate Sheriff Kenny Jones deciding to write his fellow sheriffs about this nomination. Sheriff Jones' wife was killed in the brutal rampage of James Johnson, and all Senators give their respect and sympathy to Sheriff Jones and his family. The one thing we all agreed upon, Sheriff, was how horrified we were at what happened, and the sympathy we have.

Like a number of others in the Senate, I have prosecuted a number of murder cases. In fact, for 8 years I tried virtually all of the murder cases, tried them personally, that came within our jurisdiction. Some of them are horrific, others were an example of, as anybody in law enforcement knows, what we call and use that terrible expression, "the friendly murder", the family dispute that gets out of hand.

The description of this murder is the most horrible one I have ever heard. That is not a question. Nobody disputes the horrible and terrible nature of this murder. Nobody disputes the right of the State of Missouri to impose whatever penalty they have on the books. Whether somebody is for or against the death penalty, if it is on the books, nobody disputes their right to do that. And everybody subscribes to the right of a fair trial. The question, of course, comes in this, not whether Justice White was saying this person should be freed. As he stated here today, that is not what his ruling was. His ruling was to remand. He was a dissent in that remand for a new trial.

But, Congressman, you have been, as you said yourself, both a prosecutor and a public defender. Before I was a prosecutor, I de-

fended only on an assigned-counsel basis. We didn't start a public defender service until probably through my prosecutor's career. Frankly, I found it easier being the prosecutor.

But you had to help defend a person who was accused of murder, and I would assume that as that defense attorney you zealously worked to acquit him. Would that be right? I mean, that is what you would be required to do.

Representative HULSHOF. Zealously defend the man accused to the best of my ability, and certainly a lesser offense, or to spare the death penalty, I think as any defense attorney is charged to do.

Chairman LEAHY. I would assume under Missouri procedure you would have—once there has been a conviction, you have then a subsequent hearing on the question of penalty. And I assume that you would argue, of course, that even though now he has been convicted of murder, you would then argue that he not get the death penalty.

Representative HULSHOF. That is correct, Mr. Chairman.

Chairman LEAHY. And, actually, under the canons of ethics, once having accepted that assignment, you have to do that, do you not?

Representative HULSHOF. That is correct.

Chairman LEAHY. Now, there are also requirements on the prosecutor. In the *Johnson* case, the Missouri Supreme Court had raised questions about the suggestive silence in a deposition and the failure to correct misstatements during a deposition. The majority decision—now, this is a majority that upheld Johnson's conviction and death penalty—said, "This court does not condone the conduct of the State in failing to correct the erroneous implication from its own confusion about the perimeter defense."

You have both a defense attorney and a prosecutor. Both are expected to do their best to win their case. Is that a fair statement?

Representative HULSHOF. It is, Mr. Chairman, with some qualification, and I will be happy to state this.

Chairman LEAHY. Go ahead.

Representative HULSHOF. Clearly, the challenge for any defense attorney is to aggressively, zealously, within the bounds of law and the canons of ethics, defend a client. The prosecutor's role is even a bit greater than that, not to be simply out to win the case but to be, I think as the canons say, a minister of justice.

Chairman LEAHY. You presuppose my next question. In this case, the *Johnson* opinion, if I am correct, was critical of the State, as they said, for failing to correct the erroneous implication from its own confusion about the perimeter evidence. Is that correct?

Representative HULSHOF. I am not sure of the exact—I have got the opinions, but I would love to be able to explain since I have never had the opportunity to talk about it, and perhaps just to set the record here, the perimeter evidence, as you might expect, when the hue and cry went out to law enforcement that there had been this crime spree, this rampage over a period of time, roughly between 7:30 in the evening until 1:20 the next morning, hundreds—in fact, as we learn later, probably over a hundred officers responded and participated in this manhunt. The defendant, James Johnson, actually concealed himself in the home of an 82-year-old woman.

Chairman LEAHY. The call of “officer down” galvanizes all law enforcement.

Representative HULSHOF. Absolutely.

Chairman LEAHY. I have been there. I know what that is like.

Representative HULSHOF. And at some point, after Mr. Johnson had been taken into custody and the tedious process of the collection of evidence began, it was determined there was this crude alarm system, as the court calls it, perimeter evidence, of a rope with some tin cans, and inside those tin cans pieces of gravel, so that if a person were to trip it, you would hear this noise. It was collected by the officers, but there was no report as to who had collected it, who had put it there. There was also some evidence that the vehicle that Mr. Johnson had abandoned had four flat tires and no one was quite sure—at least there were no police reports indicating who had flattened those tires. And so, really, it was not a relevant trail for the prosecution to go down, and we did not know, Mr. Chairman, as we walked into court on the day that the trial began, who had set the perimeter evidence, who had disabled the car. And, quite frankly, our theory of the case was focusing on these nationally renowned mental experts that the defense had hired to bring in on post-traumatic stress disorder. We were clearly focusing on other matters, thinking this perimeter evidence to be a curiosity.

Chairman LEAHY. The testimony here has been that in 95 percent of the death penalty cases in which Judge White participated, he voted with at least one and usually more of the judges appointed by then-Governor Ashcroft. Would that be fair to characterize that record as pro-criminal or a bent toward criminal activity?

Representative HULSHOF. Judge—excuse me, Mr. Chairman. I have already put you on the Federal bench. Mr. Chairman, I—

Chairman LEAHY. I only get the chairmanship for a few days, so I will take the bench, if you want to throw that in while we are at it. Go ahead.

Representative HULSHOF. Again, I want to be very cautious as far as my response of articulating a position on Judge Ronnie White. But what I am here to say is that, as you all have debated and as I have watched with fascination, Senator Ashcroft was here telling the Senate, as he did on the Senate floor to his colleagues, that it wasn't for any other reason, certainly not for racial reasons, as we have heard, that led to his decision to vote against the confirmation of Judge Ronnie White. And it wasn't even this one single case, Mr. Chairman, you and I have been chatting about. It was in John Ashcroft's mind a pattern or series of cases.

Chairman LEAHY. Then maybe I should ask you—and I don't think it is fair either to you or to Senator Ashcroft for you to go into his mind—but would you characterize Judge White's record as being either pro-criminal or having a bent toward criminal activity?

Representative HULSHOF. Again, as—I am not ducking your question. As a member of good standing on the Missouri Bar, I want to be very cautious about making any statements about a judge, and, clearly, as a member of the other body who has no authority to vote to confirm or not to confirm any person that is not—I appreciate your question, Mr. Chairman, but I hesitate to make a personal assessment of Judge Ronnie White.

Chairman LEAHY. I understand.
Senator HATCH?

Senator HATCH. I want to thank both of you for coming. J.C., you are one of my heroes, and, frankly, everybody here knows what a fine man you are and what a good example you are to everybody. And I appreciate your testimony here today and your support for Senator Ashcroft.

Let me just say this: Sheriff Jones, we appreciate you being here today. We know how deeply you feel, and your firsthand account of what happened and the reasons you opposed Judge White will be made part of the record.

I also want to thank you for reminding us of an important point that I am afraid some of us often overlook, and that is, decisions made by judges in this country can have a profound impact on the lives of our local citizens and law enforcement personnel. And for that reason, we should listen carefully to the views people like yourself express.

In particular, Congressman Hulshof, I have a lot of admiration for you and for the life that you have lived and the work that you have done as a prosecutor, as an attorney. You have been in the big time as far as death penalty cases are concerned. And I think the knowledge you bring to Congress is very important. I for one would want to get even better acquainted than we are now. I know it is not easy for you to testify here today, but it is important that you do.

Earlier today, Congressman Hulshof, we heard testimony from Judge White. I was very impressed with Judge White when I conducted the hearing. So my opinion of Judge White is a good one. But let me just say this: There is room for two sides on this issue. I am not going to condemn my Democratic colleagues for their very sincere vote for Judge White. Nor am I going to condemn my Republican colleagues for their very sincere vote against him. There were some pretty crass comments made at the time, but I think there is room here to go either way, as much as I like Judge White, and I do.

But we heard testimony from Judge White earlier today that his dissent in the *Johnson* case was based on settled Supreme Court case law as stated in the *Strickland* case. Are you familiar with that case?

Representative HULSHOF. Yes, sir, I am.

Senator HATCH. All right. Now, you are an experienced death penalty litigator and an expert in case law. Would you be kind enough to explain for the benefit of all of us here on the Committee the law and its relationship to effective assistance of counsel and how all the other justices disagreed with Judge White's interpretation of the law in the *Johnson* case? I would like you to explain what the law is and what exactly would have been the effect on law enforcement in Missouri and victims' rights. Some of the most compelling testimony we have had has been the testimony on this last panel on victims' rights which I appreciated. But what would have been the effect on law enforcement and victims' rights if the Missouri Supreme Court had held in the *Johnson* case, and other cases perhaps, the way Judge White would have liked the court to have decided in that case?

I don't mean to put you on the spot, but I think that question has to be answered.

Representative HULSHOF. Senator, I appreciate your kind words, and I will attempt to answer the questions as you put them to me and do that as expeditiously as I can.

I think it goes back to the Senator from my neighboring State of Illinois, as I listened to the colloquy yesterday about his—I think the question—forgive me for paraphrasing. I don't have your transcript, Senator Durbin. But is an error committed by a trial lawyer sufficient in and of itself—and I am paraphrasing what you said, but is an error committed by the criminal defense attorney in and of itself sufficient to overturn a sentence or a conviction? And the United States Supreme Court case law, which our State Supreme Court is deemed to follow, says it is not, that simply an error committed by defense counsel is insufficient because essentially there are errors committed in, whether death penalty cases or even in a felonious stealing case.

Senator HATCH. Was that the rule of law that should have been applied in this case?

Representative HULSHOF. It was not the rule of law that should have been applied, and I think that the majority opinion in the *Johnson* case adequately and accurately described what that standard is. It is: Is it as a result of any error by a defendant's counsel that it created a reasonable likelihood or probability that the outcome of the case would have been different but for the error. And so I think, again, the majority opinion in the *Johnson* case correctly stated the law.

I see the red light is on, and let me undertake—

Senator HATCH. You can continue the answer. I will ask my colleague to just give me a few more minutes.

Chairman LEAHY. Of course.

Representative HULSHOF. Let me, if I could, try to answer the second part of your question as far as the effect of law enforcement, and I really—to this distinguished panel, the numbers that have been talked about as far as the number of affirmations or the number of dissents, I really don't know. I have not done that research, and I am sure that those numbers are accurate.

But it is a little bit—I think it is troubling for me, again, going back to my former days as someone who toiled in the courtrooms around our State, it is troubling to try to negotiate or talk about these terms as far as statistics. I think the farther that I personally get away from those days when I stood this far away from a box, a jury box, where 12 ordinary citizens were asked by the prosecution to do extraordinary things, I think the farther I get away from that experience, perhaps the more I forget about how extremely difficult those cases are. They are physically demanding, emotionally draining, not just for the litigants but for the jurors that we put into those positions and for the defendant's family and certainly for the victim's family.

And the point I hope to make, Senator Hatch, is that any time that there is a reversal or any time an esteemed jurist writes a dissent, it is—in a reversal, in the case of a reversal, it is at least the opportunity that that convicted killer can be free. Or in the case of a dissent, it is a message to law enforcement, it is a message

to victims like Sheriff Kenny Jones, that perhaps their sacrifice has been somewhat in vain.

And so, clearly, again, I see that I am probably teetering on the line. This is not any comment on Judge White per se, but I answer that question in the larger context in which you gave it.

Senator HATCH. Thank you very much.

Chairman LEAHY. The senior Senator from New York.

Senator SCHUMER. Thank you, Mr. Chairman. And I want to thank both of our witnesses for taking their time and being here, and I also want to convey my respects and sadness to Sheriff Jones for his loss, as well as to Ms. Campbell for her loss. I am sorry. We had another hearing, and I couldn't be here for your testimony or those of the others. And as somebody who has been with families who have had losses in these horrible kinds of incidents, my heart goes out to both of you.

I would like to just focus a little bit with Representative Hulshof in terms of this specific issue which troubles me, because the only thing, as I understand it, that Judge White did in this case was to say that as a legal matter he believed that the defendant had received ineffective assistance of counsel with regard to his insanity defense. And there is a debate about that, which we have heard.

Representative HULSHOF. Yes, sir.

Senator SCHUMER. And that is a fair debate. But in no way did Ronnie White condone these grisly crimes. In fact, the first sentence of his opinion reads, "I would find the result troubling." And at the end of his opinion, he said, "This is a very hard case. If Mr. Johnson was in control of his faculties when he went on this murderous rampage, then he surely deserves the death sentence he was given." That doesn't indicate somebody to me who is pro-criminal or even on that instance "soft on crime." I mean, I have been in my State one of the people who has pushed for tougher laws, whether it be capital punishment or ending parole or things like that.

But when somebody, a judge or somebody else, is talking about a fair trial, I don't think fair trial ever enters into what side one is on. There is a balance between societal rights and individual rights. But all of us would agree both play a role.

So I would just like to ask Representative Hulshof, would you say that any candidate to judge should be rejected because as a legal matter he had written an opinion questioning the effectiveness of counsel? That is what I don't understand. I have come across people on the bench who I would characterize as soft on crime. I don't think a decision saying that there was ineffective counsel, whether it be right or wrong—that is not what we are debating here, in my judgment, anyway—entitles you to say that somebody is pro-criminal, or whatever the other expression was that Senator Ashcroft used on the floor of the Senate.

Could you comment on that?

Representative HULSHOF. I would be happy to, Senator Schumer. Let me say also I appreciated the 2 years that we served together in the U.S. House.

Regarding the—let me just even take a little further—Judge White's dissent went further, and this is where I can't speak for John Ashcroft. But as a prosecutor, here is the language that I find

particularly troubling. It is the sentence just where you stopped. But the question of what—and I am quoting from *State v. Johnson* at page 16. “But the question of what Mr. Johnson’s mental status was on the night is not susceptible of easy answers. While Mr. Johnson may not, as the jury found, have met the legal definition of insanity, whatever drove Mr. Johnson to go from being a law-abiding citizen to being a multiple killer was certainly something akin to madness.”

Now, it is my understanding, with all due respect to Judge White, but the role of an appellate court is not to substitute the judgment of the court for that of the jury, and particularly as, Senator Schumer, you or I as lay persons might say that going from a law-abiding citizen to a multiple cop killer is madness or something akin to madness, that is not the legal definition of what constitutes a mental disease in our State.

But putting that aside, I think you ask another good—and I will just be very candid with you. I personally do not believe that a single dissent is sufficient to disqualify any Federal jurist. And I know I am going out on a limb because I am not a member of this body. But—

Senator SCHUMER. But, you know, that is a fair standard. I mean, if we were to use a single—take a single thing that Senator Ashcroft did and just saw the world through that prism, we wouldn’t be being fair to him.

Representative HULSHOF. But if I could be permitted to follow, just as I don’t believe a jurist should be disqualified for one single dissent, neither does John Ashcroft. He described for this panel over the last couple of days a series of cases—in fact, as he talked about on the floor of the U.S. Senate during this confirmation process a number of cases.

And, Senator Schumer, just as you have said that we can have—and reasonable minds can differ on whether this dissent was right or wrong, but, clearly, I also believe, in John Ashcroft’s defense, that reasonable minds could have disagreed over whether or not Judge White was fit to be a jurist on the Federal bench for the rest of his life. And that is the point.

Again, I am so deeply troubled and somewhat offended by some of the statements regarding John Ashcroft’s vote against Ronnie White being racially motivated. The record seems to be clear, and you all have been discussing that because of, in John Ashcroft’s opinion, this series of cases by a single judge since that reflected on his fitness for office. And I think as John Ashcroft said on the floor on October the 5th, if I am not mistaken, “whether we as a Senate should sanction the life appointment to the responsibility of the district court judge for one who has earned a vote of no confidence from so many in the law enforcement community in the State in which he resides.” And reasonable minds can differ on that.

But, clearly, the fact that we are discussing those decisions and those qualifications has absolutely nothing to do with race. And so that is the point of my—

Senator SCHUMER. Let me—Mr. Chairman? I was going to follow up with a question, but if people are in a hurry, I do not have to do that. I will defer. Go ahead. Senator Specter?

Chairman LEAHY. Senator Specter was concerned that you had gone over. You have gone over less time than he went over earlier this morning, but if you want to refrain, we can go back—

Senator SPECTER. Well, now, wait a minute, Mr. Chairman. That red light has been on on the other side, including you, for a very protracted period of time.

Chairman LEAHY. About 2 minutes 21 seconds.

Senator SPECTER. And when I was questioning Judge White, I was cutoff. And I just asked you a question if the red light applies only on this side of the table. That is my question.

Senator SCHUMER. I have no further questions, Mr. Chairman.

Chairman LEAHY. I think the record will show that both sides have gone way over their time and that the Chair has given a great deal of time to both sides, did not run the red light on either of the two witnesses, both Republican Congressmen speaking on behalf of Senator Ashcroft, did run the red light on a number of people who spoke against him.

Senator Thurmond?

Senator THURMOND. Thank you.

Congressman Watts and Congressman Hulshof, I really appreciate your appearance today on behalf of Senator Ashcroft. Your testimony is very important and beneficial to him and we thank you.

I also want to thank Sheriff Jones. Sheriff, hold up your hand. Thank you. I want to thank you for being here. Your dedication and interest should be commended. I have the greatest respect for all victims of crime. Crime is a terrible harm to our society, and society must be tough on crime.

I thank you.

Chairman LEAHY. Now, there is an example of how to stay within the time.

The distinguished senior Senator from Illinois, Senator Durbin. Senator DURBIN. Thank you very much, Mr. Chairman.

Congressman Watts and Congressman Hulshof, thank you for joining us today. I want to say at the outset that, like John Ashcroft and I believe yourself, Congressman Hulshof, I support the death penalty and I voted for the death penalty. That is not the issue here.

When I read the *Johnson* case, this horrific, murderous rampage this man went on, destroying innocent lives, including the lives of law enforcement, I can tell you that I feel sympathy for Sheriff Jones and all the families involved in it. There is no question about that.

I come virtually to the same conclusion that Justice White did. If Mr. Johnson was in control of his faculties when he went on this murderous rampage, he assuredly deserved the death sentence he was given. But I have to disagree with one of the points that you made, Congressman. For you to characterize Johnson's defense as a dream team really is a stretch. This man who committed these murders signed a confession. If there was any defense, it was a question of his mental capacity. And his defense counsel decided to construct a defense, which is novel, the post-traumatic stress syndrome, and then proceed to argue that before the jury. And he used as evidence of that this so-called perimeter which was around the

defendant's house and the fact that the tires on his truck were flat to say this reminded the defendant that he was back in Vietnam and he broke and he did these terrible things.

This dream team defense counsel had failed to interview two State troopers in a death case who were on the endorsed witness list, and in failing to interview these two State troopers, this defense dream team didn't realize the perimeter had not been created by the defendant but by the police and the air was let out of the truck tires by the police as well. His entire defense disintegrated in front of him. From the prosecution point of view, you were in a pretty strong position, if the facts come out as they were in this case, and his entire defense disappeared.

I raise a question about your defense dream team's competence that they would not interview two State troopers on the endorsed witness list who clearly would have given them information to rebut their entire defense. They got right smack dab in the middle of the trial, and it disintegrated in front of them.

Justice White says, based on this, he doesn't think they did a good job as defense attorneys. Well, I want to tell you this: If I had somebody important to me in my family who needed a defense attorney, I wouldn't be calling this dream team. And I don't believe John Ashcroft, if he becomes Attorney General, would hire this defense dream team in the Department of Justice. At least I hope he would not.

Justice White sat here this morning and said what he said repeatedly. He didn't believe James Johnson should be released. All he believed is that he was entitled to a fair trial and that the counsel he was given did not give him a fair trial.

How this comes together is this: You have a man who has devoted his life to the law, fought his way to complete law school, to be the attorney for the city of St. Louis representing the police department, the first African-American to the Missouri appellate court, the first African-American in the Missouri Supreme Court, a lifetime of hard work and commitment to law, who reaches this opportunity to become a Federal district court judge, and he is rejected after 27 months dangling before this Committee on the basis of three court cases: the *Demask* case, which was cited by Senator Ashcroft, in which Justice White's opinion was confirmed by the Supreme Court as the appropriate standard; the *Kinder* case, where days before a trial a judge made not just insensitive statements but racist statements, and the question was raised as to his bias; and the *Johnson* case.

And I just have to say to, Congressmen, to have a man's entire legal career tossed aside, to have him characterized as pro-criminal, to ignore the clear statistics of his support for death penalty cases over and over again raises a question in my mind as to whether or not he was treated fairly. I would like to give you a chance to respond.

Representative HULSHOF. Thank you. It is interesting, and if I could. I find myself at an unusual position, Senator Durbin, in that as a 10-year career prosecutor that I am defending defense counsel, the same individuals that are your adversaries, against in a courtroom, but let me put a couple of other facts out there because, as you stated—and, again, not taking notes from your statement, com-

ing up with this extraordinary defense about this post-traumatic stress or, as lay people call it, the Vietnam Flashback Syndrome.

When Mr. Johnson was arrested, he gave a detailed confession and made reference to his service in Vietnam. When the hostage negotiator was trying to negotiate over the telephone before Mr. Johnson was apprehended, he had taken an 82-year-old woman hostage in her own home, allowed her to leave. She informed law enforcement officers that, "The man you are looking for is in my house," and so the helicopters come in and they surround the house. An experienced hostage negotiator on a bullhorn says, "Pick up the phone," and then they commence a couple hours of conversation on the telephone which was recorded.

During the course of that conversation, the defendant, James Johnson, was telling this Highway Patrol negotiator that, "I am the only one left from my platoon. My platoon leader has been killed." He even mentioned the name Sergeant Calley or Lieutenant Calley which, of course, if you follow Vietnam history, as this, by the way, Highway Patrol negotiator knew, that Lieutenant Calley probably was a little older than Mr. Johnson, and so he was beginning to suspect that maybe Johnson was trying to conjure up his own defense, but there were strong references during this back-and-forth, during the hostage negotiation time where the defendant Johnson was lacing his comments with "gooks" and other terminology that are consistent, of course, with those who had experience in Vietnam.

Not only that, regarding the competency of counsel, they brought in three of the most nationally acclaimed experts on post-traumatic stress disorder. In fact, Dr. John Wilson—it is in the record—who I had a very difficult time on cross-examination with, who is known by some as the Father of Post-Traumatic Stress Disorder, who wrote the diagnostic and statistical manual on PTSD was one of their witnesses, and they had this group of experts that were renowned around the country.

So, again, reasonable minds can disagree over effective representation, but I can tell you having been on the other side of this case in the courtroom, having to battle very day these exceptionally skilled attorneys, I believe that his representation was extremely adequate as far as assistance of counsel that the law requires.

Senator DURBIN. If you will spare me and allow me one closing sentence. If reasonable minds can disagree, can you understand how one Justice on the Supreme Court might dissent in this case and not be pro-criminal and not be soft on the death penalty and have his entire legal career besmirched by those comments on the floor of the U.S. Senate?

Chairman LEAHY. Both of us agree. Go ahead with your answer.

Representative HULSHOF. If, Senator, you will also agree that during the confirmation process of Judge Ronnie White that reasonable minds could agree or disagree as to his fitness to be elevated to the bench. I offer no opinion to that, but John Ashcroft, who you all are scrutinizing, just as his record is appropriately before you and the American people as to whether he is fit to be the Attorney General of these United States, he took that same measure seriously, his role then of advise and consent, as he scrutinized the record of another jurist from his homestate who had raised the

concerns of some in law enforcement as to his fitness for the bench, and I think there was reasonable disagreement there as well.

Thank you.

Chairman LEAHY. With that, we will go to the senior Senator from Pennsylvania.

Senator SPECTER. Thank you.

Congressman Hulshof, Senator Durbin, I think you have both made very reasonable arguments, and the question which comes to my mind is what impact does all of this have on the qualification of Senator Ashcroft to serve as Attorney General.

I think it is very important to focus on the testimony which Judge White gave, and the centerpiece was the opportunity for him to clear the record and to clear his name on what he considered to have been an improper handling of this matter where his record was not accurately stated. I think he had that opportunity today, but he did not say John Ashcroft should not be confirmed as Attorney General, and he did not say or question Senator Ashcroft's motivations as being political.

That accusation has been made on this side of the table, but as to what the witness said, he did not make that point, and I pressed him on it, with great respect for his record, and I do believe that the Senate ought to change procedures. We may handle confirmations which are successful without going into great detail by Senators personally, although staff and FBI and Bar Association and Justice Department does it, so that he had his chance to say his side of it.

But the question—and you have already answered this in a wide variety of ways—as to the good faith of John Ashcroft in the judgment which he made, do you have any doubt—this is repetitious, but one more time—that there was an ample basis for the good-faith judgment of Senator Bond and Senator Ashcroft in coming to the conclusions which they did as to Judge White's confirmation?

Representative HULSHOF. I appreciate the question. There is no question in my mind, knowing John as I do from his many years as a public servant in Missouri, elected twice as Attorney General, twice as Governor, once as U.S. Senator, that he is a man of high integrity and character, and you probably know that as well or better than I having worked alongside your former colleague. So, as he has answered many questions over his reasons for opposing the nomination of Judge White to the Federal bench—

Senator SPECTER. Without taking too much more time—

Representative HULSHOF.—I think the fact that there are now individuals trying to target him with slurs, I think, is intolerable.

Senator SPECTER. Well, this has been the most heated confirmation process that I have seen. I am now in my twenty-first year serving on this Committee, and the confirmation process as to Judge Bork was no picnic, and the confirmation as to Justice Thomas was no picnic, and the confirmation process as to Chief Justice Rehnquist was pretty heated. We have had a great many controversial proceedings, but the kind of charges which have come from this side of the table on John Ashcroft being political—

Senator HATCH. Please don't point at me.

Senator SPECTER.—As to Judge White, it has to be emphasized it didn't come from Judge White. It didn't come from the witness.

There have been threats of filibuster, and if John Ashcroft is as bad as the witnesses on this side of the table have characterized him, as bad as the Senators have characterized him, if he is that bad, they know how to stop him, but it really isn't all that bad because, when you strip down the issue we have been on for hours now as to Judge White, Judge White should have been treated differently by the Senate. There may have been some excessive statements made, but when you boil down Judge White's testimony, he does not say John Ashcroft should not be confirmed, and he does not say that John Ashcroft acted out of a political motive or out of a biased motive.

My red light just went on. Thank you.

Chairman LEAHY. If the Senator wants to finish his question, feel free.

Senator SPECTER. Thank you.

Chairman LEAHY. Well, we will go to Senator Kyl. I am not hearing an answer. I simply will go ahead. Senator Kyl?

Senator KYL. Thank you, Mr. Chairman.

I would like to submit to the record a series of endorsements by various law enforcement organizations for Senator Ashcroft's confirmation for the record.

Second, I want to commend Sheriff Jones for being here under these circumstances, and I look forward to reading your testimony, sir. In particular, I hope that my colleagues read that part of the testimony which makes it clear that it was you who asked Senator Ashcroft to oppose the nomination, not the other way around, and it was you who initiated the petition drive of law enforcement officials in opposition or at least in semi-opposition to Ronnie White's nomination to the Federal district bench.

Representative Watts, as always, you are willing to sacrifice your time for others for what you believe is right. I thought your testimony was powerful. I have got to get that video for my grandkids.

Representative Hulshof, I appreciate your fine legal analysis. Because so much of this hearing did revolve around this particular case, I think your expertise has been very useful to the Committee.

The bottom line here is that this was a very skilled group of lawyers who were hired to defend a case that frankly was indefensible, and I will also submit for the record the actual finding of the judge in the findings of fact and conclusions of law that the team that you characterized as the "Dream Team," to quote the court, was highly skilled and well prepared for the case.

It was not a matter of inadequacy of counsel. It was a matter of a case that frankly couldn't be defended. Clarence Darrow could not have gotten this guy off.

If we are going to hold otherwise, we are going to put ourselves in this Catch 22. Either the jury acquits or it is error because the defense counsel couldn't find a way for the jury to acquit. That would mean no one ever gets convicted in a case like this.

But I am troubled by two other things. Not only has there been some focus on the sanity defense here, but as you have pointed out, it is not just a matter of the finding here, but also whether or not the alleged errors of defense counsel and inadequacy of counsel had any effect on the jury, and, of course, the majority opinion in the

case said whatever the situation with regard to defense counsel, it had no effect on the jury. White disagreed with that.

But there were two other things pointed out. One of them was the statement that was read earlier that while Mr. Johnson—this is in the dissent of Judge White. While Mr. Johnson may not, as the jury found, have met the legal definition of “sanity,” whatever drove him to go from law-abiding citizen to multiple killer was certainly something akin to madness.

Now, there is a legal standard for insanity, and a judge is required to apply the law. This is a case where apparently Judge White was willing to fly by the seat of his pants, not applying the law because it just didn't seem right to him.

But the other thing that hasn't been brought up is something else from his dissent, and let me quote from it, at least in part, after the whole business about adequacy of defense counsel, he says, “Even more troubling to me is an issue that the principal opinion doesn't address. It is the issue of mitigating factors,” and the conclusion of Judge White is that because Mr. Johnson had not committed crimes previously, the jury might have been able to find that this four-time killer could warrant a sentence of life rather than death.

Now, we heard the testimony of Ms. Collene Campbell who said that a judge with a big heart gave a criminal one more chance, and he used it to kill her son. If you are one judge out of seven on the Missouri Supreme Court, you can make an error like Judge White did and it does not have a negative impact on society, but he wanted to give Jimmy Johnson one more chance, and that error could have had grievous consequences.

My belief is that he was wrong on the law, and that in effect he failed the law exam here sufficiently to justify us to not reward him with a lifetime appointment to the Federal district court.

There were other cases as well, but I just want to make it crystal clear that however well-intentioned and however decent Judge White is—and he clearly is from his testimony here today—the Senate has no obligation to elevate him to a lifetime appointment to the district court given the fact that he made the kind of errors that he did and that the court itself concluded that he did.

So I think this vindicates the judgment not only of the Senate, but also of Senator Ashcroft in opposing him.

Incidentally, Mr. Chairman, just one final point, there has been an allegation by some on our side that Senator Ashcroft distorted the record of Ronnie White. Of course, every Senator had full opportunity to clarify the record in the debate in the Senate. John Ashcroft was only one of 100, and there was full opportunity for debate and clarification if anybody had felt that necessary.

Thank you.

Chairman LEAHY. The senior Senator from Ohio.

Senator DEWINE. I have no questions, Mr. Chairman. Thank you.

Chairman LEAHY. I can't tell you how much the chairman thanks the senior Senator from Ohio.

The Senator from Alabama.

Senator SESSIONS. Thank you, Mr. Chairman. Not so lucky with me.

Congressman Watts, thank you for coming. Thank you for all you do to advance good and healthy ideas in America.

You just did a great job in Alabama, recently speaking, to a large group of young people, a fellowship of Christian athletes, and it was a special time. They were really inspired and motivated by what you do. It may be that those kind of things will last longer than any laws that we pass around here.

Congressman Hulshof, I really appreciate your sharing with us here, and I tend to agree with John Kyl, the problem the defense had was they had no defense. The guy was caught flat-footed and gave a detailed confession. So it strikes me that the defense was trying to do a home run. It is fourth and 10 on your own 30, and you have just got to throw it up there, and a lot of times, it gets intercepted. Is that an unfair characterization of it?

Representative HULSHOF. I think that is an accurate depiction. I think law enforcement in this case, especially those that did the investigation, deserve tremendous credit. The Court, the judge who presided over the trial, did her job. I think the litigants battled furiously for their respective sides. The jury did their job, and then the case went on to appeal and then we have had the decision that we have been discussing.

Senator SESSIONS. Now, with regard to judges in general, as a prosecutor, within the law enforcement and prosecutory community, you know the judges that consistently fail to follow the law, fail to give the prosecutor his fair due in court, and that is pretty well known around, isn't it?

Representative HULSHOF. Yes, sir.

Senator SESSIONS. Well, you know, Attorneys General like John Ashcroft and a prosecutor and former Attorney General like I have been feel an obligation and a duty when we put somebody on a lifetime Federal bench. It is our responsibility to make sure that we maybe give a particular assurance that those people are going to give both sides of the case a fair shake. Would you think that is probably something that was in the former Attorney General John Ashcroft's mind when he dealt with this case?

Representative HULSHOF. I do, Senator Sessions, as well as was pointed out in the statement that I read from Sheriff Jones, the extraordinary, for lack of a better term, effort by some law enforcement groups who saw this dissent and perhaps with some other cases who raised this red flag to Senators Ashcroft and Bond.

Senator SESSIONS. Sheriff Jones, we thank you for being here. I know most of the sheriffs in my State. Certainly, I knew the ones in my district when I was United States Attorney, and the chiefs of police, also. I respect them. I know they are good and decent people, and if they have serious concerns about a nominee, I am going to listen to it. John Ashcroft voted for every single African-American nominee presented by President Clinton, 26 out of 27 that came to a floor vote, and he opposed this one from his own district where he had a particular responsibility, it seems to me, and he had a serious objection among the law enforcement community.

The Fraternal Order of Police and others have just issued an endorsement for Senator Ashcroft, and I am going to offer that into the record.

The Fraternal Order of Police have issued a specific statement supporting John Ashcroft for Attorney General, and they represent 293,000 members nationwide. Is that a premier law enforcement agency, Congressman Hulshof?

Representative HULSHOF. It is, Senator Sessions.

Senator SESSIONS. And as have the Sheriffs Association.

The National Latino Peace Officers Association said, "It is with sincere pleasure that I write on behalf of the men and women of the National Latino Police Officers Association in support of Senator Ashcroft's appointment to Attorney General," and the letter goes on.

The Association of Former State Attorneys General have written, and here is a long list of former Attorneys General around the country that have written in support of John Ashcroft for Attorney General, and I would offer those into the record.

Mr. Chairman, thank you. My time has expired.

Chairman LEAHY. Do you have something further to add?

Senator SESSIONS. I will stay within my time.

Chairman LEAHY. You would be one of the very few on the other side of the aisle, but I appreciate it.

Senator SESSIONS. I would just offer that and say there are other letters from significant organizations that should be submitted.

Chairman LEAHY. We will keep the record open, of course, under our normal practice for Senators from either side of the aisle to submit letters or others.

Does the Senator from Kansas wish to ask questions?

Senator BROWNBACK. Yes, I would, if I could.

Thank you very much for coming in, Kenny. I appreciate that.

J.C., it is always great to see you. We came in together in the House of Representatives, and you have done very well from your football days on forward. Oklahoma is back in football like when you were quarterbacking.

Briefly, if I could, Congressman Hulshof, one of the central issues here has been Judge White and his record, not just the one case, but his record of what it was toward criminal—whether he would be tough on crime or he was going to be soft on crime. I wanted to put into the record—and if you had a comment—the number of police organizations that were opposed to his appointment to the Federal bench based upon that pattern of softness, and particularly like the Missouri Federation of Police Chiefs who stated in this letter, September 2nd, 1999, "We want to go on record with your office as being opposed to his nomination and hope you will vote against him for the Federal bench, a lifetime appointment to the Federal bench."

I would also point out the National Sheriffs Association saying, "I am writing to ask you to join the National Sheriffs Association in opposing the nomination of Mr. Ronnie White to the Federal judiciary, and I strongly urge the U.S. Senate to defeat his appointment."

Then Sheriff Jones' letter, whom I would have loved to have heard your testimony as well in this case, opposed his appointment to the Federal bench.

The Missouri Sheriffs Association said, "We strongly consider his dissenting opinion in the *Missouri v. Johnson* case."

Senator BROWNBACK. Is that the pattern you spoke of, of why these organizations were all opposed to his taking the Federal bench?

Representative HULSHOF. Again, without my own personal comments about it, I think Senator Ashcroft has indicated both on the floor when he was your former colleague, discussing various cases, I think many of those that we talked about, the *Johnson* case. There was a *Kinder* case. There were some others, again, and I think he also had the opportunity to be questioned about additional criminal cases. I think even since Judge White's nomination was defeated, there were additional cases that perhaps were brought forth in this process by your former colleague, an *Irvin* case and some others.

So, again, without offering my own opinion specifically about Judge White, that is not the purpose of me being here today. I think Senator Specter mentioned earlier that the point of these inquiries, of course, and the very difficult job that you have is the fitness for office for the Office of Attorney General for John Ashcroft, and I think that especially as a fellow Missourian, these charges of racially motivated reasons for defeating Judge White's nomination, really, there is no information or evidence to that.

Clearly, I would just urge, if I could, just as John Ashcroft I believe is a man of highest moral integrity and character, I think he would make an exceptionally qualified U.S. Attorney General.

Senator BROWNBACK. Congressman Watts, you have been here, and I thank you for participating. I don't know if you had any follow-up comments that you would like to make.

I would direct your attention particularly. There have been a number of innuendoes and allegations toward John Ashcroft's sensitivities, racial sensitivities, and if you know John and if you have any comments regarding any of those comments that others have made.

Representative WATTS. Senator, I shared my testimony or in my statement that I have dealt with John for the last 6 years. I have campaigned with him in his homestate. I have worked with him on legislation concerning poor communities, underserved communities. I have always found John Ashcroft to have nothing but the utmost respect and dignity for one's skin color.

I hear John say yesterday in some of his testimony that his faith requires him to respect one's skin color, and I think that is the way it should be. So, in my dealings with John, I have had nothing but the utmost respect for him when it comes to his dealings with people of different skin color.

Senator BROWNBACK. Thank you very much. Thank you both for joining us, too.

Senator SESSIONS. Could I bother to offer one more letter?

Chairman LEAHY. The Senator from Alabama can interrupt any time he would like. You go right ahead.

Senator SESSIONS. You are very kind. You have been very patient.

This is from the Mercer County Prosecuting Attorney's Office, and I note some have objected to John Ashcroft's use of the word "anti-law enforcement," but this is the letter he had back at that time, "Judge White's record is unmistakably anti-law enforcement,

and we believe his nomination should be defeated. His rulings and dissenting opinions on capital cases and on Fourth Amendment issues should be disqualifying factors when considering his nomination. John White has evidenced a clear bias against the death penalty from his seat on the Missouri Supreme Court," and he goes on for another page and a half. But I would just offer that as a basis for Senator Ashcroft to have said what he said.

Chairman LEAHY. I am sure that will be part of the debate for the next several weeks, but I would also note, as we have put in the record, the endorsements from a number of significant police organizations and individual police officers in Missouri for the nomination of Judge White to be a Federal district judge, a number who endorsed him for that position, a number who said they considered him far more concerned with victims than with criminals.

With that, we will stand—

Senator HATCH. If I could just make one last comment. Which, of course, makes my point that there is reason to be on either side of this issue. It is a little offensive to have some accusing Senator Ashcroft of insensitivity I think this particular panel has been very important in helping us to understand that.

I think we should be a little more careful before we start finding fault with colleagues. I don't find fault with those who voted for Judge White. I don't find fault with those who voted against Judge White.

Chairman LEAHY. Ultimately, of course, the question will come down to how 100 United States Senators will vote for John Ashcroft.

Senator HATCH. That is right.

Chairman LEAHY. While that vote will not be held today, eventually it will be held, and that will be the question.

I do thank our two colleagues from the House, both valued members of that body. They have been most patient.

I will announce the program when we come back at 2:30. We will go back to question the panel that was interrupted to allow the Members of the House to testify.

[Whereupon, at 1:26 p.m., the Committee recessed for lunch, to reconvene at 2:30 p.m., this same day, Thursday, January 18, 2001.]

AFTERNOON SESSION [2:43 p.m.]

Chairman LEAHY. Thank you all, and as sometimes happens in these events, we have to move things around, and I apologize for that.

I am going to have the questioning start by one of the two most senior members of the panel, a former chairman, Senator Kennedy, and then go in normal rotation to Senator Hatch, and then back to me. I don't think it is the altitude, unless it is the altitude of the office, but I seem to have developed a bit of a nosebleed, so I am going to step out.

Senator HATCH. If I can, Mr. Chairman, when you come to me, I am going to defer to Senator Specter, who needs to be at another confirmation.

Chairman LEAHY. Would you rather go first?

Senator SPECTER. That is all right. I will follow Senator Kennedy.

Chairman LEAHY. Let's turn to Senator Kennedy.

Senator KENNEDY. Thank you. Thank you very much, and I want to thank the panel very much for the very, very helpful commentary. And I know the 5-minute rule made it difficult, but the information you provided to the Committee is very, very valuable.

I would like to direct my first question to Harriet Woods. On Tuesday and Wednesday, Senator Ashcroft testified that the State of Missouri was not responsible for the segregation of St. Louis schools and that he was simply fulfilling his duty to defend the State when he so strongly opposed the city's voluntary desegregation plan. Is that an accurate description of what really happened?

Ms. WOODS. It is not, Senator, and I think it is one of the most troubling aspects to me of this nomination, because as you well know and pointed out, there is no more serious challenge to this country than reaching a resolution on some of these lingering issues related to race. And the fact that he would say that he was just appearing as Attorney General but protecting the State from liability, because there was no liability. The history of Missouri, at one time it was a crime to educate black children. The ministers had to take them out on boats in the river. There was a constitutional amendment requiring segregation of schools.

I served in the State Senate at a time—and, frankly, I think it lingers to this day—when there was a resistance to providing more funds to the urban schools. So for these families to be—to find no resolution to a good education for their children at either the State or local level, neither one of them willing to really assume the responsibility for remedying what was a long, clear injustice to African-American children was what brought on the Federal suit. And to have the Attorney General of the State not even—seemingly who was born and raised in Missouri, who told us, well, yes, he knew about this 1954 decision and a black child came into his class, that he was not conscious that there was a State liability really is worrisome because that could be transferred to the Federal level of no liability, no responsibility. And you can tell I am really appalled.

Senator KENNEDY. Well, I think in fairness to the Senator, he had indicated that the State was not involved. We have had contrary testimony to that in the holdings of the court. This went on for some 8 years as he was Attorney General and 8 years as Governor. Am I correct that this issue was not settled?

Ms. WOODS. It not only went on, but as you know—and I certainly don't want to take up all the time, and I know you are going to have other testimony from other witnesses. But even to the extent of impeding or trying to block voluntary—efforts at voluntary resolution, which you would think he would be happy about, in terms of if the local districts—if the State could assist a voluntary remedy, and the courts themselves chastised the Attorney General for foot-dragging and for getting in the way, I mean, it seems to me this is more than just routine representation of the State.

Senator KENNEDY. One other issue that I raised with Senator Ashcroft on the first day: he defended his veto of two voter registration bills by citing support for his action from a few Democrats in the city of St. Louis. That is the situation where there was one piece of legislation that provided voting registrars for St. Louis, and he vetoed that because he said that that was only targeted on

one city. And then the legislature, as I understand it, passed legislation to encompass the whole State, and he vetoed that as well.

The result has been a very dramatic falling off of black registered voters during that period of time when other groups, like the League of Women Voters, were out registering in the county itself surrounding the city. I believe there were 1,500 active registrars out in the area just surrounding the city, and for special reasons that you know, this is really a function of the Governor. The Governor has this responsibility, as I understand it, under Missouri law.

Could you make any comment on what was happening at that time and what kind of value do you give to—

Ms. WOODS. Well, I sometimes wore the hat as a member of the League of Women Voters, but what you are pointing out—and I was interested in your inquiry because it is quite true that in the suburban areas, the more affluent citizens, the Board of Election Commissioners did deputize members of the League of Women Voters and other groups to make it easier to register. This was not true in the city of St. Louis where the majority of African-Americans live.

Now, the point, and you really brought this out, but what it seemed to me needed to be brought out, Senator Ashcroft said, well, he checked with the local Board of Election Commissioners and the local white Democratic elected officials said we aren't interested in doing this. Everyone from the Missouri, from St. Louis, understands that by tradition there is the white south side in local politics and the black north side. And I can assure you that by tradition, by simple practical politics, the white Democratic politicians on the south side aren't going—are no more eager than Republicans to get a big turnout because of its impact on local elections from the African-Americans on the north side. So to say they agreed is a little like saying that President Eisenhower called up the politicians in Arkansas and said, Hey, do you want us to come in and do something about getting these kids into the schools? And when they say no, say, OK, we won't do it.

That was not his role. His role should have been looking out to make it easier for people of whatever background to be able to exercise their vote and not to reach agreements with politicians about keeping them from doing so. There is no reason why they couldn't have been deputizing in the city of St. Louis.

Senator KENNEDY. As a result of that failure, is it your understanding that there were hundreds of thousands of eligible black voters that were effectively denied the—

Ms. WOODS. Well, I would say there certainly were—

Senator KENNEDY.—Opportunity for registering and participating in the votes?

Ms. WOODS. There was certainly a discouragement factor for thousands of African-Americans voters who had to go to a much greater length to do what could be done easily in more affluent areas.

Senator KENNEDY. If I could, I would like to ask Gloria Feldt about Senator Ashcroft's extreme position against contraception. He supported the human life amendment which prohibited the use of common forms of contraception, tried to stop the Federal Em-

ployees Health Benefits Program from covering the cost of contraceptives approved by FDA, including commonly used birth control pills and IUDs. He has used the power of high office to block family planning services.

Let me ask you, would you tell the Committee how much impact, if any, the Attorney General's office could have on the right to access contraceptives? What is your impression given the assurance that you received yesterday and the power of the Attorney General, to what lies ahead in terms of the potential danger of actions that would limit contraceptives to women?

Ms. FELDT. Thank you, Senator. Just to clarify the basis of this point, the medical, scientific definition of pregnancy is implantation. The version of the so-called human life amendment that Senator Ashcroft has supported throughout his entire career is a version which would outlaw all abortion and it would—and it defines "life" meaning personhood, giving the legal status of personhood, upon fertilization.

What that means is that most of the methods of birth control that we are accustomed to having available to us, such as many kinds of birth control pills, the IUD, injectables and so forth, are thought of by Senator Ashcroft as abortifacients, and that is confirmed in the Dear Colleague letter that he signed to Members of the Senate in opposition to Federal employees' insurance coverage of contraception in their plans.

As Attorney General, I think that his interpretation of when personhood—I mean, the legal status of personhood begins would be a very major factor in interpreting and crafting and advising. But there are other more sort of not as obvious areas where his interpretation could have an impact.

For example, he could be asked by the Department of Health and Human Services to give some guidance with respect to family planning programs, Title 10 of the Public Health Services Act, which provides a wide array of—in fact, all medically approved birth control methods to low-income women who are primarily uninsured women as well. So it is not inconceivable that the Attorney General could be asked to define what is a contraceptive under this program, and in so doing render most of the commonly used and, by the way, most effective means of contraception no longer usable within the family planning program.

Similarly, emergency contraception, which can be taken within 72 hours after intercourse and can prevent a pregnancy from occurring, could be given that same approach. And emergency contraception has been found by researchers to—if all women of reproductive age had access to it, emergency contraception could reduce the unintended pregnancy rates and the abortion rate by one-half.

So, ironically, the outcome could be actually an increase ultimately in the rate of abortion because of the lack of birth control access.

Ms. GREENBERGER. Senator Kennedy, I wonder if I just might add—

Senator KENNEDY. I think my time is up, Mr. Chairman.

Chairman LEAHY. We will go 10 minutes with the Senator from Pennsylvania and then 5 minutes to everybody else because the Senator from Massachusetts had 10 minutes.

Senator SPECTER. Thank you, Senator Hatch, for yielding to me. I have other commitments. This has been obviously a tough day, and I appreciate a chance to take this round now.

I can understand the concern which has been expressed about a woman's right to choose, and I agree with what Ms. Michelman has said that we wouldn't tolerate dismantling *Brown v. Board of Education*, and similarly, we can't tolerate dismantling *Roe v. Wade*. And if I thought that Senator Ashcroft would do that, I wouldn't support it.

The issue about what will happen with judges and marshals and U.S. attorneys, at least the practice in the 12 years of President Reagan and President Bush, has been that Senators have a significant amount to say about who those individuals will be. And I can tell you with certainty that there will be some passionate activism, to use your term, Ms. Feldt, on that subject. And the Republicans who have been appointed in Pennsylvania have been noted nationally for balance and moderation, if I may use—they use that word.

When it is said that there is an expectation that the President would appoint a conservative, that really is an understatement because of the way the political process works and the way the primary process works. I spent the better part of a year seeking the Republican nomination for 1996, fully aware of the virtual impossibility of it, but believing that there ought to be a centrist view within the party. And being the only pro-choice Republican in a large field with about 50 percent of the Republicans being pro-choice, it seemed to me that there was an opportunity.

I was the only candidate to favor retaining the Department of Education. At least we won that one, although I didn't win it. There still is a Department of Education.

But I point this out because of the concerns I have about having some balance within the Republican Party. We sought to change the platform, to take out the litmus test and take out the provision to overturn *Roe v. Wade*. And President-elect Bush did make commitments on both of those lines, but they weren't as binding as a platform change, in my opinion. And I tried to do that, not successfully.

And we do have very firm commitments on the record from Senator Ashcroft that he is not going to move to overturn *Roe v. Wade* by constitutional amendment, and the fact is he couldn't if he tried. We have had a Republican Congress for 6 years, now going into 8 years, and nobody has even made an effort, at least not a serious effort. And there is a firm commitment that he is not going to use a litmus test.

And with the 50-50 split, I think that is an enforceable commitment, both as to the President-elect and as to Senator Ashcroft, if he is, in fact, confirmed.

So my question goes to the point about trying to get centrist Republicans to adopt the Feldt doctrine of passionate activism, and maybe even making a heretical suggestion that some Democrats might want to become Republicans, to provide some of the Javits and Heinz and Scott and Arlen Specter point of view. There are some places where people are assigned to both parties so that there is a voice. And you have to give credit to the activists who have dominated the party, the Republican Party. They have done the

work. They have been the passionate activists. And we do have a political system, and there is a way to make a modification of it.

So when we come to a hearing of this sort—and I haven't hidden it. I wrote a New York Times article saying that—perhaps a little presumptuously, saying that the President-elect ought to appoint centrists. But that is the kind of balance we need. But if there is more of a face in the primary process, where a very small number control the outcome and nominate the President, there would be a change.

Ms. MICHELMAN, you are a practical—you are a pragmatist. I know that because I see you working out in the gym with some regularity. We go to the same health club. How about getting some people who have your passionate activism to become Republicans to influence the political process so that you have a voice in who the Cabinet officers, even Attorney General?

Ms. MICHELMAN. I couldn't agree with you more, Senator, that it is so important to recognize that freedom to choose is not a matter of partisan politics. It is a fundamental right of women, and it is a fundamental right that guarantees women equality.

The reason that I mentioned *Brown v. Board of Education* in my comments earlier on was because there are signature decisions along the way as those of us in society who are not guaranteed freedoms and equality by the Constitution, we have had to struggle for those rights. And *Brown v. Board* was an essential milestone along the way to full emancipation, full protection, full equality for African-Americans. So, too, *Roe v. Wade*, as Justice Blackmun I thought so eloquently put it, was necessary as women continued their journey toward full equality and full emancipation. So it is an issue—

Senator SPECTER. Ms. Michelman, I think—

Ms. MICHELMAN.—That rises above and transcends.

The problem we have here is that I agree with you, we need to have more Republicans—and I have to say I have tremendous admiration for the fact that you did run, and I wish you had been the nominee on the other side. But that is a long-term effort that we have to engage in, both short term and long term, that—

Senator SPECTER. Ms. Michelman, let me interrupt because the time is fleeting.

Ms. MICHELMAN. Sorry.

Senator SPECTER. You said the other side. How about joining my side?

Ms. MICHELMAN. Joining your side?

Senator SPECTER. Yes. How about joining the Republican side—

Senator HATCH. Don't be so shocked here.

[Laughter.]

Senator HATCH. I have never seen such a shocked look on your face.

Ms. MICHELMAN. Well, no, actually, I—

Senator SPECTER. You don't have to convince Senator Kennedy.

Ms. MICHELMAN. I am an Independent myself, but I think with all—you know, all kidding aside here, though—

Senator SPECTER. I am not kidding.

Ms. MICHELMAN. No, but—

[Laughter.]

Ms. MICHELMAN. The issue before us is whether we are going to have an Attorney General that will respect, defend, and protect women's established constitutional rights. While we work to bring more pro-choice Republicans into political positions, we have got to start now making sure that we don't have an Attorney General who is a pathway to overturning *Roe v. Wade*. And—

Senator SPECTER. Ms. Michelman, I have to—

Ms. MICHELMAN. The human life amendment is a little bit of a straw man here—

Senator SPECTER. I have to interrupt you—

Ms. MICHELMAN.—With all due respect—

Senator SPECTER.—Because time is fleeting, and I am not doing very well with you. I want to turn to Ms. Feldt.

How about joining up, Ms. Feldt? How about being passionate to try to influence the other party, make it your party, and have a place at the table?

Ms. FELDT. Senator, as you may know, Planned Parenthood has a very large, very active Republicans for Choice group that is forming chapters faster than you can imagine all over the country and has been active actually for some years.

I just want to tell you a little bit about my own personal experience. I ran the affiliate in Arizona for 18 years. That affiliate was started by Peggy Goldwater, and Barry Goldwater, Mr. Conservative himself, is the person who taught me that a true conservative doesn't want the government telling people what to do about their own personal, private respective choices.

Senator SPECTER. Barry Goldwater was the preeminent conservative who said keep the government off your backs—

Ms. FELDT. That is right.

Senator SPECTER.—Out of your pocketbooks, and out of your bedrooms.

Ms. FELDT. Absolutely.

Senator SPECTER. Well, we need to get those Republicans in Planned Parenthood more active.

Ms. FELDT. We are working on that, Senator. I guarantee you.

Senator SPECTER. Marcia Greenberger, how about it? Will you join up? I am recruiting.

Ms. GREENBERGER. Well, I have to say, as I have been sitting and listening to this conversation—I, of course, come from an organization that is non-partisan entirely, and I think the point of all of this is whether Republican or Democrat for this Senate, for those who believe in *Roe v. Wade*, Senator Specter, as you do, the issue isn't what party you are. The issue is: What is your commitment to the principle of *Roe v. Wade* and other constitutional principles at stake here, including 14th Amendment, equal protection, so important for women and minorities?

And I do want to say I respect fully that you said if you were convinced that Senator Ashcroft would overturn *Roe v. Wade* you wouldn't support him. And you cited a constitutional amendment and the litmus test points, and I wanted to go to those points precisely.

He can—and I think our concern is that he will—effectively overturn *Roe v. Wade* not through a constitutional amendment, which an Attorney General, we agree, would not have a role in pursuing,

but by defining *Roe v. Wade*, even if he says he is not trying to overturn it, in such a loose fashion that it is completely eviscerated.

Now, I want to say that when he came as the Missouri Attorney General to this U.S. Senate in Washington in 1981 and testified in favor of a human life bill—bill, statute, not constitutional amendment—which Gloria Feldt described and how extreme it was, he said among the points, the legal points he was making, that it was constitutional under *Roe v. Wade*. When he has committed not to try to turn over *Roe v. Wade*—and I want to question the commitment he even gave on that because he said he didn't think it was an agenda, he didn't really commit even on that point. What did he mean by *Roe v. Wade* if he could come and testify that *Roe v. Wade* was consistent with his human life bill that he was supporting?

It is the antithesis of *Roe v. Wade*. So for him to say that he won't seek as an activist agenda matter to overturn *Roe v. Wade*, but what he means by that is that he can still push for and find constitutional under *Roe v. Wade* as Attorney General his human life bill, then I cannot help but say the American women in this country and all of us who care about the right to choose were given no guarantee whatsoever but what we heard.

Senator SPECTER. Well, I appreciate your arguments, but it comes back to a place at the table and a basis in the party, and I would urge you to consider what I have said so that you have a place at the big table.

Thank you very much. Thank you, Senator Hatch.

Chairman LEAHY. Mr. Susman, I can imagine that the nurses in the case in 1983 that you mentioned earlier were very upset to be threatened to go to jail after then-Attorney General Ashcroft issued his opinion to stop nurses from providing access to contraceptives and family planning services. My wife is a registered nurse. I can imagine what her reaction would be if somebody told her she could go to jail if she told a patient anything about contraceptives or family planning services. It sounds like something out of the 19th century.

Now, how significant was this case and the defeat of what then-Attorney General Ashcroft tried to do to the nurses in Missouri?

Mr. SUSMAN. I think you can tell the significance of the case by merely going to Exhibit A of the Supreme Court's decision which lists the amicus parties that were involved in this case who saw fit to have their voices from all around the country heard by the Missouri Supreme Court. But you have to remember that they not only were going to charge the nurses with the crimes of practicing medicine without a license; the State Board of Registration for the Healing Arts also told the physicians who were writing these standing orders that they would be charged with the crime of aiding and abetting the nurses by actually writing these orders.

This is a practice that was in effect in 40 of the 50 States at the time. It was not uncommon for advanced nurse practitioners to do all of these services that I listed. This was routine. This was the way every county health department—

Chairman LEAHY. So let me make sure I understand this. Under then-Attorney General Ashcroft's position, the doctor wrote an

order for a contraceptive, the nurse practitioner, who was required to have a high degree of schooling and an advanced degree, then were to pass out the contraceptive following the doctor's orders. If so, they could both go to jail?

Mr. SUSMAN. Oh, absolutely. Practicing medicine without a license.

Chairman LEAHY. Does this seem kind of 19th century—

Mr. SUSMAN. It caused panic because many of the doctors in these family planning clinics resigned, just from the threat, resigned their practices.

Chairman LEAHY. So the concern that you were expressing this morning is not just the question of Senator Ashcroft's position on a woman's right to choose, but on a woman's right to choose a method of contraception.

Mr. SUSMAN. Absolutely. That is all the case dealt with, was contraception. I mean, family planning clinics—and, again, these were in the federally designed low-income counties, counties in which you did not have a single physician who would give prenatal or childbirth services to women because of the low rate of pay established by the Missouri Medicaid program. Not a single physician in these counties offered services to indigent women. And this was the only outlet for indigent women to be able to control their reproductive destinies that were being shut down.

Chairman LEAHY. Mr. Hunter, I noticed in your testimony you mentioned the Mound City Bar Association of St. Louis, one of the oldest African-American bar associations in the country—incidentally, one of the most respected ones—commended John Ashcroft in 1991 for appointing an African-American judge. Is that correct?

Mr. HUNTER. That is correct.

Chairman LEAHY. We should note, though, for the record that the Mound City Bar Association, however, has come out against John Ashcroft to be Attorney General, and they have stated very clearly that they oppose his nomination based on his treatment of Judge Ronnie White. I will enter a letter into the record, that says, among other things, "the attack on Judge White is an attack on all persons who possess similar values; the MCBA has long stood for the rights of the accused to get a trial free from bias; Judge White's position is similar to us; Mr. Ashcroft has spoiled an opportunity for the Federal bench to become a more diverse institution; consequently, while we have been silent on this nomination up to this point because of the impression left by previous statements of the association, we must make it clear that this is not a nomination that we can support; simply put, the chickens come home to roost."

Ms. Woods, Senator Ashcroft, I feel, deserves credit for selecting Mr. Hunter as his first Secretary of Labor when he served as Governor of Missouri from 1985 to 1993, and I understand, Mr. Hunter, you have set a standard that other Governors could look at for similar positions.

But Senator Ashcroft in his opening statement stated during the Governorship he took special care to expand racial and gender diversity in Missouri's courts. I am going to ask a little bit about that. As his Lieutenant Governor, I am sure you are familiar with his record. Tell me if this is correct: that Mr. Hunter was the only African-American or minority to serve in then-Governor Ashcroft's

Cabinet, which is made up of 15 department directors, during his first 4 years; and that the African-American leaders of Missouri were critical of his failure to appoint more minorities.

Ms. WOODS. Well, yes, the answer is there was only one appointment, and the head of the National Association of Blacks within Government noted in 1988 this one black member in Ashcroft's cabinet, but that, "In most offices in Jefferson City, it is an ocean of whiteness."

Chairman LEAHY. Do you know Representative Shelton?

Ms. WOODS. Oh, yes, the Representative, and he reacted to the failure to sign the—I'm sorry.

Chairman LEAHY. Oh, go ahead.

Ms. WOODS. There are so many things I think have caused the African-American community to feel that Senator Ashcroft could not be counted on to give them justice, and one of them was Governor Ashcroft, then, being one of only two people who refused to sign the One-Third of America Report which was signed by former Presidents, Republican and Democrat, and, of course, Coretta Scott King, which because he said that it really exaggerated the plight of African-Americans.

Whether one differed or not with a degree, this was a chance at a national report to bring the attention of the whole country, if you really wanted to provide leadership, if you really were concerned, and let me just add one other thing. He and I served on something called the Board of Public Buildings, which handled contracts in State government, and it was perfectly obvious that minorities and women were not getting a full share of State business, but his response was whatever we are doing is the law. My response was we have got to be creative, we have got to reshape these contracts so that small contractors, as minority and women usually are, can get them. He wouldn't do anything, and ultimately our office just refused to sign one of the contracts until they started a minority program.

So what I am saying to you about this, and I realized you gave me a specific question about his position, I just don't feel he—this was a priority for him to open up more opportunities.

Chairman LEAHY. Does anybody here disagree that his Human Life Act, which he introduced, was patently unconstitutional on its face, the Act that he subscribed to and urged passage of, the Act that would basically by a statute overturn *Roe v. Wade*? Does anybody feel it is constitutional?

Ms. MICHELMAN. No.

Ms. FELDT. No.

Chairman LEAHY. I take it by your answers, everybody feels it is unconstitutional. Thank you.

Senator HATCH?

Senator HATCH. Judge Robertson, I have been led to believe that in the nurses case, Attorney General Ashcroft never questioned the constitutionality of the statute in question. Additionally, not only did the Office of Attorney General represent the board, it also found an amicus brief on behalf of the Board of Nursing urging an interpretation of the statute consistent with the position taken by the nurses.

Now, the Supreme Court's opinion, as I understand it, agreed with the position taken in the amicus brief. Am I wrong on that?

Mr. ROBERTSON. No, Senator. You are 100-percent right. When I read the news accounts of this *Sermchief* case as the person who was responsible for approving much of the litigation in the Attorney General's office during this period of time, it didn't read like anything that I had been involved in.

So I went and got some research done. What I discovered was that the Board of Healing Arts was represented by private counsel and not the Attorney General's office, that the doctors had enough money to pay private counsel and not use the State lawyers. That is first.

Second, that Mr. Susman filed the lawsuit after the Board of Healing Arts on the advice of their counsel, indicated that they might be in violation of the law. The Attorney General's office merely intervened to protect the constitutionality of the statute, and I have the briefs filed, Senator, by the Attorney General's office in the Missouri Supreme Court with me today, one of them on behalf of the Board of Nursing, and I am going to quote from it if I might, "urges the Court to find that the law under question should be interpreted broad in scope allowing flexibility in nursing practices." That is the first brief.

The second brief filed on the merits by the Attorney General's office indicates to the Supreme Court merely that the Attorney General's office was intervening for the sole purpose of protecting the constitutionality of the statute and took no position whatsoever on the question of what the nurses could or couldn't do. All of these acts were consistent with the Attorney General's responsibilities and are inconsistent with some of the testimony that you have heard today.

Senator HATCH. Well, Mr. Chairman, I believe Senator Kennedy expressed concern yesterday and again today that the St. Louis Board of Election Commissioners, that he alleged was appointed by Senator Ashcroft, may have refused to deputize private voter registration volunteers because these voters were primarily African-American and voted Democratic, at least that is the accusation.

I thought it would be of interest to the Committee to know that the city board, and you correct me if I am wrong, I don't believe I am, the city board had a long history of refusing to deputize private voter registration deputies long before John Ashcroft appointed anyone to that board.

I know this because a lawsuit was filed against the members of the St. Louis board appointed in 1981 alleging the same concerns that Senator Kennedy expressed, and the Federal District Court for the Eastern District of Missouri explicitly rejected charges of racial animus finding that the board properly refused to deputize volunteers to prevent fraud, ensure impartiality, and administrative efficiency.

Now, these conclusions were sustained by the Eighth Circuit, as I understand it, in an opinion by Judge McMillan, a prominent African-American jurist.

If I could, I would like to submit copies of those opinions for the record.

Now, Judge Robertson, do you have anything to add to that, and would you like to comment on some of the assertions of Ms. Woods here today? Your statement was followed by Lieutenant Governor Woods who described a number of actions by then-Governor Ashcroft. So I would appreciate it if you would cover those two areas and any others you care to cover.

Mr. ROBERTSON. Thank you, Senator.

Governor Woods and I used to play tennis together when we were in Jefferson City, and we have even been on the same side, but it doesn't appear that we have made that jump today.

Let me suggest that the case that Governor Woods spoke of comes—with regard to the Lieutenant Governor's authority comes from a history in Missouri where there was a Governor who was literally held hostage in the State by a lieutenant Governor—

Senator FEINGOLD. Excuse me just for a moment.

Mr. Chairman, it is very difficult to hear on this end. I just wonder, is there a way you could speak more directly into the microphone?

Senator HATCH. Maybe even a little more slowly.

Chairman LEAHY. I would also ask if there is somebody who could double check it. Really, the sound system is leaving something to be desired.

Ms. Campbell, I think, is having difficulty. There are dead places in the sound. Maybe we could ask one of the engineers to see if they can boost it up.

Go ahead.

Mr. ROBERTSON. I see the red light is on.

Chairman LEAHY. No, that is all right.

Senator HATCH. No, that is fine. Some of the time has been eaten up here.

Mr. ROBERTSON. An 1883 decision of the Missouri Supreme Court, which was cited in the case to which Governor Woods referred, ruled that when the Governor of Missouri was out of the State, he could still receive compensation, and I think Governor Ashcroft's comments with Governor Woods at the time were designed merely to say let's try and get along, but if we don't, I have legal authority here from an 1883 Supreme Court decision that makes it sure that I don't have to tell you when I leave the State. Absent that authority, I believe he never would have had the conversation which he reports.

Senator HATCH. Thank you.

Just one last question. I would like to ask Ms. Campbell this question.

Some have tried to call John Ashcroft insensitive, among other things, that are not justified by his private deportment and public record. Ms. Campbell, I wonder if you would discuss whether you and the people you represent feel John Ashcroft is sensitive to victims of crime and why you and your group think John Ashcroft is the right person to be Attorney General from the perspective of crime victims.

Ms. CAMPBELL. Well, Senator Hatch, let me tell you, particularly this week, I would not have been here if I did not have a lot of people feeling very strong about this.

I am sorry that Senator Feinstein wasn't here a while ago, but the 12 victims organizations in the State asked me to come here because they had followed Ashcroft's record as to what he has been doing.

One of the things that he did was work on the Victims' Constitutional Amendment that Senator Feinstein was working on and was very involved in that. Not too many people got deeply involved in that. Senator Kyl did. That tried to address on a Federal level a lot of the inadequacies that we have on the State level.

If we have 3 days, I could go over the things that are happening that shouldn't be happening to victims. Victims are probably the only people that didn't do anything to get where they are. It just happens that anybody in this room could share the pain that I am feeling right now, just like that.

Things that I endured—and when I say “I,” I can only speak for myself because everybody goes through this. Both men that strangled my son and threw him out of an airplane, they were being tried for special circumstances, the death penalty. In the State of California, they are not entitled to bail, but guess what? They had bail. They appointed four defense attorneys for them.

We had a deputy D.A. that, bless his heart, we were his first case, and he was very overworked. I had to ride up the elevator with the two men that strangled my son.

I don't know what you can do about things like that, but that is trying a mom right to the top because I hate to tell you the thoughts that I had on that elevator, and we wouldn't have been able to have a trial any further if what I wanted to do, I would have done.

There is a notice of appeal situation where they filed an appeal, the men were in prison, all the family members of the murderers were notified. Not us. We read it in the headlines of the front paper that the men who murdered our son were out. These are the things that John was trying to do something about in the victims' bill of rights saying that people are notified, that they can protect themselves.

I mean, it is just common sense saying that unless you are there, you don't know what it is not taking place in our country, and if anybody says he is insensitive, I have got to tell you, I have got a bone to pick with them because he was on the board a long time ago.

Senator HATCH. Well, thank you very much.

Ms. CAMPBELL. At this time, I would sure like to thank my Senator from the State of California for all she has done for victims' rights. I really do appreciate it, and that is a Republican to a Democrat, and I called and told her that I voted for her.

Chairman LEAHY. Well, you voted right. She is a good person, and we are fortunate to have her on this Committee.

You had a request, Senator Kennedy.

Senator KENNEDY. Mr. Chairman, in response to Senator Hatch's comments about the registration in St. Louis, I would like to include in the record at this time what the registration was when Governor Ashcroft became Governor and then information demonstrating the collapse in black registration in St. Louis when he left, and then how it increased again when Governor Carnahan

came in. I will put in those statistics, and I think they speak very clearly for themselves.

Senator HATCH. Well, my point was the Democrats controlled the process. I don't know how you blame Senator Ashcroft for that.

Senator KENNEDY. Excuse me. Excuse me. They did not, not when the Governor was the Governor. He controlled the process, Senator, and he is the one who vetoed.

Senator HATCH. Those local boards controlled the process.

Senator KENNEDY. No. Under the Missouri constitution he had direct responsibility.

Senator HATCH. Yeah, blame him.

Chairman LEAHY. Gentlemen, gentlemen, please. A little understanding.

Senator HATCH. I am trying to be understanding.

Chairman LEAHY. We have to understand if anything good happened, apparently if anything good happened while Senator Ashcroft was Governor, then he takes full credit for it, and if things weren't done right when he was Governor, then the Governor had nothing to do with it. You have got to have it one way or the other.

Senator KYL. Just like the Presidency, right, Mr. Chairman?

Chairman LEAHY. Just like the Presidency. You can't have it both ways.

Senator HATCH. That is right.

Chairman LEAHY. The Senator from California.

Senator FEINSTEIN. Thank you very much.

I want to welcome you here, Ms. Campbell, very much. I am very sorry what happened to your son.

You should know that my leader on the Victims' Right Constitutional Amendment is Senator Kyl. We got it out on the floor at the last session. We came a cropper. We withdrew it. We will resubmit it this session, and I hope you will come back.

Ms. CAMPBELL. I want to be here when you do, and I do not want it weakened.

Senator FEINSTEIN. Thank you very much. Thank you. I appreciate that.

Kate, if I might say to you, I am really pleased that you mentioned, although it was very brief and I don't know if people really heard it, how important *Roe* really is in this whole effort of women for equality, and I think many people in this country think women were born with this equality and they don't realize we couldn't inherit property, we couldn't get a higher education, we couldn't own property, we couldn't vote, for so many years of this Nation's life. The ability not to have politicians interfering with our reproductive system is really a very important concept in women being able to stand tall and make their own decisions based on their religion, their beliefs, their morality, their family, and that that is really what this is all about, and that is why it is so important to those of us who are pro-choice.

Now, having said all of this, I am one of those that was really amazed when Senator Ashcroft said *Roe* has been settled, I respect that, I will not bring a case, when he also said in response to a question, he will maintain the task forces.

I wanted to ask the people that are really knowledgeable in this area. With respect to the access to clinics which is known as

FACE—everything here gets to be an acronym. I kind of don't like it. I like to say what it is. In that Act, there are some specific terms. For example, Section 3(e), the term "interfere with" means to restrict a person's freedom of movement. Also in 3(e), "intimidate" means to place a person in reasonable apprehension of bodily harm to him or herself or another. Section 3(c), "physical obstruction" means rendering impassable ingress to or egress from a facility that provides reproductive health facilities, or rendering passage to or from such a facility unreasonably difficult or hazardous.

Now, there is some concern about changes of definitions. Do any of you support any change of definition, or are those the definitions that you feel are really important and as part of any Attorney General's mandate should be carried out?

Ms. GREENBERGER. I think those are very important definitions, but I also think that some of those words are open to some interpretation, and it is very important not only to have the definitions, but to have strong interpretations of what those statutory definitions mean.

Ms. FELDT. I will just add to that, and, again, I am going to speak right now from the perspective of an on-the-ground provider who has actually dealt with law enforcement at all levels. I know less about the wording of the law and more about what it means in the real life of people who are trying to provide services, but I do know this, and that is that it has taken several years to actually hammer out an understanding that is now agreed upon to a reasonable extent and being able to be carried out to a reasonable extent by law enforcement at all levels because the U.S. Justice Department does not ever have the personnel to be able to enforce all of these laws uniformly across the country. It really does take using their bully pulpit and their leadership and their prioritizing of resources to make sure that their people will take the time and the energy and the leadership at the local level and the State level to bring together the various law enforcement agencies so that they are all working off of the same page and so that they will use that not just to apprehend a criminal once something terrible has happened, but rather to be able to prevent the violence and harassment and threats.

Senator FEINSTEIN. Well, I would strongly agree with that.

Now, my interpretation, and I want to put this in the record, from what Senator Ashcroft said is that he would fully enforce, not only the word, but the intent of the freedom of access to clinics law, and that he would preserve the task force and that he would adequately fund it. "Provide it with resources," I believe was the language that he used, and I think that is very important to get in the record.

Ms. MICHELMAN. Well, I would just like I say I agree completely it is important to get it in the record, and I appreciate the point that you are making.

This law, the freedom of access to clinic entrances law, has been challenged repeatedly by those who oppose a woman's right to choose abortion, and universally throughout the country, courts have said this law is constitutional, that it does not prohibit freedom of expression, freedom of speech, and the right of those who oppose to prey and speak out, march with signs, et cetera, but it

continues to be challenged, and the question I think a lot of us have is with John Ashcroft, Senator Ashcroft at the helm of the Attorney General's—at the helm of the Justice Department, what kind of interpretation will he give, is this settled law or is it not settled law.

You raised, Senator, he said he would honor and respect and protect settled law. Well, many of the questions that come up in the area of reproductive rights law and policy are, according to many, not quite settled. Some of the questions and some of the issues that come before us, many of them will be a matter of interpreting the law, and with all due respect to Senator Ashcroft, again, his record of 25 years of unmitigated attempts, active participation in dismantling this law, the laws that protect women's reproductive rights, contraceptive access as well as abortion access, just speaks loudly to the view that he—it is implausible to think that he would as Attorney General interpret, not just the enforcement part, but interpret the law that would guarantee women's rights. It is just implausible.

But I think there is a lot of room for an Attorney General to question whether a law is really settled.

Senator FEINSTEIN. Well, I would be very happy if you—you see, I was very puzzled by the hearing because I saw a distinct change.

Ms. MICHELMAN. Yes.

Senator FEINSTEIN. And I accept and I recognize his point that he would enforce the law, and those of us that know him and who have worked with him have found that he has kept his word, and that is an important thing around this place. If somebody gives you their word, they keep it, and he has done that. Therefore, there is also a tendency to take him at face value.

So, if you have any questions that you think we could further clarify this, because this is a very important area—and I view this as coming really from the administration, and I think we need to know exactly what it is before we get hornswoggled.

Ms. GREENBERGER. Senator Feinstein, I just wanted to underscore that that is a point I was trying to make; that I don't question his word. I think there may be miscommunication about what he means when he says the law and settled law and what you or others may think he means about the law and which parts of the law are settled and which parts when they come up in the future, he might say, well, that is an interpretation that isn't part of settled law. So I think that he may be fully committed to enforcing the law as he sees it.

Senator FEINSTEIN. Well, would you give us the specific question on the parts of the law that may not be settled and let us ask his view in writing, hopefully to get a prompt response before there is a vote?

Ms. GREENBERGER. Yes. Thank you, Senator Feinstein.

Ms. MICHELMAN. One just final comment. The concern is that if he is Attorney General and he is as Marcia said, interpreting the law differently from the way we believe the law now states, the protections the law guarantees, it will be too late after he is Attorney General for the women of this country as we find that his interpretation of the law, whether it is settled or not in all the as-

pects of the law that come up for us, it will be too late for women then.

Senator FEINSTEIN. Well, let me just respond to that, just quickly.

Chairman LEAHY. We really—

Senator FEINSTEIN. Very quickly. I mean, we are a 50–50 body.

Chairman LEAHY. You have had your time, Senator.

Senator FEINSTEIN. The Judiciary Committee is the oversight Committee. Senator Hatch is a man of great integrity.

Ms. MICHELMAN. Yes, he is.

Senator FEINSTEIN. He has heard this entire discussion. I think if the Attorney General were to depart from this, I would be the first one that would importune Senator Hatch to bring him up before the Committee.

Senator HATCH. I can guarantee you that. I can guarantee that you would be the first one.

[Laughter.]

Chairman LEAHY. I was going to finish your sentence for you, Orrin, because I know exactly what you meant. You were not agreeing that easily.

Senator HATCH. Let me tell you, I know my place, too.

Ms. GREENBERGER. Can a witness insert a quick point?

Chairman LEAHY. Yes.

Ms. GREENBERGER. That is, much of what we are worried about, it never often comes to your attention, to our attention, in order to hold an Attorney General accountable. That is what is so important here. Much of it is prosecutorial discretion. Much of it is private advice. Much of it is a matter of such, I guess, personal interactions that we, the public, and unfortunately the Senate would never know—

Chairman LEAHY. And that is a point that has been made a number of times at these hearings, and we will stop at that point.

I would emphasize, because Ms. Greenberger raises the subtleties of something like that we have to look at it, and that is why you have to make a judgment call.

There will be the record. Following our normal thing, the record will be available for additional written questions to Senator Ashcroft. The members of the Republican Party have some they want to submit through Senator Hatch. The Democratic Party will submit through me. He understands that he is available to respond to those. That is our normal practice.

I would turn to the Senator from Arizona, and obviously he has some extra time.

Senator KYL. Thank you, Mr. Chairman.

I really want to direct my first remarks to Senator Feinstein, and then I will talk to the panel for a moment.

First of all, the issues that have been raised here and the process is exactly correct, as you have described it, in my view. There will be disputes as long as there are lawyers, and, unfortunately—well, my wife might argue with that. I am a lawyer, a recovering lawyer, namely. There will always be lawyers. There will always be disputes about words, and there will never be an end to litigation. Those who are responsible for taking positions will, therefore, always have to make judgment calls. You all are absolutely correct

on that. Therefore, you have to ask carefully what kind of a person is going to be making those judgment calls, what kind of commitments has that person made.

Having acknowledged that, I believe that your area of concern here is misplaced. First of all, there is an assumption that John Ashcroft disagrees with the particular law that you are concerned with. He testified that he has no argument with that law. I personally have no argument with that law, and I sit here today committed to you, committed to Senator Feinstein. You will not have to, first of all, contact Orrin Hatch. You can contact me, Senator Feinstein, because I am committed to the enforcement of the law in every appropriate respect. Senator Ashcroft said that he was, too. So there shouldn't be any question about whether he will do so.

Does he like what goes on in the clinics? No. But is it appropriate to protect people's rights to enter any place without undue harassment and violence? Yes, a clear constitutional principle that should be applied in many different situations. In fact, I have personally litigated it in labor disputes. It is not an unfamiliar legal principle. So there should be no argument here about that, irrespective of his and my concern about some of the things that go on inside the clinics.

If there is, Senator Feinstein, you let me know. We will march down and talk to John Ashcroft, and I simply don't believe this is going to be a problem.

There are some other things that you are concerned about, and I cannot make that same degree of commitment because I am just not totally familiar with it, but I make that commitment to you personally, and I believe I can also speak for the Attorney General to be, I hope.

Secondly, let me welcome you, particularly Gloria Feldt who also spent time in Arizona, a friend, at least I considered her a friend, notwithstanding some of our differences.

I also want to, again, welcome Collene Campbell. You came here on your own dollar, as I understand. Is that right, Collene?

Ms. CAMPBELL. Yes, sir.

Senator KYL. You testified before, I think it was, 4 years ago when Senator Feinstein and I had a hearing, and at that time, you were just beginning your political career. I wanted to go back.

Ms. CAMPBELL. No, I just didn't tell anybody about it.

Senator KYL. Right. You have completed your second term as Mayor of the city of San Juan Capistrano, as I understand. Congratulations on that.

You also said that you served as chairman of the Peace Officers Standards and Training Commission and served on the California Commission on Criminal Justice. So you come before us not just as a personal victim of crime, but also as a representative of others. Is that correct?

Ms. CAMPBELL. I was authorized to represent the people that I told you about earlier. I guarantee, everybody in San Juan Capistrano feels the same way I do. I am not sure about the POST Commission. I didn't ask.

Senator KYL. Mr. Chairman, I will just ask at this point to submit in the record a list of all the several organizations. I know Senator Feinstein would be interested in these, too, because, in fact,

I am sure she is familiar with many of them. They are all California victims' rights organizations.

One of the key questions Senator Feinstein said to me yesterday, I think one of the questions we have to answer is will Senator Ashcroft follow the law, and that is a totally appropriate question.

She and I have a particular concern about that because, despite the law and sometimes despite their best intention, even judges haven't followed the law frequently with respect to victims' rights. There are other things that are of a higher priority.

A Department of Justice study said that these laws are honored more in the breach than the observance.

Unfortunately, here is where you get into this matter of discretion. We believe that the current Department of Justice has interpreted the law in such a way that it did not feel it was in a position to help us, and as a result, it did not help us in getting our constitutional amendment to a vote on the Senate floor.

I happen to think John Ashcroft will see it a different way, and he will help us to do that, and that is one of the reasons why I am so strongly committed to him because I am so strongly committed to this issue. I know from your testimony earlier, Collene, that you said if this were not so important, I would not have come, considering the recent death in your family and the other tragedies that you have had to endure. I think sometimes we do have to feel some passion about these things. We do have to insist that the law will be enforced, but it is not just some of the laws that have been talked about here. It is also the victims' rights laws and hopefully amendments that we have been talking about.

Just a final point since the red light just went on.

Chairman LEAHY. The Senator has extra time.

Senator KYL. I appreciate that, Mr. Chairman, but I also appreciate you have been trying to move things along.

Not everybody on the dais right here was able to here all of the testimony, and with the greatest respect to Harriet Woods who served her State with great distinction, it was a totally different John Ashcroft described by Jerry Hunter than it was described by you, and if Jerry Hunter could take just 30 seconds for the benefit of those who weren't here to describe the John Ashcroft he knows, I think that would be beneficial since you had your opportunity to do it a second time.

Mr. HUNTER. Thank you, Senator Kyl.

I will just take a brief 30 seconds, as you say, but I would like to go back and just briefly mention in response to a question that Senator Hatch asked about the St. Louis City Election Board, and I will briefly comment that when Governor Ashcroft was elected, as I indicated, he tried to appoint responsible people in all positions of State government. He came up with a group of individuals, both white and black, to put on the St. Louis City Election Board. One of his first nominees for the St. Louis City Election Board was a black attorney in St. Louis.

In the Missouri system, when a Governor is appointing an individual that requires Senate confirmation, you have to get the State Senator of that district to introduce that individual.

Governor Ashcroft, the first black nominee for the St. Louis City Election Board was rejected by the black State Senator because

that person did not come out of his organization. He came up with a second black attorney in a different senatorial district to put on the St. Louis City Election Board. That second black attorney was rejected because, again, the two black State Senators did not feel that they could introduce those individuals because they did not come out of their political organization.

So, from the beginning, any efforts to make changes in the St. Louis City Election Board were forestalled because State Senators wanted people from their own organization, and even though John Ashcroft was the Governor, they felt they should be able to name those individuals.

As I mentioned in my testimony, Governor Ashcroft's office called me shortly after his election and said he wanted to find good people and particularly of all races and African-Americans to appoint to positions, and they asked me if I would work with him. I was practicing law in St. Louis at the time, and I worked with him for a year and a half, prior to becoming the director of the Department of Labor, and Governor Ashcroft appointed, as I indicated, numerous blacks to State boards and commissions. He appointed myself as Department director. He appointed the first blacks to serve as administrative law judges in the State of Missouri, both in St. Louis and Kansas City, and in St. Louis County.

Unfortunately, I think there is some testimony, obviously, which I don't agree with. Clearly, Governor Ashcroft had certain standards. He wanted people who could think on their own who didn't have to call the ward leader and ask the ward leader how they should vote on issues, and I think that is one of the differences that I saw in Governor Ashcroft and maybe in appointments prior to that.

The other thing I do want to just briefly mention, and I will stop here, there was a reference—and I think my good friend, Ms. Woods, indicated it, and I don't want to make this too political—about how the State of Missouri would not want to find education in the urban area of St. Louis City and St. Louis and Kansas City, and I think in this past election, our current Governor who was running against Congressman Jim Talent, was running ads in our State of Missouri saying that Congressman Talent was going to take all the money, education money from rural Missouri and give it to the rich St. Louis County school districts, and I heard those ads as I traveled throughout the State of Missouri.

So I think that should be on the record because, clearly, I thought that was unfortunate. It played to the suspicions that people in our State of Missouri have of St. Louis, and that ad clearly was run to damage Congressman Jim Talent.

Chairman LEAHY. I have noted it a couple of times during these hearings, but we get some inquiries from the press, and sometimes C-SPAN and others. I notice that some Senators have been in and out of this hearing. It is not because there is any lack of interest in either the Republican or Democratic side. We have several nomination hearings going on at the same time. The Senator from New Hampshire, for example, has had a nomination hearing. Senator Feinstein and Senator Cantwell have been in Energy all day today. Senator Biden and Senator Kennedy have had other hearings. Actually, Senator Hatch and I have had to miss some Committees we

are on because we are doing this, but just so people understand and all the witnesses and States are wanting to be heard, all of our staffs are here for all of this. Senators are in a not-unusual circumstance of having to be four places at once.

For example, I am on the Agriculture Committee. President-elect Bush has nominated from California, Ms. Campbell, Ann Veneman to be Secretary of Agriculture. I wanted very much to be there today to applaud President-elect Bush for that appointment. I knew Ms. Veneman when she was Deputy Secretary of Agriculture. I think it was an excellent choice. I think Californians probably feel that way. I think there will be unanimous support from Republicans and Democrats from California.

But that is just an example of what is going on. I just wanted to put that on the record so people would fully understand.

Senator Feingold?

Senator FEINGOLD. Thank you, Mr. Chairman.

First, let me thank all of the witnesses, and especially Ms. Campbell for coming here after a personal tragedy.

Let me make a couple of comments and general points before I ask a question. First, I want to commend the chairman for how he has arranged and handled this morning's testimony. The disagreement over the confirmation of Judge Ronnie White is controversial, potentially very divisive, and I hope that everyone on the Committee could now agree that both sides were treated fairly, given ample time to discuss their positions, and most importantly, that both sides had those positions aired with dignity, and I, again, thank Chairman Leahy.

Chairman LEAHY. Thank you very much.

Senator FEINGOLD. Second, I want to say again to the witnesses, some of whom have already testified before and some who are testifying now, as I said in my opening statement, I think the efforts that are being made to raise questions about this nomination are entirely appropriate. This is a highly controversial nomination. I am glad this scrutiny is taking place because I believe these issues have to be debated.

If nothing else, if Senator Ashcroft is confirmed, he will be more aware of the heavy burden he bears to convince all of the American people that he will be fair and even-handed and work for all their interests, and even though this is a difficulty and grueling process, I don't think there is anything wrong for that kind of scrutiny. In fact, given the tough issues that this Committee takes on and that an Attorney General takes on, I can't think of a place where it is more appropriate.

Let me ask Ms. Feldt, Ms. Greenberger, and Ms. Michelman a question after making a couple of comments. I agree with Senator Feinstein and just about everybody else that we were struck with the strength of Senator Ashcroft's comments about enforcing the law, probably a little stronger than many of us would have expected with regard to *Roe v. Wade*, and I think it is going to be difficult for him to parse his words if he becomes Attorney General.

I would expect him, as some of the Republican members have indicated here, to live up to the spirit, not just the letter of the law, and I think that is exactly what the three of you are trying to address, that it will not be sufficient to simply somehow point to a

few words in *Roe v. Wade* and use an interpretation that will completely undercut the right to choose.

So, in that spirit, I would like you to say a little bit more about your concerns with the nomination. As you know, I have made this clear. I am not very persuaded when you tell me about his votes and his vetoes. I don't buy that as a reason to not put somebody in a position.

What is more central, as Senator Schumer has well said, is whether he can turn the spigot off, whether he will enforce the law, and you have talked about at least two areas that relate to this, the position or interpretation he may take working with the Solicitor General on interpretations for the Constitution. Another is what literally will be done in terms of enforcing the law, but a third—and I think you have already touched on it, but I would like each of you to talk more about it—is his role as an administration in terms of personnel and budgets and resources.

What concerns would you have in terms of the choice issue with regard to the Attorney General Ashcroft, if he becomes Attorney General in terms of the administrative role, starting with Ms. Michelman.

Ms. MICHELMAN. Well, my number-one concern, of course, is that as an administrator, as a leader, the Attorney General sets the tone, establishes the values and the principles by which the Justice Department carries out its duties, and with all due respect, again, to Senator Ashcroft, you have heard 2 days of testimony. It strains a bit of credulity, I think, to hear 2 days of testimony against 25 years—25 years of not just passive opposition, but active participation in undoing—trying to undo a fundamental constitutional right of women that took us a century to achieve, and it has taken many forms.

So my first concern would be the values in the principles he brings, the leadership he brings, and what values he wants the Justice Department to uphold.

Second is what kind of people is he going to select, and if those values and those views and those principles are hostile to the integrity of women and to our established constitutional rights, it seems to me his selection of people who work for him will be informed by those views, and, therefore, will have more people in the Justice Department who will join with him in his interpretation of the law as it relates to reproductive rights.

His priorities, we have already talked about that a lot, what kind of priorities he will bring to bear for the Justice Department.

You know how it is as a manager, as an administrative. You have to establish goals. You can't do everything. You have got to establish your goals and your priorities. Is he going to put the full force of the Justice Department behind enforcing all of the laws that protect women's constitutional rights of freedom of choice? I just think there are so many ways that as the Attorney General he will—so many ways, a myriad of ways, some of which we have elaborated, some of which we haven't even touched on, some of which, as Marcia said earlier, are yet unknown or we won't even know about, that he will have an influence on the future of a woman's right to choose and the laws that protect and guard our constitutional rights.

The Attorney General is a prominent Cabinet member. He is not, you know—it is sort of much more important in terms of women's rights than almost any, maybe the Secretary of HHS, but the Attorney General has a profound impact on the direction of the Justice Department, the influence on the President, and how interpretation of the law and even Federal legislation will be carried out.

I also think we do have the matter of what cases the United States will argue before the Supreme Court.

Senator FEINGOLD. I see that. I am just trying to get at the administrative piece now.

Ms. MICHELMAN. The administrative. Well, that is an administrative piece. That is a decisionmaking—

Senator FEINGOLD. I was trying to distinguish that from other things.

Ms. MICHELMAN. All right. Let me let others comments on that very question.

Senator FEINGOLD. Thank you very much.

Ms. Feldt?

Ms. FELDT. Let me try to add to that and first say that I agree with what Kate said. So I won't repeat any of that.

I was listening very carefully to Senator Kyl and the exchange with Senator Feinstein, and I know that this question of Mr. Ashcroft as a man of his word is a very important one, and this does speak, Senator Feingold, I think to how I think he might handle the administrative elements of what he has to do.

So I looked back at his record to sort of look at how did he handle some things as Attorney General in Missouri, and I have to say that it is precisely because I think Ashcroft is a man of his word that I fear what he might do as Attorney General of the United States.

When he was the Attorney General in Missouri, he did, as Marcia has already mentioned, take very aggressive stances. That means that he did use resources. He did prioritize the use of resources and budgets and personnel and research and all of the things that go into it. He took a very aggressive approach, even to the point of testifying in Congress in support of that human life amendment that would have banned all abortions. It is not a usual step. I mean, that is an unusual and an unusually aggressive step in an application of resources, and it speaks to an example of what he might do.

Secondly, because of some of the other work that he had done in shaping the State laws of Missouri, he ended up with quite a full plate of litigation. For example, *Planned Parenthood v. Ashcroft*, that also dealt with some of the limitations that he wanted to see on the right to choose abortion.

Kind of moving to another arena in terms of the school desegregation litigation, he was willing to apply an immense amount of resources and personnel and energy to fighting the school desegregation process, and the district court had ordered the State and the City Board of Education, as you probably know, to submit voluntary plans to desegregation, and he repeatedly delayed doing that.

Senator FEINGOLD. But I take it, your answer is that your concern is that the reverse would sort of happen here, that he would shut off the enforcement.

Ms. FELDT. I am not talking just about the enforcement.

Senator FEINGOLD. Or the administrative resources.

Ms. FELDT. It is the administrative resources.

Senator FEINGOLD. He would shut off the resources that would be pursuant to protecting the right to choose.

Ms. FELDT. I think there are big questions about that, and there are even bigger questions about the use of resources to find ways that cases could be brought, that cases could be shaped, that legislation could be shaped, and when he told the Missouri Citizens for Life that he would stop at nothing until there is a constitutional amendment outlawing abortion, I take him at his word, and I do not think John Ashcroft should be Attorney General of the United States where he would have the ultimate ability to be able to shape that very Act.

Senator FEINGOLD. Thank you.

Ms. Greenberger?

Ms. GREENBERGER. Yes. Senator Feingold, I wanted to just add something that I am not sure time had allowed us to get to before on this, and it is a very important question that you asked. I know you asked it in the context of choice, but actually I know that your commitment to women's rights and to fighting discrimination is broad and I would like to try to include that if that is responsive to your questions.

Senator FEINGOLD. Sure.

Ms. GREENBERGER. First of all, let me say with respect to administration, personnel, budget, resources, in Senator Ashcroft's record, in the choices of how he has allocated his budget priorities, we have heard comments, but I am not sure you were there when I mentioned in the context of vetoes, one of the vetoes I talked about was picking out through a line item veto funding for domestic violence that the Missouri State legislature had appropriated, and they were very small sums, actually. So it was very instructive to imagine a Governor at the time finding and striking those specific, quite small amounts out when there was really -

Senator FEINGOLD. So you are suggesting he would wield his power as an administrator in the Department Justice—

Ms. GREENBERGER. Yes.

Senator FEINGOLD.—And in a similar manner that he used his line-item vetoes as Governor of Missouri?

Ms. GREENBERGER. Because the Domestic Violence Program is within his purview as an administrator and is of central importance to the safety of women, and nobody could be moved more than I sitting next to Ms. Campbell, about how much—we've been holding each other's hand through this entire testimony—how much we want to avoid violence and victims, men or women, let alone children. For those of us who are mothers, there is nothing more horrifying than that. And the Violence Against Women Program that Senator Ashcroft would be administrating, with so many discretionary judgments he would make about where that money would go within line items—often it is in line item—how much it would go for this part of the Justice Department or another part,

is something that would be difficult to review. And his past actions on that administrative judgment is clear.

I want to also talk about—

Chairman LEAHY. Ms. Greenberger.

Ms. GREENBERGER. Yes, sorry.

Chairman LEAHY. We are going to give everybody a chance to add to their testimony and submit things for the record. I will let you complete your thought, but then we are really going to have to move on now for fairness to both sides here.

Ms. GREENBERGER. Well, the one other thing quickly I just did want to add is there is a lot of discretion with respect to laws that prohibit discrimination in employment and education, central to women, and we saw, again, a major shift, a concrete shift in 1981, and I wanted to give some statistics if I could, that I hadn't a chance to mention, involving disability discrimination, where suits went from 29 in 1980 to zero in 1981.

Senator FEINGOLD. Thank you.

Chairman LEAHY. Senator Hatch.

Ms. GREENBERGER. Three over the next 3 years. And I could go on, but that is some of the concrete concerns as an administrator.

Chairman LEAHY. Thank you very much.

Senator Hatch.

Senator HATCH. Just one comment. Ms. Greenberger, you know, as the prime author, along with Senator Biden, of Biden-Hatch Violence Against Women Act, I can tell you on our side, John Ashcroft was one of the more sensitive people working on that with us, and in all honesty, a number of the provisions that are in that bill came from Senator Ashcroft. So I think it is maybe not fair to ignore the credit that he deserves in that area. I have been an active participant in that since the first passage of that bill, and a lot of people do not realize what our side does sometimes, but he played a significant role in that.

Ms. GREENBERGER. Senator Hatch, I know you have, and I remember over many years how you've come to support women, lady miners I remember, in Utah, and child care, and many other important things. But I want to go back to my point. Authorizing and reauthorizing that bill is a very different matter than appropriating funding for those programs, and that's why I really wanted to focus on the funding issue.

Senator HATCH. My point is that he is sensitive to these issues, and I think he will do a very good job, and I intend to see that he does. So I would not worry too much if I were you, because you have both a sincere man who has worked on it diligently, but you also have people up here in Senator Biden and Senator Hatch, who are going to make sure that that works very well.

Chairman LEAHY. The very patient senior Senator from Ohio.

Senator DEWINE. Mr. Chairman, you keep insisting on calling me the senior Senator here, so you make me feel old.

Chairman LEAHY. You are the senior Senator. Are you not the senior Senator?

Senator DEWINE. In service, that is correct.

Chairman LEAHY. Well, that is what I mean. But what makes it worse, the first day or the first week after I became the senior Senator from Vermont—I was about 10 years younger than I am

now—to get introduced at some event in Vermont, “With great pride, we introduce Vermont’s senior citizen.”

Senator DEWINE. Senior citizen, well, at least you did not do that, Mr. Chairman. Thank you.

Chairman LEAHY. No.

Senator DEWINE. Although I guess I am getting close.

Let me thank our panel for your patience and your testimony. I want to thank all of you for coming in today in this very important hearing. Mayor Campbell, thank you for coming in. As other Senators have said, we know this has not been easy, this has been difficult, but as you said, it is important, and we appreciate you being in here, and we appreciate you testifying not only for yourself, but for different victims’ groups and for victims of crime.

I must tell you that John Ashcroft, in my experience, has been someone who brings a real passion to the issue of victims’ rights. Politicians always talk about victims. That is very easy to do. It has not always been really, though, fashionable to back up your words with actions. And it has been my experience that John has done that, and it has been my experience that John truly brings, when you talk the him as I have about this, and I know as you have as well, that you just see the passion that he brings to this. And I think it goes to his empathy and his understanding, and the fact that he has dealt with many victims, as many of us have. And when you talk with victims and understand, as the chairman has, if you are a prosecutor, or if you are Attorney General, I think you see that up close and personal, and you really understand it.

So, I just want to give my own comment about that, and I appreciate it, and I think that John just brings an unbelievable passion to this cause, and I think that he will be the advocate as Attorney General for the victims of crime in this country. He has done that in the U.S. Senate. He did it as Attorney General. He did it as Governor. And I expect that he will do that as Attorney General of our country.

John—and I do not know if this, Mr. Chairman, has been mentioned before, but one of the areas that John worked on and brings a passion to is in the area of missing children. A quote that I would like to put in the record from Steve McBride, executive director of the National Center for Missing and Exploited Children branch in Kansas City, a brief quote. “John Ashcroft’s ground-breaking initiative as Governor and his efforts in the Senate to provide the necessary resources to find missing children, have had a wonderful effect. Since he formed the first regional agreement with five Governors, recovery rate in missing children cases has increased from 60 percent to 94 percent.” End of quote.

And as has already been mentioned, John was presented with the Congressional Leadership Award by the National Center for Victims of Crime, quote, “For leadership that expands national discussion about crime and victimization issues, to include nonviolent crime and its victims.”

He secured funding for \$800,000 for the National Victim Rights Hotline in 1999. Helped secure \$100 million in increased funding to combat violence against women. Helped to enact legislation, increasing penalties for those who purposely defraud seniors with tele-marketing scams.

And we could go on and on, but I think, Mr. Chairman, it is a record that John can be very proud of, but more important than that, I think it is a very good indication of what type priority John will have as Attorney General of the United States.

We have seen a tremendous change in the way we deal with victims in this country. I started as a county prosecuting attorney, 1976, in my home county in southwestern Ohio, Greene County, and quite candidly, the crime victim agenda just was not there. We tried to help the victims. We did it on an informal basis. We worked with them as prosecutors and police, and tried to make everyone sensitive, but there were people who frankly fell through the cracks, literally, and we just did not get to because we did not have any formalized programs. Today what we see in this country, as you know—and although that still happens, and sometimes victims are not treated correctly, and we have to work on that and fight about that and fight for that, but we are doing as a country, I think, better. And we are getting some systems in place, and we are doing it at the local prosecutors' offices. We are doing it in state attorneys general offices. We are doing it with not only crime victim compensation in some states, many states, but with very, very formalized programs.

And the Federal Government plays, and must continue to play, a major role in this and a major role with funding. And this is an area where I just have every, every confidence that this is going to be a man who will make us very, very proud as Attorney General.

And so, Ms. Campbell, thank you for coming in.

Mr. Chairman, I will not take any more time. I appreciate the Chair's courtesy, and I again thank all the members of the panel.

Chairman LEAHY. And you are submitting something for the record there too? You submitted something for the record too, or you just read it for the record?

Senator DEWINE. No, I just read it right in.

Chairman LEAHY. OK. The senior Senator from New York.

Senator SCHUMER. Thank you, Mr. Chairman. And I want to thank all of the panel. I know it has been a long day.

I guess my first question that I would like to ask of both Ms. Feldt and Ms. Michelman, is about a law that is important to me, the FACE law, which I authored when I was in the House. And first I wanted to clarify the record, because it has not been. On that FACE law we did have an amendment in the bankruptcy bill which would prevent those who did violence or threats of violence against clinics, not to hide behind the false shield of bankruptcy to avoid the consequences of their actions.

What we found was the FACE law was remarkably successful. Before the law, a large percentage of the clinics in America had been closed down, the family planning clinics, by blockades, by threats. And the FACE law gave the clinics the right to sue, and it was remarkably successful. Unfortunately, some of those sued then decided to use bankruptcy. The most notorious case was that of the Nuremberg files, where the people who put these together, had the names and addresses of doctors who performed abortions on the screen. When one died—when one was killed, they were taken off. When one was injured, they were grayed over. And a

clinic in Oregon, in Portland, Oregon, that had been targeted, one of the clinics, by this group, sued. I think there were 12 defendants. They won. They won a large judgment. And then each defendant went back to their home state and declared bankruptcy, making it extremely difficult for a poor little clinic to go around the country and follow them down.

So this law, the idea was you should not—it was modeled on a law we used against drunk drivers, same thing for someone who had hurt somebody in terms of drunk driving would be sued and declare bankruptcy, and we said you could not use bankruptcy then, and so we did the same thing here.

Senator Ashcroft, it is true, as many of my colleagues have noted, voted on the floor to support that amendment. However, what they have neglected, and he neglected to mention, is that he had voted against it in Committee. And actually, on the floor it looked like it was going to be a tough fight to win it. Al Gore, who was then both Vice President and candidate for President, came back from wherever he was because it looked like it might be a tie vote. And at that point, at least the newspapers reported, maybe some will dispute it, that Senator Lott urged his colleagues to vote the other way so that Gore would not have the drama of breaking the tie, and urged a lot of his colleagues to vote the other way. It passed 80 to 20. We have never had such a pro-choice victory on the floor of the Senate, at least in the 2 years I have been here. And Senator Ashcroft did vote the other way. But he had voted previously, maybe a couple of weeks or a month or two before, against the bill in Committee.

But my question is: since one of the most important functions of an Attorney General, at least in the area of women's reproductive rights, is to implement the FACE law and support the clinics, or prevent the clinics from being shut down by violence or threat of violence, what do you think will happen if the FACE law is not aggressively pursued, if the task forces that are in place—I was glad to hear Senator Ashcroft, in response to a question from my colleague from California, say that he would keep these task forces in place, that he would fund them—I think his word was “adequately.” But what would happen if they were not, if the Justice Department played a less forward role in protecting those clinics? And maybe I will call on Ms. Feldt and Ms. Michelman to answer that one.

Ms. FELDT. Sure. Thank you, Senator Schumer. I guess to put that in perspective, the first thing I should do is simply review what happened before FACE, because that might be the best way for us to think about what might happen if it were not appropriately enforced.

The very good news is that since the passage of FACE in 1994, there has been really a precipitous fall in really all of the major categories of violence and criminal acts perpetrated against health centers, compared to the 5 years before that. The number of murders of medical staff dropped 40 percent. Attempted murders fell by 36 percent. Arson dropped by 58 percent. Attempted arson and bombing fell by 50 percent. And incidents of harassment, disruption and blockades also showed a decline.

In my oral testimony earlier today, I talked about what it felt like as a provider to be personally harassed, vilified, death threats, bomb threats. You name it, I have probably dealt with it.

As I began to think about the answer to the question though—and I think all we have to do is look at how it was before and get a picture of what it might be like after if in fact it is not properly funded and not properly supported, and most importantly, not properly given the bully pulpit and the leadership and the—in addition to the resources, because it really does require that.

As I thought about my answer, I began to have this feeling of outrage, that we should even have to talk about the need for such a law. It is truly outrageous to think that health care providers, that women seeking health care, that those of us who believe with all our hearts and souls, that women must be able to control their own fertility if they are going to be able to enjoy any kind of equality in this world, have to even think about the necessity for such a law.

I apologize for getting on that little soapbox, but I must say that I see the enforcement of FACE as being an immensely important issue, but the much larger issue even than that, is the whole question of the legality and the social support for a woman's ability to determine the course of her own life. Thank you.

Senator SCHUMER. Do you want to add something? See, my time is up.

Ms. MICHELMAN. Yes, just a quick addition to Gloria's, I think, very fine response.

Since FACE was enacted in 1994 the Department of Justice has obtained convictions of 56 individuals in 37 criminal prosecutions for violation of the law. Now, as of this January, the Department of Justice has 53 remaining open investigations under FACE and related statutes. So the question is: what do we fear? Not only, you know, the reality of threats to women and health care professionals and to their lives if it's not enforced, but will the Attorney General continue with these investigations with great vigor and commitment. Again, this goes to establishing priorities and goals, and we respectfully suggest that it's hard to believe that there will be great weight brought to this, given Senator Ashcroft's long record of opposition to a woman's right to choose.

Chairman LEAHY. Thank you.

Senator SCHUMER. Thank you, Ms. Michelman

Chairman LEAHY. The Senator from Alabama, Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman.

Senator Schumer, I guess—is still there—but as I recall the facts on the FACE legislation, Senator Grassley, who was a prime sponsor, and I in Committee, opposed this amendment, this bankruptcy amendment on bankrupting any judgments, because we believed it was inconsistent and unprincipled, targeting one simple group, and we discussed options and that kind of thing. And we saw it as a poison pill, and I think most people who supported the bankruptcy bill, voted with us in the Committee, but on the floor, Senator Ashcroft did choose to support it, much to my surprise, because I felt like it was in fact a targeting of one kind of protest, but there was a refusal on the part of the sponsors of that to be willing to cover people who blockaded work sites or things of that nature.

That is kind of the inside ball-game story of that. I don't think it reflected a lack of integrity on his part. Certainly he enforced a similar FACE law in Missouri, and as I understand, lectured some abortion protesters about the need to follow the law. And that's certainly been his career and commitment, I believe.

On the abortion question, it has been suggested that he had, sometime ago, did not believe *Roe* was wrongfully decided. Attorney General Dick Thornburgh, when he was confirmed, testified he would not hesitate to ask the court to overrule it; Attorney General Barr, both whom I served under, said that he thought *Roe* was wrongfully decided. He has made some commitments on *Roe v. Wade* I think are quite significant, and I think should be comforting to those—to you.

Mr. Susman, you used the phrase, I believe, "He fought against court-ordered desegregation plans" in your phrase. I think that is an accurate description of what went on in St. Louis. I do not believe he should be characterized as having fought desegregation. That has upset me, and Senator Kyl has raised that point. I think that was an inaccurate legal description of what went on.

Mr. Robertson, you, in at least some of this period, I believe were in the Attorney General's office. This St. Louis plan involved a settlement of one school system's problems; is that right; or two; was it one?

Mr. ROBERTSON. Well, the settlement that the Attorney General's Office ultimately challenged and continue to challenge, was a voluntary settlement between school district in the suburban part that had not been actually found guilty, and they invited the state to pay for it so that they would be absolved of that responsibility.

Senator SESSIONS. Well, Senator Smith and I have been working on a charity that we would like to see funded, and we have agreed it ought to be funded, and we are going to ask Senator Kennedy to pay for it, I guess, or Senator Leahy. Basically the people of Missouri were being asked to pay for a school system in the St. Louis area, all the people of Missouri; is that correct?

Mr. ROBERTSON. That's correct.

Senator SESSIONS. And the Attorney General is a lawyer for all the people; is that correct?

Mr. ROBERTSON. That's correct. And the state was a defendant in the lawsuit, and the law requires the Attorney General to defend the state.

And I think it's important to make another point, and that is that we, every year, were involved in budget negotiations to fund this plan, and that every year we only challenged those things about which we could not agree. To characterize this as being standing in the steps or the doorway of a schoolhouse by then Attorney General Ashcroft I think is to mischaracterize what happened. Further, his concern was the concern expressed by Representative Gephardt at the time, that we're not helping children here. We're just moving them around. And as Representative Gephardt went on at that point to sponsor an amendment to ban busing in the United States Constitution.

Senator SESSIONS. This is the Minority Leader in the House of Representatives.

Mr. ROBERTSON. And reported in the St. Louis Post Dispatch.

Senator SESSIONS. He agreed with Senator Ashcroft on this desegregation court plan basically, or opposed it also?

Mr. ROBERTSON. Well, he then. I'm not sure he would now.

Senator SESSIONS. Well, I think that is significant. I think we ought to know that. I am glad to hear that.

Mr. ROBERTSON. Well, and we did what we thought was appropriate under the law, to attempt not only to help the children, but to protect the taxpayers. There was never a conversation—and I was involved in many of them—in which there was any statement by John Ashcroft that could be interpreted as “We’re going to stop integrating schools.” It was the plan that was being imposed that was the problem, not the end that was being sought.

Senator SESSIONS. Would you offer for the record the article that shows the Minority Leader of the House, Mr. Gephardt, agreed with Senator Ashcroft, that this was not a good plan for children in the St. Louis area?

Mr. ROBERTSON. I would be pleased to do that if the Senator would like for me too.

Senator SESSIONS. And I would like to talk about this other one, this Kansas City desegregation case. Is it not in fact, perhaps the most notorious court order in the history of the United States? Is that not the one in which the Federal court in Kansas City, Missouri ordered a duly elected commission to raise taxes?

Mr. ROBERTSON. I might want to fight with you over the word “notorious”, but it was in fact a very—

Senator SESSIONS. The Taxation without representation phrase was heard a lot in America by people concerned about it.

Mr. ROBERTSON. That’s correct.

Senator SESSIONS. Federal judges are unelected, have lifetime appointments, and are unaccountable to the people. I do not believe they should be in the business of raising taxes.

Mr. ROBERTSON. Well, ultimately, I think the Supreme Court of the United States agreed with you on that question.

Senator SESSIONS. Well, in this Kansas City case—correct me if I am wrong—the Federal judge ordered, among other expenditures, an eight-lane, 50-meter swimming pool, better than any swimming pool in any college in the State of Missouri, a 300-seat Greek amphitheater, a stage framed by white columns, a planetarium, greenhouses, dust-free diesel mechanic shop, broadcast cable, radio, TV studios, school animal room—I am not sure what that is—private nature trails, overseas trips for students, model United Nations with foreign language translation. The price tag for these being, eventually reached, I understand, \$1.7 billion. Is that consistent with your recollection of the case that Attorney General Ashcroft resisted?

Mr. ROBERTSON. Well, that is an accurate rendition, as I understand it. But I want to make the further point that never a single time did Attorney General Ashcroft direct the State not to pay money that had been ordered by the court, even when that order was being appealed.

Senator SESSIONS. Did you personally have to approach him—

Chairman LEAHY. I know some of the witnesses have to leave, and I just want people to know, after Senator Durbin and Senator Smith ask questions, we will dismiss this panel.

Mr. SUSMAN. Forgive me for interrupting. Let me offer my apologies, but I was supposed to be in California today and the last stage out of Dodge is 5:30, and if don't leave, I won't make it.

Chairman LEAHY. As my mother's family would say, Andiamo.

Senator SESSIONS. Just one yes or no question for Mr. Robertson.

Chairman LEAHY. In fact, if anybody else is in that same situation, feel free.

Senator SESSIONS. Even after all these expenditures, is it accurate that Missouri stripped the school district of its accreditation in 1999 even after all this?

Mr. ROBERTSON. The tragedy, Senator, is all this money results in lower test scores and greater minority concentration in the school district.

Senator SESSIONS. We can do better. There are better ways to do business than the way it was done in Missouri.

Chairman LEAHY. Senator Sessions, certainly—I mean, I am here for the Committee. We can have further rounds on this, but we want to finish these hearings before the inaugural at noon on Sunday.

Senator SESSIONS. Well, I have gone over a lot less than the last three on this side of the aisle.

Chairman LEAHY. I understand. No, I am not cutting off the Senator. If the Senator wants to have another round, we will have another round.

Senator HATCH. I suggest that we enforce the 5-minute rule, and let's—

Chairman LEAHY. I see Senator Brownback is back. The Senator has not had questions. So it will be Senator Durbin, Senator Brownback, Senator Smith. We will then break, and Senator Hatch and I will invite—we will break for 5 minutes. Senator Hatch and I will invite all Senators on both sides out back to talk about seeing which ones we can finish tonight and what time we will start in the morning.

Senator Durbin?

Senator DURBIN. Thank you, Mr. Chairman. I am always heartened that there is a reminder to enforce the 5-minute rule by the time it gets down to this end of the table.

[Laughter.]

Chairman LEAHY. What is it, 10 minutes here, 5 minutes there?

Senator DURBIN. I am also reminded of Muriel Humphrey's admonition to Hubert Humphrey that a speech does not have to be eternal to be immortal. So I will try to be brief.

First, let me thank Ms. Campbell. All of the witnesses made a sacrifice to be here. You made a special sacrifice, and thank you for being here. It makes a big difference. We really appreciate that.

I would like to ask some of the panelists here, Ms. Greenberger, Ms. Feldt, Ms. Michelman, and Ms. Woods as well, most of you heard the testimony of Senator Ashcroft relative to what is settled law. I think that is going to become a very important phrase should John Ashcroft become Attorney General. And I found it interesting in his opening statement that he said he believed *Roe v. Wade* and *Casey* were settled law in the land. And yet when Senator Schumer and I tried to follow up on the whole question of the partial-birth

abortion ban to ask him what that meant, I am not certain we received a direct answer.

I think we understand that most Americans believe that third-term late abortions should be rare and confined strictly to those cases where a woman's life or health are in jeopardy. We have debated this over and over in the Senate, and Senator Santorum of Pennsylvania, who offers this regularly, has said he will not include the protection of a woman's health when it comes to these late abortions. And many of us have said that is an important element to include.

We have been criticized by some who say that we were insensitive, but that has been the case, that has been the vote, and that has been, I guess, the outcome, until this case comes along under the Nebraska statute. The Nebraska statute did not include an exception for the health of the mother in late abortions and was sent to the Supreme Court for a decision. And the Supreme Court I thought gave a very clear answer to the Nebraska statute. It threw it out and said that under the Casey decision, you have to protect not only the life of the mother but the health of the mother. Unequivocal. And they said the Nebraska statute didn't do that.

The point we tried to make yesterday and asked of Senator Ashcroft on this whole settled law concept is: What would you do with the Santorum bill if it came to you again and didn't have the health protection provided by *Casey*, reiterated by the Supreme Court in *Stenberg v. Carhart*? And, unfortunately, what seemed like an unequivocal answer in the beginning about what he would do as Attorney General fell apart. When he was asked by Senator Schumer if he would advise the President to veto such a bill, I am not sure we got a straight answer.

When I asked him whether or not a Santorum bill without the health protection came up before the Supreme Court, what he would do as Attorney General, again, he equivocated.

That leaves me uncertain as to how this Senator, who has been resolute in his opposition to a woman's right to choose throughout his public career and has told us in the last 48 hours he is a different person in a different job with a different attitude, could fail to answer that basic question.

Ms. Michelman, could you respond your view of his response yesterday?

Ms. MICHELMAN. Well, I would offer that you raised a very critical challenge to *Roe v. Wade*, which are these bans on abortion procedures that you have dealt with as a Senate and this Congress indeed has over the last 5 years. And that challenge that these procedure bans raises go to the very heart of *Roe v. Wade*. Not only did they not protect women's health by ensuring that exception, but they also were written so vaguely and, you know, in such a way that they would, in fact, criminalize many commonly used forms, many commonly used procedures from the earliest moments of pregnancy.

Also, the ban did not follow and was not constitutional under *Roe* because, again, it would cross trimester lines. I mean, the thing about *Roe v. Wade* was it was a carefully balanced decision, recognizing and guaranteeing women a right to choose in the first two trimesters of pregnancy, without any government interference.

In the last trimester, *Roe* said indeed States may prohibit abortion except there have to be exceptions for when a woman's life is at risk and her health is at risk.

These procedure bans that you are talking about have not included those exceptions and have not made sure that these laws are constitutional under *Roe*. So it seems to me that what Senator Ashcroft found himself doing was having difficulty when it comes right down to establishing that he will enforce the law in the question of these cases. He wasn't able to guarantee, or even talk about the fact that these cases are a violation of what he considers established law. They were violations. They were attempts to overrule *Roe*. They were clearly unconstitutional. The Supreme Court has already said this. And he wasn't able with the same force that he has been saying for 2 days that he will uphold *Roe*, he wasn't able to see that case.

So I think it again just raises the question as to whether 2 days of testimony can offset and overturn 25 years.

Senator DURBIN. Thank you very much.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Smith?

Senator SMITH. Thank you, Mr. Chairman. Is it 5 minutes now, Mr. Chairman?

Chairman LEAHY. We are trying. We are trying. Hope springs eternal at this end of the table.

Senator HATCH. It is 5 minutes, though.

Chairman LEAHY. For your side, I am going to let Senator Hatch run the clock.

Senator HATCH. I refuse to handle the gavel. I know my place. [Laughter.]

Senator SMITH. Don't start the clock until you guys—

Chairman LEAHY. You are all right. Go ahead.

Senator SMITH. Ms. Campbell, let me say what others have said to express my sympathies to you for what happened, and for you to be here and sit through a debate on other matters, too, is very difficult, and my heart goes out to you. It is a terrible, terrible thing to have to experience.

Ms. Michelman, as you might expect, we have differences over this issue, and I am not going to debate it here, obviously. But I guess the only thing I would say is: Aren't we really, in essence, conducting an extension of the campaign here? I am assuming that your organization, the National Abortion Rights League, didn't support Governor Bush. That is obvious. He won. Doesn't he have a right to pick his Attorney General?

Ms. MICHELMAN. Senator, I—

Senator SMITH. And please be brief, not out of disrespect, but I do have a couple of other—

Ms. MICHELMAN. OK. Let me just say I think this threat to the constitutional right of women to freedom of choice is much too serious to relegate it to political—dismissing it by referencing the election. Of course, we endorsed a pro-choice candidate, but we fully respect the President-elect's right to choose his Cabinet, and we fully expected him to choose a conservative nominee for Attorney General and, in fact, one who would oppose *Roe v. Wade*.

This is different. This candidate is way outside the mainstream of any kind of thinking on—you know, in opposition to contraception. So there is much too much at stake. This is not about the past. This is about the future of a woman's right to choose, and that is why we so strongly oppose this nomination.

Senator SMITH. And I understand and I respect you for your views. There are those, though, that would say that in 1857 when Dred Scott was not allowed to sue in Federal court because he was a slave and, therefore, property, they thought that was wrong. I am not saying it is the same issue, obviously, but—or *Plessy v. Ferguson*, that was the law of the land at one time, and that had to be changed. There are those who respectfully would disagree.

But let me just see if I could focus on it this way. So if that is the—if that is the disqualifier, again, I just would remind you, when Senator Hatch had the gavel when Janet Reno was confirmed—I could be wrong. Correct me, Senator Hatch, if I am. I don't recall whether it—maybe there were requests made, but Senator Hatch did not have pro-life advocates here at the table and criticizing Janet Reno. I voted for Janet Reno, as did all of my colleagues, and I disagreed with her vehemently on this issue because Bill Clinton won the election and respectfully I thought that he had the right to pick his Attorney General, and I really believed that she would enforce the law of the land, no matter what it is. I think Senator Ashcroft—I know Senator Ashcroft will do likewise.

But with respect, let me just see—I am trying to figure out who is acceptable. William Rehnquist is the Chief Justice of the United States. If he had been asked to serve as the Attorney General—he is pro-life; he has voted that way. If he were asked by President Bush to be Chief Justice—to be Attorney General, would it be acceptable to you?

Ms. MICHELMAN. Well, I—

Senator SMITH. Just yes or no because I am trying—

Ms. MICHELMAN. I think we are talking about Senator Ashcroft.

Senator SMITH. I know we are, but I am trying to understand the criteria—I am trying to understand the criteria for choosing.

Ms. MICHELMAN. The criteria, Senator, is about an Attorney General who will—whom Americans can count on to respect and defend and protect their established constitutional rights—

Senator SMITH. And in every—

Ms. MICHELMAN.—and Senator Ashcroft is not that Attorney General.

Senator SMITH. Well, Senator Ashcroft has had experience that many in this job have not had as Attorney General, and with one or two notable exceptions, I think was absolutely strictly adhering to the law. You can be an advocate—you are always an advocate in your heart, but there is a difference between advocating as a legislator and as—Senator Ashcroft would legislate aggressively on what he believes, as you would, but as the enforcer of the law, he has an obligation to do it. He took an oath to do just that. So I am just assuming that, whether it is Senator Hatch—is Senator Hatch qualified? He is a supporter of the human life amendment. Would he be acceptable to you as the Attorney General of the United States? I know I am not, but I was just curious about Senator Hatch.

[Laughter.]

Senator SMITH. Let me just point out with respect to all my colleagues, some of whom I am going to quote here, I am trying to make a point. I think you have to be fair and not extend—this is a pretty important nominee. I respect, I understand that is a lifetime appointment. But, you know, we saw apologies down the table on the other side for Ronnie White. I didn't realize that one Senator could apologize for another Senator, but apparently that did. So in that spirit, I will apologize to Clarence Thomas and I will apologize to Robert Bork for what the Senate did to them.

But let me just say why I think you get in trouble. Let me read a quote. Wanted or unwanted, I believe that human life, even in its earliest stages, has certain rights which must be recognized, including the right to be born. Once life has begun, no matter at what stage of growth, it is my belief that termination should not be decided merely by desire. When history looks back to this era, it should recognize this generation as one which cared about human beings enough to fulfill its responsibility to its children from the very moment of conception. That wasn't John Ashcroft who said that. That was Ted Kennedy who said that 2 years before *Roe v. Wade* in 1971. Very interesting.

So I guess what I am saying to you is—and we could go on and on. Byron White, who worked under Robert Kennedy at the Attorney General's office, appointed to the Supreme Court by John F. Kennedy, "I cannot accept the Court's exercise"—this is *Roe*—"by proposing a constitutional barrier to make State efforts to protect human life and by investing mothers and doctors with the unconstitutionally protected right to exterminate it."

The point is people change, people enforce the law regardless of their views, and John Ashcroft is going to be confirmed. And when he is and you look back on this period of time 8 years ago—I know him well—you will find that he will enforce it. There are going to be times he is going to enforce it that he wished he didn't have to. But he will. And that is the issue here, and I wish that we were not extending—and I say this respectfully. I think we are extending the campaign. None of us on this side that I know of many any effort to derail the Reno nomination or embarrass her in any way because of her views. And I think that is, frankly, the difference in this bipartisan—so-called go-along, get-along bipartisan Senate. That is really the difference as to the two sides in this issue.

Chairman LEAHY. Senator Brownback?

Senator BROWNBACK. Thank you, Mr. Chairman, and I thank the panel for being here through a long day for everybody. I just want to make a couple brief points and recognize my limit of 5 minutes, and everybody starts getting antsy when I get up because I am the only thing that stands between them and the door. So it shortens things up.

One of the things that has been troubling to me is that it seems like that you are going at the nominee here and trying to paint him in an extreme light when the issue is not the point of view that he has taken, which I think can be fairly categorized in many cases as quite mainstream, but really that what it is about here is whether he will enforce the law. And then you try by extension saying, OK, he has taken this political position; therefore, that is

how he will enforce the law. And I don't think that that is really a fair characterization.

I realize you have differences of opinion with the nominee on the issues. Partial-birth abortion, you have differences of opinion with him on that. But I don't think you could put the nominee's position as extreme on partial-birth abortion. He voted for the Santorum bill. That is where—I have got a poll here—shows 73 percent of the American public is. Your organization opposed this bill on the partial-birth abortion, and I think your group would be deemed more outside of the mainstream on that particular issue.

On parental notification, a number of people, over 80 percent of the American population believes that parents should be notified if their under-age daughter is having an abortion. Your organization has opposed that. The nominee says that parents should be notified. And then you use these sorts of other positions to say he is outside of the mainstream, you are in the mainstream; therefore, he can't be trusted to enforce the law—not the position that he has taken.

The only overall point that I am trying to make here is that you can take a lot of different positions from people, and we can look at the issue of partial-birth abortion or if you want to look at parental notification of this where the public is generally saying we don't like partial-birth abortion and we think parents should be notified, and you are outside of the mainstream on that, the nominee is within it. But that is irrelevant on both sides.

The issue is: He has stated that he will enforce the laws, that he will uphold the laws of this land, that he has done that in the past and that he will do that in the future. And so I don't think it is a fair characterization to try to paint one way off of a position and, therefore, then pull it all the way around to say this is going to be how he will be as Attorney General.

I have noted that NARAL has opposed a number of nominees in the past: Justice Souter, Justice Rehnquist as Chief Justice, Justice Scalia, Justice Thomas, William Barr as Attorney General. So I know that this is a consistent position that you have taken in the past, and I respect that consistency that you have been there. But I don't think that this is a fair way to say that your Attorney General will act extrapolating off of policy positions. So I respect your willingness to do it, your desire to stand up and to say so. I would just hope that we would look at what we are about here today, and that is not debating partial-birth abortion, not debating parental notification, but whether or not this nominee will enforce the law. And I don't think you can extract from a policy position that note.

So, Mr. Chairman, I realize it is late in the day for this, but I appreciate the opportunity to be able to speak and thank all the panelists for being here and being willing to testify.

Chairman LEAHY. Every Senator has the right to be heard on this, no matter which side they are on, and I think Senators realize the Chair is trying to protect the right of each Senator on each side, on both sides of the aisle, to have their time. And that is why I have allowed extra time several times on both sides of the aisle.

If there are no further questions—

Senator SMITH. Mr. Chairman, may I make a 10-second comment?

Chairman LEAHY. Of course. Take 12.

Senator SMITH. One other item I neglected to mention was that on your scorecard in 1999, you gave a 0 to Senator Ashcroft. You also gave a 0 to Senator Breaux and a 5 percent to Senator Reid, which means under that criteria, neither one of them would be qualified to be Attorney General either.

Chairman LEAHY. Well, as soon as Governor and now President-elect, soon-to-be President Bush nominates either Senator Breaux or Senator Reid to be Attorney General, we will get right to that issue immediately.

Senator SMITH. It will be very interesting to see where the opposition came from.

Senator HATCH. If I could add something, we are glad to see you back. It has been 8 long years without you.

[Laughter.]

Chairman LEAHY. That is very good.

Senator HATCH. I have missed you.

Chairman LEAHY. You are not as serious as you try to let on.

OK. If nobody else has got a question—anybody else?

Senator HATCH. No more questions.

Chairman LEAHY. We will recess for 5 minutes. Both parties will meet out back to see where we go, how far we go.

[Recess from 4:50 p.m. to 5 p.m.]

Chairman LEAHY. We will start with this panel and this is almost like the Durbin lament. When we get down toward the end, we start saying, by golly, we are going to keep time. As Senator Durbin has pointed out to us, why didn't somebody think of that earlier before it got to him? We are going to try to do that. We will go through this panel. We are going to go until about 6. I say "about" because I am obviously not going to cut somebody off in the middle of a question or testimony, and then come back tomorrow. We have to give up this room by around noon tomorrow because of various inaugural events, and Senator Hatch and I have determined to wrap this up, because there are still questions that are being submitted in writing to Senator Ashcroft and to others. We have got to give, in fairness to them—in fairness to Senator Ashcroft—time to complete the paperwork for the Senate that is required and also give him time to respond to the questions that will be asked.

Do you want to add anything to that, Orrin?

Senator HATCH. No. I think we should try to finish. If we can move fast, we might be able to get this panel over by 6. Let's try.

Chairman LEAHY. On the other hand, I would also note for the record, everybody here on this panel has been waiting very patiently for a considerable period of time, and I am not going to have anybody leave here feeling they did not have a chance to make their statement because of a clock. They all have serious things to say. You all have a strong reason for being here.

Mr. Mason, we will begin with you, sir.

**STATEMENT OF HON. DAVID C. MASON, CIRCUIT JUDGE, ST.
LOUIS, MISSOURI**

Judge MASON. Thank you very much, Senator. A little brief commentary about my background, if you will. I grew up in Nashville, Tennessee, in very difficult financial circumstances.

Senator KENNEDY. Can we have order, Mr. Chairman? It is difficult—

Chairman LEAHY. We have people going in and out. We are going to have to ask those at the door—there is a lot of noise in the hall that filters in. Mr. Mason, bring the microphone close to you. I will start the clock back up. Go ahead.

Judge MASON. As I said, I wanted to give you a little bit about my background because I want you to understand where I am coming from, Senator, with respect to my comments.

I grew up in Nashville, Tennessee, in North Nashville, under very difficult circumstances. I lived in New York City ages 10 to 15, the last 2 years in South Ozone Park, New York, in Queens. And it was while I was living there I attended John Adams High School Annex. That area, South Ozone Park, and Ozone Park, Queens, was experiencing a great deal of racial conflict at the time.

I and a friend of mine named Ricardo, walking home after school 1 day in 1971, were jumped on, quite frankly, by a white gang from Ozone Park. We were beat very severely. There was an argument between the gang leader and some other member of the gang about whether I should be stabbed or just have my blank-blank-blank butt sent home. And while their argument was going on, a police car came up and they ran away, and I survived it.

I have seen racism in every respect that one can see it. I have been the victim of it professionally, academically. I have been the victim of it physically in terms of being beat. I have been the victim of it verbally. I know it when I see it. I can smell it walking down the street.

I am here for one reason and one reason alone: that I strongly disagree with the implications that John D. Ashcroft is a racist. I have spent a great deal of time with that man, and I will elaborate.

I graduated from the Washington University School of Law in 1983, and after that I went to work for the Missouri Attorney General's office. At that time John Ashcroft was the Attorney General.

In my interview with him, we discussed various backgrounds as young people, and I talked about my work in the political party, the Democratic political party. In fact, Senator Kennedy, I mentioned to him an experience when you came to Vanderbilt in 1976 and you spoke, and I was only about 100 feet away, and the cheering and screaming crowd, and it was quite an exceptional speech that you gave. And he talked about his background working as a Republican in the Republican Party as a young person. And, frankly, I thought I wasn't going to be hired after that. But I was hired, and I began employment in that ocean of whiteness that was described as the Jefferson city office of the Missouri Attorney General.

I found in that office nothing but support, warmth, commitment. I got good cases at all times. At no time was there ever any suggestion that I was anything less than an appropriate person to represent the interests of the State of Missouri in all Federal courts,

all jurisdictions we went to, up to and including a case that I was able to work on for the U.S. Supreme Court that I had to give up the oral argument on, but I drafted the brief on the merits.

The Senator and I formed a friendship based upon our mutual commitment to our Lord and Savior. We had lots of discussions about how I grew up, about how my grandmother raised me, and he developed an affinity for her, would often write her letters and send her copies of his albums, his gospel albums, where he would sign things to her. And as time went on, I began to get a real feel for this man and where his heart is.

When the subject of Martin Luther King Day came up, I was there and I recall that he issued the executive order to establish the first King Day rather than wait for the legislature to do it, because as you may recall, some of you, when the Congress passed the holiday, they passed it at a time when the Missouri Legislature may not have been able to have the first holiday contemporaneous with it. So he passed the King holiday by executive order. He said in doing so that he wanted his children to grow up in a State that observed someone like Martin Luther King.

I saw this commitment carried through when I began to work in the Republican Party. I worked heavily in both parties. I was a Jimmy Carter person, worked for Bob Clement, and I went and did some work in the Republican Party because of the friendship I developed with John Ashcroft. And what that work was, I wrote a diversity platform policy for the Missouri Republican Party. I took it to Sedalia and all the small towns of Missouri. I took it to the Missouri Republican Party convention in 1988. It passed unanimously, and it passed under Ashcroft's watch. I noticed that it survived after I became a judge in both 1992 and 1996.

There was some discussion about black participation under the years when John Ashcroft was Governor. While I was an attorney, after I left the Department of Corrections—I was their general counsel for a while—he appointed me to the stadium authority. It was the St. Louis Regional Athletic and Sports Complex Authority, and it was our job to build a new stadium for our football team, a \$270 million project. Most of the votes on that commission were controlled by John Ashcroft.

We made a commitment very early on that that program was going to have substantial black participation at all levels. I chaired the Committee that hired the large number of black lawyers that worked on that project, members of the Mound City Bar. I watched as accountants and people who sold stocks and securities and carpenters and the people engaged in construction management who were of color, who were black, came into that project and that project came in on time, under budget, with the highest level of minority participation of any project of its size in Missouri's history. That was under John Ashcroft's watch. It is a monument of steel and stone to his commitment to participation, and no amount of rhetoric can dance around it. It was there, and I watched it happen. No one had to come to St. Louis and protest and stop the work in order for that to happen.

So I say all that to simply say this to you, Senator, and I will sum up because I see that red light. I will ask that this Senate avoid the politics of vengeance in making this decision, to forget

how angry any of you may be about things that Senator Ashcroft may have done or said to people that you wanted to see appointed, and show America that you are prepared to engage in the politics of principle, that you will advise the President of the United States how the Justice Department should be run, what the priorities should be, how the law should be enforced, and upon giving that advice, give your consent when you know that his nominee has committed to you that he will enforce all the laws of this country in equal measure, both spirit and letter. Give the President your consent, and that is what I am here to say today.

Thank you.

Chairman LEAHY. Thank you, Judge. I appreciate your testimony.

Mr. Henderson, you are not stranger to this Committee. You have appeared before us on many different issues, and we are always pleased to have you here. Go ahead, sir.

**STATEMENT OF WADE HENDERSON, EXECUTIVE DIRECTOR,
LEADERSHIP CONFERENCE ON CIVIL RIGHTS, WASHINGTON, D.C.**

Mr. HENDERSON. Thank you.

Chairman Leahy, Senator Hatch, and members of the Committee, I am Wade Henderson, executive director of the Leadership Conference on Civil Rights. The Leadership Conference is the Nation's oldest and most diverse coalition of civil and human rights organizations. I appreciate the opportunity to present to you the views of the Leadership Conference regarding the nomination of former Senator John Ashcroft to be Attorney General of the United States.

The Leadership Conference on Civil Rights strenuously opposes the nomination of Senator Ashcroft to be Attorney General. I report this judgment to you with great sadness. We did not seek this conflict, and we do not relish it. We are mindful of the calls for bipartisan cooperation that accompany the upcoming inauguration of President-elect Bush, and we had looked forward to working with the new President and his Attorney General on a wide array of civil rights challenges facing the Nation. We still do.

However, the unexpected and disappointing selection of John Ashcroft compels our current position. It is hard to conceive of an Attorney General nominee with more immoderate beliefs and a more abysmal civil rights record than former Senator Ashcroft. For over 30 years in public life, first in Missouri and then in Washington, John Ashcroft has been on the wrong side of virtually every issue of concern to the membership organizations of the Leadership Conference. In reaching to the farthest degree of his political party to make this selection, President-elect Bush has displayed indifference to the sensitivities of African-Americans, Hispanic Americans, women, Americans with disabilities, gays and lesbians, the elderly, and so many other Americans who are concerned about equal justice under law.

We acknowledge that a President is ordinarily entitled to deference in his choice of executive branch appointees, but the nomination of Senator Ashcroft to be Attorney General overcomes that presumption for four reasons.

First, this appointment occurs in a political context unprecedented in our Nation's history. The Ashcroft nomination was announced less than 2 weeks after the extraordinarily close Presidential election ended in an abrupt and discomfiting manner. It is no secret that Americans were aggrieved by the circumstances of the election, especially in the decisive State of Florida.

It is often said that Dr. Martin Luther King gave up his life so that others would have the right to vote, but as we have learned last November that even in the year 2000, some citizens are less firmly enfranchised than others. Investigations by the NAACP, the United States Commission on Civil Rights, and other groups have exposed widespread suppression of the African-American vote in Florida and disparities in election technology that systematically disadvantage voters in less affluent neighborhoods.

In the wake of this harrowing election, we might have expected the new President to reach out to the civil and human rights community by selecting, yes, a conservative, but an Attorney General with nonpartisan stature and an unquestioned commitment to well-established principles of equal protection under law. And we might have expected the new administration to turn its attention immediately to the electoral reforms needed to assure Americans that in this democracy every vote counts. Instead, with the wounds of Florida still raw, the country finds itself in the midst of a divisive debate over the confirmation of John Ashcroft. Responsibility for this new schism unfortunately does not rest with the civil rights community and those who oppose Senator Ashcroft.

I did not hear questioned in any way the legitimacy of the election results, but I must observe that the incoming President, we believe and say so quite respectfully, lacks an electoral mandate to undertake the dramatic reconsideration of civil rights policy that this nomination implies.

Second in my list of four items, the deference due to an executive branch appointment does not end debate on this nomination because of the unique role of the Attorney General in our constitutional system.

As the Nation's chief law enforcement officer, the Attorney General serves in a quasi-judicial function. He or she adjudicates legal disputes within the executive branch and renders advisory constitutional opinions upon which the President and Congress rely. He or she serves as the President's chief advisor on judicial nominations, which for all of us is an important responsibility, including nominations to the Supreme Court.

Finally, the Attorney General represents the United States in the Supreme Court through the Solicitor General, an officer sometimes referred to as "the tenth Justice" because of the special reliance the Justices place on the Solicitor to advise the Court on the state of the law.

Thus, the Attorney General is not merely the President's agent, not just another member of the President's team. The Justice Department enjoys a tradition of independence and a unique constitutional standing that should lead the Senate to grant less deference to the President's choice for Attorney General than the deference due to the President's other Cabinet selections.

Chairman Leahy and others have taken note of Senator Ashcroft's unyielding opposition to the nominations of Bill Lan Lee as Assistant Attorney General for Civil Rights, Henry Foster and David Satcher for Surgeon General, James Hormel to be Ambassador to Luxembourg. It might be argued that a Senator who did not extend to President Clinton the deference due to executive branch appointments is not entitled to the benefit of such deference upon his own nomination. However, that is not our position. We disputed what has been called now the "ashcroft standard" when it was applied to Mr. Lee or Dr. Foster or Mr. Hormel, but we will not apply it to Senator Ashcroft himself. Rather, we contend that the skepticism with which Senator Ashcroft unfairly approached these other nominations is, in fact, justified in the case of the Attorney General.

I notice that my red light is on, and so I need to summarize and I will try to do so very briefly.

Let me say that there are numerous concerns that we have. Obviously, we have heard much testimony over the last 2 days from Senator Ashcroft himself attesting to his willingness to enforce the law, to respect the great traditions of the Department of Justice, and, indeed, we were pleased to hear that news on that information. However, when you examine the record, the totality of the record that Senator Ashcroft has established, first as Attorney General in St. Louis, the cases that have been mentioned here including the school desegregation case that has been so noted and other concerns, we believe do, in fact, require us to oppose him as a compelling matter of principle, and we hope, indeed, that the Senate will reject his nomination.

Thank you very much.

[The prepared statement of Mr. Henderson follows:]

STATEMENT OF WADE HENDERSON, EXECUTIVE DIRECTOR, LEADERSHIP CONFERENCE
ON CIVIL RIGHTS, WASHINGTON, DC

Chairman Leahy, Senator Hatch and members of the Committee: I am Wade Henderson, Executive Director of the Leadership Conference on Civil Rights (LCCR). I appreciate the opportunity to present to you the views of the Leadership Conference regarding the nomination of former Senator John Ashcroft to be Attorney General of the United States.

The LCCR is the nation's oldest and most diverse coalition of civil rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, the Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education. The LCCR currently consists of over 180 organizations representing persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups. I am privileged to represent the civil and human rights community in addressing the Committee today.

The Leadership Conference on Civil Rights strenuously opposes the nomination of Senator Ashcroft to be Attorney General.¹ I report this judgment to you with sadness. We did not seek this battle, and we do not relish it. We are mindful of the calls for bipartisan cooperation that accompany the upcoming inauguration of President-elect Bush, and we had looked forward to working with the new President and his Attorney General on the wide array of civil rights challenges facing the Nation. We still do.

However, the unexpected and deeply disappointing selection of John Ashcroft compels our current position. It is hard to conceive of an Attorney General nominee with

¹ Several LCCR organizations, including AARP, American Civil Liberties Union, Anti-Defamation League, American Jewish Committee, League of Women Voters, and the U.S. Catholic Conference, do not generally take positions supporting or opposing confirmation of federal officials and for that reason have abstained from joining this endorsement.

more immoderate beliefs and a more abysmal civil rights record than former Senator Ashcroft. For over thirty years in public life, first in Missouri and then in Washington, John Ashcroft has been on the wrong side of virtually every issue of concern to the membership organizations of the Leadership Conference. In reaching to the farthest extreme of his political party to make this selection, President-elect Bush has displayed gross indifference to the sensitivities of African-Americans, Hispanic-Americans, women, Americans with disabilities, gays and lesbians, the elderly, and so many other minority citizens.

We acknowledge that a President is ordinarily entitled to deference in his choice of executive branch appointees, but the nomination of Senator Ashcroft to be Attorney General overcomes that presumption for four reasons.

First, this appointment occurs in a political context unprecedented in our Nation's history. The Ashcroft nomination was announced less than two weeks after the extraordinarily close presidential election ended in an abrupt and discomfiting manner. It is no secret that Americans were aggrieved by the circumstances of the election, especially in the decisive state of Florida. It is often said that Dr. Martin Luther King, Jr. gave up his life so that others would have the right to vote, but as we learned last November that, even in the year 2000, some citizens are less firmly enfranchised than others. Investigations by the NAACP, the United States Commission on Civil Rights and other groups have exposed widespread suppression of the African-American vote in Florida and disparities in election technology that systematically disadvantage voters in less affluent neighborhoods.

In the wake of this harrowing election, we might have expected the new President to reach out to the civil and human rights community by selecting an Attorney General with nonpartisan stature and an unquestioned commitment to well-established principles of equal protection under law. And we might have expected the new Administration to turn its attention immediately to the electoral reforms needed to assure Americans that in this democracy every vote counts. Instead, with the wounds of Florida still raw, the country finds itself in the midst of a divisive debate over the confirmation of John Ashcroft. Responsibility for this new schism rests solely with the President-elect.

I do not here question the legitimacy of the election results. But I must observe—with deliberate understatement—that the incoming President lacks an electoral mandate to undertake the dramatic reconsideration of civil rights policy that this nomination implies.

Second, the deference due to an executive branch appointment does not end debate on this nomination because of the unique role of the Attorney General in our constitutional system. As the nation's chief law enforcement officer, the Attorney General serves in a quasi-judicial position. He or she adjudicates legal disputes within the Executive Branch, and renders advisory constitutional opinions upon which the President and the Congress rely. He or she serves as the President's chief advisor on judicial nominations, including nominations to the Supreme Court. Finally, the Attorney General represents the United States in the Supreme Court through the Solicitor General, an officer sometimes referred to as "the 10th Justice" because of the special reliance the Justices place on the Solicitor to advise the Court on the state of the law.

Thus, the Attorney General is not merely the President's agent, not just another member of the President's team. The Justice Department enjoys a tradition of independence and a unique constitutional standing that should lead the Senate to grant less deference to the President's choice for Attorney General than the deference due to the President's other Cabinet selections.

Chairman Leahy and others have taken note of Senator Ashcroft's unyielding opposition to the nominations of Bill Lann Lee as Assistant Attorney General for Civil Rights, Henry Foster and David Satcher for Surgeon General, James Hormel to be Ambassador to Luxembourg and others.

It might be argued that a Senator who did not extend to President Clinton the deference due to executive branch appointments is not entitled to the benefit of such deference upon his own nomination. Because we disputed the "Ashcroft test" when applied to Mr. Lee, Dr. Foster, Dr. Satcher and Mr. Hormel, we will not apply it to Senator Ashcroft himself. Rather, we contend that the skepticism with which Senator Ashcroft unfairly approached the Lee, Foster, Satcher and Hormel nominations is, in fact, justified in the case of a nominee to be Attorney General.

Third, whatever level of deference might otherwise buttress the President's Cabinet selections cannot save this nomination because of Senator Ashcroft's extreme anti-civil rights record. This is a man whose public positions are so anathema to the mission of the agency he has been chosen to lead that the Senate should conclude he cannot reasonably fulfill the solemn duties that would be entrusted to him as Attorney General.

Senator Ashcroft pledges to uphold laws with which he disagrees. Even if that were possible for a man of such passionate ideology, can there be any doubt that he would work every minute of every day in office to shape those laws to more closely conform to his extreme vision?

I will highlight just a few of the untenable contradictions between the responsibilities Senator Ashcroft would assume at the Department of Justice and the radical positions he has espoused as a public official:

- The Attorney General is responsible for litigation on behalf of the United States to implement the Constitutional promise of racial integration. Yet as Attorney General of Missouri, John Ashcroft led the dishonorable resistance to federal court orders seeking to integrate St. Louis and Kansas City public schools. More recently, in hearings he chaired in this Committee in 1997, Senator Ashcroft appeared to criticize the landmark case of *Brown v. Board of Education* as an example of unwarranted judicial activism.²

- The Attorney General is responsible for carrying out the Voting Rights Act of 1968. Yet as Governor of Missouri, John Ashcroft twice vetoed bills to expand voter registration in St. Louis, vetoes widely understood to limit the voting strength of predominantly Democratic minority neighborhoods.

The Attorney General serves as the principle advisor to the President on judicial nominations. Yet Senator Ashcroft has opposed numerous judicial nominees on illegitimate grounds, and his tactics in engineering the Senate's rejection of Missouri Supreme Court Justice Ronnie White to be a United States District Court judge were either inappropriately political or reveal a misguided understanding of our judicial system. By twisting the facts of a small handful of Justice White's opinions, Senator Ashcroft declared the nominee to be "pro-criminal" and "anti-death penalty," and said Justice White, the only African-American to sit on the Missouri Supreme Court in its 175 year history, exhibited "a tremendous bent toward criminal activity." In fact, Justice White voted to uphold 41 of 59, or 70%, of the death sentences he reviewed while on the Court. According to the Washington Post, "Ashcroft badly distorted White's record at a time when he was looking for law-and-order issues for his reelection campaign."

- The Attorney General is responsible for enforcement of the Freedom of Access to Clinic Entrances Act and is in other respects the custodian of the constitutional right to reproductive choice.³ Yet John Ashcroft has amassed a record of unmatched hostility to *Roe v. Wade*. He has said that if he could pass one law it would be to ban all abortions, even those necessitated by rape or incest, except as necessary to save the life of the mother. He has argued that common forms of contraception constitute abortion and has opposed insurance coverage for contraception. He has a record of antipathy on a range of other issues important to women as well.

- Through the Solicitor General and other litigation arms of the Justice Department, the Attorney General is responsible for maintaining the separation of church and state enshrined in the First Amendment. Yet Senator Ashcroft is a leading advocate of providing public funds to religious organizations without many of the current safeguards that assure compliance with constitutional protections.

- The Attorney General is responsible for enforcing the Americans with Disabilities Act. Yet Senator Ashcroft has questioned the constitutionality of the ADA and has sought to limit its scope and enforcement.

- The Attorney General exercises oversight over the Immigration and Naturalization Service (INS). We are concerned with several of the positions John Ashcroft has taken in the area of immigration policy; and we are particularly concerned with the fairness of future immigration policy under his oversight administration of the INS. For example, Senator Ashcroft voted repeatedly in favor of legislation that would eliminate welfare benefits, even to legal immigrants. However, he has taken this position to the extremes by supporting legislation that would have even denied some federal benefits to naturalized United States citizens. This policy, which stands in stark contrast to long-standing constitutional precedent regarding the rights of naturalized citizens, raises questions about his commitment to protecting the civil rights of immigrants.

- In the wake of the Supreme Court's decision in *Romer v. Romer* recognizing the civil rights of homosexuals, gay and lesbian citizens look to the Justice Department to enforce their rights and protect them from bigotry. Yet in 1996 John Ashcroft cast a decisive vote against the Employment Non-Discrimination Act that would have prohibited employment discrimination based on sexual orientation, passage of which

²Senate Constitution Subcommittee Hearing on "Judicial Activism", June 1997.

³The LCCR does not take a position on the issue of abortion or a "woman's right to choose." However, the LCCR is committed to the protection of existing constitutional rights, including the right of privacy.

is a high priority for the LCCR. Not only did he vote against ENDA, but he spoke in opposition to the legislation twice on the Senate floor. He used the opportunity to voice some extreme views on the nature of sexual orientation, including that it is a choice and could be changed—something clearly not supported by science or leading medical and mental health authorities.

- Currently, gay and lesbian employees at the Department of Justice and throughout the federal government are protected by the President's executive order and other departmental policies. Given Ashcroft's opposition to ENDA, how can we be assured that these evenhanded policies will continue and be properly enforced?

- He has also opposed a bipartisan bill to extend federal hate crimes laws to include anti-gay violence. Clearly, statistics show that the lesbian and gay community should be protected by our nation's hate crimes laws. While it is heartening that John Ashcroft said yesterday that he believes the Hate Crimes Prevention Act is constitutional, it makes his opposition to the bill last year even more puzzling.

- Two federal hate crimes laws currently include sexual orientation, the Hate Crimes Statistics Act and the Hate Crimes Sentencing Enhancement Act. In addition, some anti-bias programs in the Department of Justice help combat hate crimes aimed at this community. Given Senator Ashcroft's extreme views on sexual orientation, how can we be assured that he will continue to devote the necessary personnel and resources to proper enforcement of these laws and programs?

- Perhaps John Ashcroft's bias showed itself most clearly during the nomination of James Hormel, the openly gay businessman and philanthropist nominated by President Clinton in October 1997 to serve as Ambassador to Luxembourg. Hormel had served as a member of the U.S. Delegation to the 51st UN Human Rights Commission in 1995 and had previously been unanimously approved by the Senate Alternate Representative of the U.S. delegation to the United Nations General Assembly.

John Ashcroft was one of two Senators who voted against Hormel's nomination in the Senate Foreign Relations Committee. He did so without attending the hearing or submitting questions or statements for the record. Hormel's nomination was voted out of committee, 16 to 2.

After the hearing, Hormel sent a letter requesting a meeting with Ashcroft to discuss his qualifications. In the letter Hormel raised a previous connection and appealed to Ashcroft as the former Dean of Admissions who had admitted Ashcroft to the University of Chicago School of Law in 1964. Hormel followed up with three telephone calls and had others call as well. Hormel never even received the courtesy of a return phone call from Ashcroft's staff. The following year Ashcroft said, "People who are nominated to represent this country have to be evaluated for whether they represent the country well and fairly. His conduct and the way in which he would represent the United States is probably not up to the standard that I would expect. He has been a leader in promoting a lifestyle. . . . And the kind of leadership he's exhibited there is likely to be offensive to. . . individuals in the setting to which he will be assigned". (*The Boston Globe*, June 24, 1998).

Ashcroft and his allies blocked Hormel's nomination for more than a year because he is gay. President Clinton exercised his constitutional power by appointing Hormel during a congressional recess. Ambassador Hormel served with distinction in Luxembourg for 18 months.

- Due to the groundbreaking work of Attorneys General such as Robert Kennedy, Nicholas Katzenbach and Edward Levi, the Justice Department today is a symbol of racial progress and healing. Yet over many years, John Ashcroft has displayed astonishing disrespect to the concerns of minorities. Only two years ago he accepted an honorary degree from Bob Jones University, an institution notorious for its history of segregation, its ban on inter-racial dating and its anti-Catholic and homophobic traditions.

- Only three years ago he gave an interview to the neo-Confederacy racist publication "Southern Partisan" in which he said: "Your magazine helps set the record straight. You've got a heritage of doing that, of defending Southern patriots like (Robert E.) Lee, (Stonewall) Jackson and (Jefferson) Davis. Traditionalists must do more. I've got to do more. We've all got to stand up and speak in this respect, or else we'll be taught that these people were giving their lives, subscribing their sacred fortunes and their honor to some perverted agenda."

Fourth, the deference due to the President's executive branch appointments evaporates when a nominee testifies at his confirmation hearing in a manner that is less than candid. While there are many aspects of Senator Ashcroft's testimony that are subject to this criticism, the nominee's testimony about the St. Louis desegregation case veers especially far from the facts.

Despite Senator Ashcroft's denials over the last two days, the State of Missouri he represented as State Attorney General was found directly liable for illegal school

segregation in St. Louis, notwithstanding repetitive and unsuccessful appeals by the nominee all the way to the U.S. Supreme Court. Despite the nominee's claim that he followed all court orders in the case, the federal judge presiding over the case concluded that "the state has, as a matter of deliberate policy, decided to defy the authority of the court." And despite the nominee's claim that he supported voluntary desegregation, the fact is that Ashcroft publicly called the St. Louis desegregation plan an "outrage against human decency."

At bottom, the Attorney General of the United States must have a demonstrated commitment to the constitutional principles of due process and equal protection. The Department of Justice must be perceived by the public as an instrument of justice, and the person who leads the Department must be the embodiment of fairness and impartiality. These are vital criteria in our heterogeneous democracy, especially in the wake of the Florida debacle. By these measures, the Ashcroft nomination fails utterly.

Simply put, John Ashcroft's extreme views and public record on a range of issues are irreconcilable with the duties of an Attorney General. His open hostility to the very laws and policies he would be called on to enforce, laws indispensable to the preservation of civil rights of all individuals in our society, leave the LCCR no choice but to oppose his nomination.

We urge members of the Senate to vote against the confirmation of John Ashcroft to this important position.

Chairman LEAHY. Thank you, Mr. Henderson.

I would note that both you and Judge Mason went over just about exactly, almost to the second, the same amount of time.

Judge MASON. I am sorry, Mr. Chair.

Chairman LEAHY. It is a difficult thing, and you both have extremely important things to say. I mention that because I can see the clock and Senator Hatch can see the clock. The rest cannot see the exact time, and, unfortunately, it is the realities of a nomination hearing like this and trying to get so much in.

I suspect Pastor Rice would never want to have one of his sermons cut to 5 minutes, and I suspect your congregation wouldn't want you to.

Pastor, go ahead, please.

STATEMENT OF PASTOR B.T. RICE, NEW HORIZONS SEVENTH DAY CHRISTIAN CHURCH, ST. LOUIS, MISSOURI

Rev. RICE. I think that may be debateable with some, but we will do our best.

Mr. Chairman and Senator Hatch, my name is Pastor Booker T. Rice, and I have been a pastor in St. Louis, Missouri, since 1979 and am presently with the New Horizons Seventh Day Christian Church.

I am here today at the request of the St. Louis Clergy Coalition believed to be the largest and oldest organization of African-American ministers in the State of Missouri, and its president, the Reverend Dr. Earl Nance, Jr., to register our strong opposition to John Ashcroft's confirmation as Attorney General of these United States of America.

Our opposition centers primarily around, but not limited to, the following reasons. First, Mr. Ashcroft made false and inflammatory charges against Missouri Supreme Court Justice Ronnie White. Mr. Ashcroft labeled this distinguished jurist as "pro-criminal, dangerous liberal" and the "most anti-capital punishment judge on the Missouri court." These labels fly in the face of the fact that in no way reflects the record of this distinguished judge.

Second, we oppose Mr. Ashcroft because of his consistent opposition to restrictions on handgun ownership and consistent support

of what we call “packing,” or better known as carrying concealed weapons.

Third, we oppose Mr. Ashcroft because of his insensitivity to the African-American community in general and to the African-American community in Missouri in particular.

We also oppose Mr. Ashcroft’s extreme unyielding position on a woman’s right to choose.

It is my intention here today to expand on several of these points so that you may better understand why the appointment of John Ashcroft would be divisive and insulting to our community.

To characterize Judge White as “pro-criminal” makes a false assertion that the respected judge is a supporter of criminal activities. We teach our children to set their sights on good role models, then pattern their lifelong goals after those role models. Unfortunately, sometimes our children focus on what we perceive to be wrong role models. So we attempt to refocus or redirect them to those we believe the very best for our Missouri children. In our community, Judge White has become such a role model.

Imagine, if you will, our disappointment to read, hear, or see in media that a U.S. Senator has referred to this role model as “pro-criminal.” We know Justice White well and know that the facts do not in any way, shape, form, or fashion resemble this distortion. Mr. Ashcroft’s careless remarks were very damaging to our community and to the work we do with our children.

We in the faith community believe that sensitivity to minorities is absolutely essential to our Nation’s chief law enforcement officer. Mr. Ashcroft associating himself with and participating in organizations and institutions like the Southern Partisan magazine and Bob Jones University demonstrates insensitivity as well as poor judgment.

We felt deeply betrayed when Mr. Ashcroft’s statement in the Southern Partisan magazine and his acceptance of an honorary degree from Bob Jones University, two institutions notorious for their extreme racist statements and policies. Any affiliation with these kinds of institutions demonstrates complete disregard for our community.

Mr. Ashcroft’s vocal and fervent opposition to the voluntary desegregation of Missouri schools was quality insensitivity. He was more concerned with the cost of desegregation than with the interest of African-American children in our community. He never apologized for segregation. He closed the door on negotiation, and he strictly opposed desegregation.

We are deeply troubled by the strong stance that Mr. Ashcroft took while Governor of Missouri to prevent independent voter registration drives in St. Louis. Opposing independent voter registration drives in St. Louis which is about 53-percent African-American was more than insensitive. It was offensive.

The Senator’s record opposing restrictions on handguns ownership and supporting carrying concealed weapons shows a lack of common concern for the safety of our community. Too many African-American youth die each year, the victim of senseless handgun violence. We need less guns, not more guns. We need more control of handguns, not more handguns.

Finally, to the issue of a woman's right to choose, Mr. Ashcroft's position is apparently far, far to the right of even the most conservative views. Regarding a woman's right to choose, Mr. Ashcroft says no, under any circumstances, at any risk.

So, as we examine Mr. Ashcroft's record, we must ask ourselves whether we can count on the Justice Department under John Ashcroft to be fair on civil rights, fair on discrimination, fair on racial profiling, fair on handguns, and fair on a woman's right to choose.

As a minister of the gospel and righteousness, speaking on behalf of myself and my colleagues, we have come too far and we have traveled too long to be turned back into the wilderness of indecision and cohesion based on race, color, and national origin. We are not in the mood to have to retrace our steps to be turned back into Egypt where many have died in the struggle for civil rights and decent treatment.

As human beings, under our stars and stripes, shall we go back to the wilderness of oppression, or shall we go forward into the full reality of the American dream?

Chairman LEAHY. Thank you, Pastor.

Rev. RICE. Your vote will tell the world the direction in which we, this great Nation, will go.

[The prepared statement of Rev. Rice follows:]

STATEMENT OF PASTOR B.T. RICE, NEW HORIZONS SEVENTH DAY CHRISTIAN CHURCH
ST. LOUIS, MISSOURI

My name is Pastor B.T. Rice. I have been a pastor in St. Louis, Missouri since 1979 and am presently the pastor of the New Horizon Seventh-day Christian Church. I am also a member of the St. Louis Metropolitan Clergy Coalition, the largest and oldest organization of African-American ministers in the state. I am here today at the request of the St. Louis Metropolitan Clergy Coalition, its president, Earl Nance, Jr., and all of its other officers and members, to register our strong opposition to Senator John Ashcroft's confirmation as Attorney General of the United States of America. Our opposition centers primarily around, but is not limited, to the following issues.

First, Mr. Ashcroft made false and inflammatory charges against Missouri Supreme Court Justice Ronnie White. Mr. Ashcroft labeled this distinguished jurist a "pro-criminal, dangerous liberal" and the "most anti-capital punishment judge on the Missouri court." These labels fly in the face of the facts and in no way reflect the record of this distinguished Missouri Supreme Court Justice.

Second, we oppose Mr. Ashcroft because of his constant opposition to restrictions on hand gun ownership and consistent support for "packing" or carrying concealed weapons.

We also oppose Mr. Ashcroft because of his insensitivity to the African American community in general, and the African-American community of Missouri in particular.

We also oppose Mr. Ashcroft's extremely unyielding positions on a woman's right to choose.

These are our primary reasons for opposition and it is my intention here today to expand on several of these points so that you may better understand why the appointment of John Ashcroft would be divisive and insulting to our community.

To characterize Justice White as "pro-criminal" makes the false assertion that the respected Missouri Justice is a supporter of criminal activities. We teach our children to set their sights on good role models, then pattern their life long goals after their role models.

Unfortunately, sometimes our children focus on what we perceive to be wrong role models, so we attempt to refocus or redirect them to those we believe to be the very best for Missouri children. In our community, Justice White has become such a role model.

Imagine if you will our disappointment to read, hear, and see in media that the United States Senator had referred to this role model as pro-criminal. We know Jus-

tice White well and know that the facts do not in any way, shape, or form resemble this distortion. Mr. Ashcroft's careless remarks were very damaging to our community and to the work we do with our children.

We in the faith community believe that sensitivity to minorities is absolutely essential for our nation's chief law enforcement officer. Mr. Ashcroft's association with, and participation in, organizations and institutions like the Southern Partisan Magazine and Bob Jones University demonstrate insensitivity, as well as poor judgment. The African-American community in Missouri felt deeply betrayed by Mr. Ashcroft's statements in the Southern Partisan Magazine, and his acceptance of an honorary degree from Bob Jones University, two institutions notorious for their racist statements and policies. We believe that any affiliation with these kinds of institutions demonstrates complete lack of sensitivity and disregard for our community.

Mr. Ashcroft's vocal opposition to the voluntary plan to desegregate Missouri's schools and the fervent manner with which he blocked voluntary desegregation were equally insensitive. Mr. Ashcroft was more concerned with the costs of desegregation than the interests of African-American children in our community. He never apologized for segregation; he closed the door to negotiations; and he strictly opposed desegregation.

We are also deeply troubled by the strong stance that Mr. Ashcroft took while governor of Missouri to prevent independent voter registration drives in St. Louis. Independent voter registration drives were a common practice throughout other parts of the state, including St. Louis County, which is predominately white.

They worked well in St. Louis County and could have worked well in the city also. Opposing independent voter registration drives in the city of St. Louis, which is 53% African-American, was more than insensitive. It was offensive.

The Senator's record opposing restrictions on hand gun ownership and instead supporting the carrying of concealed weapons shows a lack of common concern for safe streets, safe neighborhoods, and safe communities. Too many of our African-American youth die each year, the victims of senseless hand gun violence. We need less guns, not more guns. We need more control of hand guns, not more hand guns.

Finally, to the issue of a woman's right to choose, Mr. Ashcroft's position is apparently far, far, to the right of even the most conservative views. Regarding a woman's right to choose, Mr. Ashcroft says, "no, under any circumstance, no at any risk, no. It makes no difference what, No!"

So, as we examine Mr. Ashcroft's history on a number of key issues, we must ask ourselves whether we can count on the Justice Department under John Ashcroft to be fair on civil rights, fair on discrimination, fair on racial profiling, fair on hand gun control, fair on a woman's right to choose. We think not.

Our concern is that Mr. Ashcroft will do everything in his power to reshape this great Constitution of ours to reflect his personal sense of what is right and what is wrong. We fear that he will exercise his duties as Attorney General with the same insensitivity he brought to his duties as Governor and Attorney General of Missouri. We did not support him then, and cannot support him now. His record on so many issues of grave importance to African-Americans was harmful to our community and caused division in our state. We believe he will bring the same division and harm to our country.

John Ashcroft has every right to hold strong views on civil rights and other issues, but he should not be Attorney General of the United States.

As a minister of righteousness, speaking on behalf of myself and my colleagues, we have come too far and traveled too long to be turned back into the wilderness of indecision and coercion based on race, color or national origin. We are not in the mood of having to retrace our steps to be turned back into Egypt where many have died in the struggle for civil rights and decent treatment.

As human beings under our stars and stripes shall we go back to the wilderness of oppression or shall we go forward into the full reality of the American dream? Your vote will tell the world the direction in which this—our great county—will go.

Chairman LEAHY. Thank you, Pastor.

Rev. RICE. And I didn't preach.

Chairman LEAHY. No, no. Listen, I like preaching. I always worry when I am at church and I don't hear a sermon that gets me going.

Mr. Woodson, Pastor Rice takes a different position than you do.

Mr. WOODSON. Yes.

Chairman LEAHY. He went a bit over, and I will give you the same amount of time. I want to be as fair as possible. I will give you the same amount of time over, but, again, please try to—

Mr. WOODSON. I will.

Chairman LEAHY. Thank you.

STATEMENT OF ROBERT L. WOODSON, SR., PRESIDENT, NATIONAL CENTER FOR NEIGHBORHOOD ENTERPRISE, WASHINGTON, D.C.

Mr. WOODSON. Thank you.

I am Robert L. Woodson, Sr., president and founder for the National Center for Neighborhood Enterprise, a national non-profit that assists low-income neighborhood leaders in 39 States, and I am here today to represent a federation of grass-roots, faith-based organizations that operate throughout this Nation, but I am also a veteran of the civil rights movement, having served and organized demonstrations in the 1960's and 5 years with the National Urban League.

I am here today, first of all, to voice strong support for Senator Ashcroft as Attorney General. Let me just destroy a myth. There are those who tend to believe that the black community speaks in one voice. We are not monolithic. A lot of people talk about diversity except when it comes to expression of independent political views, and so I challenge my colleagues who come here before you and say the black community believes this, the black community wants this. We do not speak with a single voice.

It is a prophetic irony that we meet at this time when 4 years ago, a 12-year-old boy named Daryl Hall was snatched from a car on his way home, just 20 minutes from here, in an area called Simple City, Benning Terrace Public Housing. He was assassinated as a consequence of a conflict between two warring factions, the Avenue and the Circle. Fifty-five young black men died in a five-square-block area in 2 years as a consequence of this conflict. The police couldn't make a difference. Social services couldn't make an impact. But the National Center working with faith-based organizations, the Alliance of Concerned Men, went up into this area where people were huddled in their homes with refrigerators next to doors and brought these warring factions, the leadership, 16 of them, to my office downtown. They were searched. They had bullet-proof vests. We started with prayer, and we negotiated a settlement, the first truce, and as a consequence of this negotiation, we put these young people to work, thanks to the Housing Authority and David Gilmore, and rebuilding their community, taking out the graffiti.

I am pleased to report after 4 years of these faith-based organizations working in Benning Terrace, one of the most dangerous areas of the city, we have not had a crew-related killing in 4 years as a consequence.

I have a young man here. Stand up, Vernon.

[Mr. Wise stood.]

Mr. WOODSON. Vernon Wise, who is a young man, his heart had been transformed as a consequence.

Thank you.

Vernon in that war was shot 10 times at point-blank range with a .45. He lost three of his ribs, his spleen, and a kidney, and Vernon spent time in prison, six cells down from his father. To all conventional wisdom, he was Godless, hopeless, and useless, but we reached out to him in a spirit of Godly love and now Vernon is trained as a telecommunications specialist, having gone to school, and is now a responsible person.

Vernon is one of 100,000 young people like him whose lives have been transformed through these faith-based organizations, Teen Challenge, Victory Temple, who exist all over this Nation. Senator John Ashcroft is the only person who from the time he came into this body reached out to us. He is on the board of Teen Challenge. He has raised money for them. He sponsored the charitable choice legislation that will stop the Government from trying to close them down because they don't have trained professionals as drug counselors.

We have an 80-percent success rate of these faith-based organizations with a \$60-a-day cost when the conventional therapeutically secular programs cost \$600 a day with a 6-to-10-percent success rate. Senator Ashcroft has gone with us. He has fought with us, and this legislation would help us.

As a consequence, the day before yesterday, 150 black and Hispanic transformed drug addicts got on busses from all over this Nation and came here to support him. Fifty of them came from Victory Temple, throughout the State of Texas, spent 2 days on a Greyhound bus at their own expense to come here to voice strong support for Senator Ashcroft.

So let me say to you that a criminal personality is one who is very discerning because you have to be in order to survive. They are not Democrats. They are not Republicans. They are not conservatives or liberals, but they know the real thing when they see it, and they came here to voice strong support for Senator Ashcroft.

Let me say to those of you who adhere to charges of racism. As a civil rights veteran, I reject this notion that we should soil the rich legacy of the civil rights movement by using it as a sword against those with whom we have political disagreements and as a shield to protect those who happen to agree with us who are even criminals. You can be a pedophile, you can be a sex abuser, and you can be a thief and still score A on the NAACP's credit card, and as long as you hold the right political views.

I have as part of my testimony an article that I published in The Wall Street Journal that gives names of people that have been supported for reelection to office who have committed these crimes. So I am saying to you that we hope that you will vote this man in knowing that the black community does not speak with a single voice and that we strongly support Senator Ashcroft.

I will be pleased to take questions or elaborate further on the reasons why we support this very noble man. I don't know why righteousness has to be an exemption for public service in America.

[The prepared statement of Mr. Woodson follows:]

STATEMENT BY ROBERT L. WOODSON, SR., PRESIDENT, NATIONAL CENTER FOR NEIGHBORHOOD ENTERPRISE

I am here to vigorously support the nomination of Senator John Ashcroft for U.S. Attorney General, and to explain to you the reasons why more than 150 leaders of

faithbased organizations across the country came here Tuesday at their own expense to show their support for Senator Ashcroft. Most of these leaders, for the record, are minority and low-income.

There is clear evidence that the most critical problems of our society are not caused by poverty or racism, and that they cannot be alleviated by remedies that assume these causes. General trends among young people in our nation's suburban communities—rising rates of gang activity, youth crime, and adolescent substance abuse, make this very clear. We are facing a nationwide crisis—a spiritual and moral freefall—which has brought fear and uncertainty throughout America. Fifty-three percent of respondents in a recent USA today/CNN/Gallup poll said that the nation's moral problems concerned them more than economic problems, while 39 percent rated the state of moral values in our nation as “very weak.”

The good news is that solutions to this crisis do exist. However, if we are to forge an effective strategy of moral and spiritual revitalization, we must move the focus of the debate beyond racial and economic considerations. To develop solutions for the crises we now face, we must go beyond the level of education, jobs, housing, or racial reconciliation. These strategies will never be able to address the root of a crisis that is essentially spiritual and moral. If we are to identify effective remedies, we must be willing to look to a new source for solutions.

Over the past 20 years, the National Center for Neighborhood Enterprise has worked with grassroots, faith-based organizations within the nation's inner cities that have transformed the homeless into homeowners, hopeless addicts into productive citizens, and violent youth predators into peacekeepers. Through the power of God they have worked these miracles without tv control, gun control, but through self-control. Some examples of these God-centered transformation stations are as follows:

Teen Challenge, with more than 150 chapters in the U.S. and abroad; Victory Fellowship, with 65 chapters in the U.S. and Latin America; and Youth Challenge, with some 50 locations in the U.S. and internationally, are faith-based substance abuse programs with very successful track records in freeing drug and alcoholic addicts from their addictions.

Victory Fellowship, for instance, founded in San Antonio almost 30 years ago by Pastor Freddie Garcia, has a success rate of more than 70% of those that complete its program. Victory finds its success in the rehabilitation of heroin and other severe addicts through a program that is composed of Bible study, prayer, chapel, one-on-one counseling—mostly by others who have conquered their own addiction—and visiting former haunts to evangelize old friends and drug colleagues as well as to let them know of the success of the program. The program leads addicts through three attitudinal changes: Regeneration, Responsibility, and Reconciliation. Without these critical phases, Pastor Garcia says, the program would have the same results as those of secular programs. The program normally takes 18 months, during which time the individual changes from being a “taker” to a “giver.”

Despite this success, faith-based programs are continually under assault by the professional poverty industry. In fact, several states have tried to shut down these organizations with the charge that they do not have trained professionals as counselors, and therefore do not meet the states requirement. To focus attention on this issue, in 1995 the National Center for Neighborhood Enterprise led a demonstration in Texas against the Texas Commission on Alcohol and Drug Abuse (TCADA), which was trying to close down a very effective Teen Challenge chapter there. When the situation became known to then Governor Bush, he responded by initiating legislation to exempt faith-based substance abuse programs from regulations by the state.

We brought this issue to Senator Ashcroft, who has long been a champion of faith-based programs. He immediately responded and has worked tirelessly with us when there were no headlines to be made and no political capital to be gained. He fashioned the Charitable Choice provision in 1996, and it was passed overwhelmingly by the Congress in the Welfare Reform legislation. Many times he has traveled to different parts of the country at great inconvenience to himself, to address grassroots groups that are trying to solve the problems of their own neighborhoods. And he has persuaded many other members of both parties to do the same.

I would like to read from a letter Senator Ashcroft wrote for one of our publications about why he initiated the Charitable Choice legislation:

In the past, many successful faith-based organizations have not participated in government programs for fear of having to compromise their religious integrity or of being hobbled by excessive government regulation and intrusion. The confusing array of legal precedents has often led government officials to conclude mistakenly that constitutional law requires that faith-based organizations be excluded from the mix of private service providers, or that entities accepting government funds must forego their religious character.

One of my goals in proposing the Charitable Choice provision was to encourage faith-based organizations to expand their involvement in the welfare reform effort by providing assurances that their religious integrity would be protected. The Charitable Choice provision uses U.S. Supreme Court case precedents to clarify what is constitutionally permissible when states and local governments cooperate with the religious and charitable sector of society. The provision protects the rights of faith-based providers as well as the religious liberty of the individuals they may serve.

These are not the words of a zealot or a person who would place his personal opinions above the rule of law. These are the words of a man who is a servant of the law, and who has a deep concern for those in need.

That is why over 150 grassroots leaders pooled their resources to travel here this week, 50 of them riding in a bus for two days, with a return trip of two more days—just to come and demonstrate their support. Ninety-percent of those who came are transformed drug addicts, thieves, and prostitutes—people that society has given up on. But Senator Ashcroft, since he has been the in Senate, has worked tirelessly on their behalf.

Let me address the really outrageous accusations that Senator Ashcroft is a racist. As a former civil rights advocate, who led demonstrations in the 60's, a person who has personally felt the sting of racism in the three years I served in the south, who went to jail three times, I can tell you that we should not permit false accusations of racism to trump character. Members of the press and public are quick to attack bigotry. But we should also reject bigotry coming from those who style themselves as defenders of justice, who use race as a spear against those with whom they disagree, and a shield against personal responsibility.

Senator Ashcroft is not a racist, and others who have testified have articulated his record in supporting minorities. While governor of Missouri, he appointed the first black federal judge. Three members of his cabinet were black. He fought to save Lincoln University and approved making Martin Luther King's birthday a legal holiday. He voted yes for 26 out of 28 blacks nominated by President Clinton for federal judgeships.

Some attack Senator John Ashcroft on the grounds that he will be "bad" for black issues, like affirmative action and abortion. But it is a fallacious assumption that blacks are monolithic in their opinions. Seldom is it reported that 47% of blacks oppose race-based affirmative action. Seventy-four percent of those with school-age children favor school choice. A large percentage of blacks oppose abortion. And many do favor the death penalty. The most important thing to say, however, is that he is a man of integrity who will uphold the law.

His Charitable Choice legislation alone may do more to help blacks solve the real problems in their own communities than anything else government has done.

The most important thing in this day and age is to have leaders who are morally and spiritually sound, especially in public offices like the Attorney General. In this post-civil rights era, we need moral and spiritual leadership as never before. And John Ashcroft passes the test.

Chairman LEAHY. Thank you, Mr. Woodson. I appreciate that.
Mr. Taylor, go ahead.

**STATEMENT OF WILLIAM L. TAYLOR, ESQ., ATTORNEY,
CITIZENS' COMMISSION ON CIVIL RIGHTS, WASHINGTON, D.C.**

Mr. TAYLOR. Thank you.

Mr. Chairman, Senator Hatch, members of the Committee, I appreciate the opportunity to be here and present testimony.

I have been a civil rights lawyer for more than 45 years, beginning as a staff attorney for Thurgood Marshall at the NAACP Legal Defense Fund and later serving as General Counsel and then Staff Director of the United States Commission on Civil Rights during the 1960's.

You know I am well affiliated, but my testimony today is solely on my own behalf. I am the lead counsel for a class, not a single, a class of African-American and white students in the major school case in St. Louis. I have served as counsel for more than 20 years, and for much of that time, John Ashcroft was a lawyer and defend-

ant in the case, first as Missouri Attorney General and later as Governor.

I have fought seriously since this nomination about whether Mr. Ashcroft's conduct in the St. Louis case was simply that of a lawyer vigorously defending the interest of the State or whether some of his actions went over the line of strong advocacy and reflect on his qualifications to serve as Attorney General of the United States. My conclusion is that the latter is the case.

I believe that in his tenure as Attorney General, Mr. Ashcroft used the court system to delay and obstruct the development and implementation of a desegregation settlement that was agreed to by all major parties except the State. In so doing, he sought to prevent measures that were a major step toward racial reconciliation in an area where there had been much conflict and to thwart a remedy that ultimately proved to be a very important vehicle for educational progress.

Worse yet, Mr. Ashcroft sought to exploit fears and misconceptions about desegregation as a means of gaining higher political office, thereby deepening racial divisions in the St. Louis area. Taken together, I believe these actions raise the most serious questions about whether Mr. Ashcroft is prepared to serve all the people as Attorney General and to enforce the civil rights laws fairly and impartially. I realize these are serious charges, but I am prepared to document them.

I assume my full statement will be in the record.

Chairman LEAHY. Of course.

Mr. TAYLOR. I would like to concentrate the remainder of my time on statements Mr. Ashcroft has made as a witness here. I will skip over statements that he made about whether the State was a party to the case at the time adjudications were made about its responsibility, and I will skip over his allegations that the State did nothing wrong. I think, Mr. Chairman, he may have taken some of those back in conversation with you.

I want to focus on the question of whether it is trust, as Mr. Ashcroft claimed, that in all cases where the court made an order, "I followed the order both as Attorney General and Governor," and that, he did not repudiate, he, in fact, repeated. Nothing could be further from the truth.

One key period came in 1980 after the Court of Appeals asked the parties to explore the possibility of an voluntary inter-district remedy, and Judge Meredith entered an order to begin the process. The State resisted the process at every turn.

In March 1981, Judge Hungate, who had taken over the case, found that, "The State as a matter of deliberate policy decided to defy the authority of this court," and that the State had resorted to "extraordinary machinations in an effort to resist dismantling the dual system." These findings came after a lengthy recitation of numerous occasions on which the State had sought to delay and avoid court orders. The court considered holding the State in contempt, but decided to make one more effort to issue an order that might result in State compliance. In doing so, it said, "To grant the State defendants a stay would permit the State to escape triumphantly from the consequences of its defiance of Judge Meredith's court orders. The Court would be doing much less than its duty if

State defendants were not held accountable for their actions,” and I have included this court order as an appendix to my testimony.

The resistance of John Ashcroft became quite personal. As I detail in my testimony, in July 1981, the court appointed Susan Uchitelle as an employee of the State Department of Education as interim director of the Committee charged with developing a voluntary plan. The State objected strenuously to Ms. Uchitelle’s appointment and filed formal objections with the court which were later rejected.

At the same time, the State sought to pressure Ms. Uchitelle to resign from the assignment. A contemporaneous law kept by Ms. Uchitelle reveals that a State education official relayed to her a threat from Mr. Ashcroft that if she chose to remain in the job, she would have to resign her State job, and if she did, she would “never receive another State appointment to a job from him,” delaying tactics. It did not cease. Indeed, after our settlement with 22 suburban districts was reached and the State appealed again and again and continued to resist the orders, even after its appeals were exhausted, the district court noted that the State had delayed implementation of a voluntary plan through opposition and repeated appeals and concluded that were it not for the State and its feckless appeals, perhaps none of us would be here at this time.

I am almost done.

These tactics continued through Mr. Ashcroft’s tenure as Governor. Judge Stephen Limbaugh, a Reagan appointee to the bench, referred to the conduct by the State that included factual inaccuracies, statistical distortions, and insipid remarks—that is a quote—regarding the Court’s handling of the case. He warned the State to desist in filing further motions grounded in rumor and unsubstantiated allegations of wrongdoing and added that the State had even resorted to veil threats toward the court to try to thwart implementation of the remedy.

Chairman LEAHY. Thank you.

Mr. TAYLOR. In summary—

Chairman LEAHY. Thank you, Mr. Taylor.

Mr. TAYLOR.—Contrary to Mr. Ashcroft’s claim of review to follow court orders, we have a—

Chairman LEAHY. Mr. Taylor, everybody has had exactly the same amount of time as this point, both for and against Senator Ashcroft.

[The prepared statement and attachments of Mr. Taylor follow:]

STATEMENT OF WILLIAM L. TAYLOR, ESQ., CITIZENS’ COMMISSION ON CIVIL RIGHTS,
WASHINGTON, DC

Mr. Chairman and members of the Committee:

I appreciate the invitation of this Committee to submit written testimony concerning the nomination of John Ashcroft to be Attorney General of the United States. I have been a civil rights lawyer for 45 years, beginning as a staff attorney for Thurgood Marshall at the NAACP Legal Defense and Education Fund in 1954 and later serving as General Counsel and then Staff Director at the U.S. Commission on Civil Rights in the 1960s.

While I currently serve as Vice Chair of the Leadership Conference on Civil Rights and Acting Chair of the Citizens’ Commission on Civil Rights, my testimony today is solely on my own behalf. I am lead counsel for a class of African-American parents and children in a major school case in St. Louis. I have served in that capacity for more than 20 years and for much of that time John Ashcroft was a lawyer

and defendant in that case, first as Missouri State Attorney General and later as Governor.

I have thought seriously since Mr. Ashcroft's nomination about whether his conduct in the St. Louis case was simply that of a lawyer vigorously defending the interests of the State or whether some of his actions went over the line of strong advocacy and reflect on his qualifications to serve as Attorney General of the United States. My conclusion is that the latter is the case. I believe that in his tenure as State Attorney General, Mr. Ashcroft used the court system to delay and obstruct the implementation of a desegregation settlement that was agreed to by all major parties except the State. In doing so, Mr. Ashcroft sought to prevent measures that were a major step toward racial reconciliation in an area where there had been much conflict and to thwart a remedy that ultimately proved to be a very important vehicle for educational progress. Worse yet, Mr. Ashcroft sought to exploit fears and misconceptions about desegregation as a means of gaining higher political office, thereby deepening racial divisions in the St. Louis area. Taken together, I believe that these actions raise the most serious questions about whether Mr. Ashcroft is prepared to serve all the people as Attorney General and to enforce the civil rights laws fairly and impartially. I realize these are serious charges, but I am prepared to document them.

THE LIDDELL CASE—1978—1984

The St. Louis school case (*Liddeil*) began in the 1970s with a suit designed to desegregate the city schools. The federal courts ultimately found that both the State and the city school board were responsible for maintaining school segregation for many years following the Supreme Court's landmark decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), and that they acted in violation of the constitutional rights of the plaintiff school children. *Liddell v. Missouri*, 731 F.2d 1284, 1302-03 (8th Cir.) (*en banc*), cert. denied, 469 U.S. 816 (1984). Indeed, the District Court held that the State had previously "mandated school segregation and that it "never took any effective steps to dismantle the dual system it had previously compelled." Therefore, the court concluded that the State was a "primary constitutional wrongdoer with respect to the segregated conditions in the St. Louis schools." *Liddell v. Board of Education*, 491 F. Supp. 351, 357, 359-60, aff'd 667 F.2d 642 (8th cir.), cert. denied 454 U.S. 1081 (1981). As was his prerogative, Attorney General Ashcroft took appeals to the Eighth Circuit and the Supreme Court and lost.

Mr. Ashcroft's opposition did not stop there. I became involved in the case in the fall of 1980 when I filed an amended complaint on behalf of the plaintiff class and the NAACP seeking to extend the relief to 22 suburban school districts in St. Louis County that had also contributed to segregation. The City Board of Education filed a similar amended complaint. In part, these complaints were a response to a suggestion by the Court of Appeals that the City Board and the State seek the cooperation of suburban districts to develop a voluntary, cooperative plan in which students could choose to transfer between districts to enhance desegregation. When the District Court entered this suggestion as an order to explore the possibilities of inter-district cooperation, the City Board and the suburbs promptly began to discuss a voluntary plan. But Mr. Ashcroft immediately announced that he would appeal even the provision calling only for a planning process. Mr. Ashcroft asked the Court of Appeals to delay the order while the appeal was being heard. He lost in the Court of Appeals and unsuccessfully sought a stay in the Supreme Court. It was also reported in 1980 by a court-appointed expert that State education officials appeared prepared to help develop a voluntary plan but that they were "forbidden to do anything" because the Attorney General "was running the show" and it was "a legal issue." Deposition of court appointed expert Gary Orfield at 128-134. The St. Louis Post Dispatch concluded that Mr. Ashcroft's actions "nearly wrecked "the initial city suburban meeting efforts. (June 20, 1980.)

These tactics continued through 1981 with the State failing to comply with Court orders for the submission of plans and filing numerous motions for delay in the Court of Appeals. In March of 1981, the District judge issued a blistering order threatening to hold the state in contempt if it failed to submit a voluntary plan in 60 days. Citing the State's "continual delay and failure to comply" the Court said that it could only conclude that "the state has, as a matter of deliberate policy, decided to defy the authority of this Court" *St. Louis Post-Dispatch, March 5, 1981*. These matters are discussed in more detail in Appendix 1; to my testimony, an account prepared by lawyers at People for the American Way and reviewed by me for accuracy.

One other incident that occurred in 1981 is telling. In July, 1981, the Court appointed Susan Uchitelle, an employee of the Missouri Department of Education, as

interim director a coordinating committee to devise a voluntary plan. The State objected strenuously to Ms. Uchitelle's appointment and tiled formal objections with the Court on July 9, 1981 which were later rejected. Contemporaneously, the State sought to exercise pressure on Ms. Uchitelle to resign from this assignment. A contemporaneous log kept by Ms. Uchitelle reveals that a state education official relayed to her a threat from Mr. Ashcroft that if she chose to remain in the job she would have to resign her state job and if she did that she "would never receive another appointment or job from them." This, in my judgment, is evidence of a gross threat of retaliation by Mr. Ashcroft against a dedicated state employee who only sought to aid the Court and the parties in carrying out a voluntary remedial plan. See Appendix 2 to my testimony. Fortunately, Ms. Uchitelle did not bow to these threats and continued to serve for many years as the coordinator of the voluntary plan, although the State continued to level criticism at her.

Late in 1982, the Court brought the parties together under the supervision of a courtappointed mediator to explore the possibilities of settlement. I believed that we had a strong case, with evidence for example that the State and suburban school districts had maintained segregation by busing black children living in suburban areas into the city to avoid desegregation of suburban schools. But I and my colleagues actively sought settlement, realizing the value of prompt relief and avoidance of many years of contentious litigation. The 22 suburban districts agreed on the value of a settlement as well and many showed real courage in doing so because they faced the fears and opposition of many of their constituents. And so, after tough negotiations we reached an agreement that allowed *volunteering* African-American students from the city to enroll in any of the 22 districts until the black enrollment of the district reached 25% and *volunteering* white students in the 22 districts to enroll in city magnet schools. The agreement also provided for improvements in the educational program in the low performing city schools that would continue to remain racially isolated.

All of the parties agreed to the settlement except the State of Missouri. (Under the Reagan Administration, the Justice Department, which was an intervening party, took no position at that point although it was later persuaded by Mr. Ashcroft who made repeated visits to Washington to join in his appeal). The Assistant Attorney General who represented the State in the negotiations had taken a positive approach but Mr. Ashcroft's decision was to oppose the settlement. Mr. Ashcroft opposed all aspects of the settlement in the District Court and then appealed the decision to the Court of Appeals which, sitting en banc, rejected his positions almost in their entirety. *Liddell, supra*, 731 F.2d 1294. He then unsuccessfully sought in 1984 review in the Supreme Court. It is important to note, that Mr. Ashcroft opposed not only desegregation but the portions of the agreement calling for improvements in black schools, consistent with the Supreme Court's unanimous decision in *Milken v. Bradley*, 433 U.S. 267 (1978). In an undated press release, issued at the time he was petitioning the Supreme Court, Ashcroft said "the requirements for widespread improvements throughout the city school system. . .are simply a shopping list compiled by the plaintiffs and the City Board".

Even after his appeals had been rejected. Mr. Ashcroft continued to obstruct implementation of the settlement. His tactics led the District judge to conclude at the end of 1984:

"If it were not for the State of Missouri and its feckless appeals, perhaps none of us would be here at this time. Further litigation to compel the State to meet its responsibilities was unquestionably necessary. The compromise settlement was made possible through the cooperation of all parties but the State, which, through opposition and repeated appeals, has delayed implementation of a remedial plan designed to remove the last remaining vestiges of school segregation for which the State, through its constitution and statutes, remains responsible. It has continued to litigate what the other parties sought to settle, thereby increasing litigation costs for which it now seeks to avoid responsibility." Order H(3550) at 17, 25. December 28, 1984 Relevant portions of the Order are attached as Exhibit 3 to my testimony.

This, as previously indicated, was hardly the first time the Court found it necessary to ruhuke the State and its Attorney General. Earlier the Court had found that "the State has, as a matter of deliberate policy, decided to defy the authority of [this] Court" and that the State had resorted to "extraordinary machinations" in an effort to resist dismantling the dual system. Order H(11) 81 at 6.

THE 1984 GUBERNATORIAL CAMPAIGN

In 1984 as he was fighting the voluntary settlement tooth and nail in the courts, Mr. Ashcroft was running in the Republican primary for governor. He was pitted

against Gene McNary, the County Executive of St. Louis County, who was also an adamant opponent of desegregation. Toward the end of a close campaign in which the candidates sought to outdo each other in their opposition to desegregation, Mr. Ashcroft ran a television ad, dubbed the McFlipFlop commercial, in which he accused McNary of being soft on desegregation for having said some time earlier that he would not object to the desegregation plan if all of the suburban school districts accepted it.

That commercial was “given a major part of the credit for Mr. Ashcroft’s convincing victory.” *St. Louis Post-Dispatch*, August 12, 1984, p. 1 B. Whatever its effectiveness, the ad and other statements by Mr. Ashcroft were calculated to inflame the passions of people who feared or resisted desegregation. In the words of the *St. Louis Post Dispatch*, Mr. Ashcroft and his opponent were “exploiting and encouraging the worst racist sentiments that exist in the state.” March 11, 1984. See also Exhibit 1. In his December 28 Order Judge Hungate, responding to State charges about the work of one group of plaintiffs, said “with equal validity, one might argue that counsel for the State voluntarily rode Liddell’s bus to political prominence.” H(3554) 84 at 16.

LIDDELL: 1985–1992

In the years that John Ashcroft served as governor, the State continued its slash and burn tactics in court. In 1989 and 1990, Judge Steven Limbaugh, who had succeeded Judge Hungate and who ordinarily was very mild in his manner and language, was moved to make the following statements:

“It appears to this Court that the extremely antagonistic nature of recent filings indicates that the counsel for the State is ignoring the real objectives of this case—a better education for city students to personally embark on a litigious pursuit of righteousness.” Order L (3039) 90 at 3.

The States Motion was “the latest in a series of motions which are not only unnecessarily adversarial in nature but indicate a lack of communication between counsel and the State’s non-legal personnel involved in this case. The motion is meddlesome and intrudes upon the cooperative efforts of the educational personnel of both parties.” Order L (3039)90 at 2.

The State’s litigation tactics were only serving “to waste the Court’s time and taxpayers’ money.” *Id.* at 4.

The State had resorted to “factual inaccuracies, statistical distortions and insipid remarks regarding the Court’s handling of this case.” Order L (2311) 89 at 2.

Judge Limbaugh warned the State to “desist in filing further motions grounded in rumor and unsubstantiated allegations of wrongdoing.” He added that the State in recent years has even resorted to “veiled threats” towards the Court in its effort to thwart implementation of the remedy. *Id.* at 3–4.

I of course have no way of knowing the extent of Mr. Ashcroft’s personal participation in the actions that roused the Court’s ire. I do know that they represented a continuation of his policies as Attorney General and that he did nothing to repudiate them as Governor.

In 1995, Governor Mel Carnahan who was then the most prominent defendant in the case, offered this comment on the history of the litigation:

“The reason Missouri has been unsuccessful in ending the desegregation cases is that the State has never made a credible attempt to address the concerns of the Federal courts. The state has always forcefully and consistently objected to Plaintiffs’ demands. However, it has not; offered potential solutions to the desegregation problem. . .” *St. Loads Post Dispatch*, March 26, 1995 at 3B.

LIDDELL: THE AFTERMATH

In 1991, the State began filing a series of motions seeking a declaration of unitary status and a cessation of its financial obligations That issue came to trial in 1996. At the trial it became clear that many of the aspects of the remedy had been very successful. For example, it was revealed that African-American students (the great majority of them poor) who attended schools in the suburban districts graduated high school and went on to college at rates far in excess of students in St. Louis who had very high dropout rates and also in excess of African-American students in urban districts around the nation In addition, the State’s own expert, David Armor, praised the academic progress that had been made in city magnet schools.

After the trial Judge George Gunn appointed William Danforth, recently retired chancellor of Washington University in St. Louis to be settlement coordinator. Dr. Danforth, who had done his own investigation of the effectiveness of the remedy, concluded that the best solution would be to find a way to continue the remedy by

replacing court-ordered funds with a legislative appropriation, thus enabling the court to withdraw from active supervision of the case. I worked with Dr. Danforth to lobby the Missouri legislature, and with Governor Carahan's active assistance, we were able to secure bipartisan action by the legislature to appropriate funds sufficient for the remedy to continue into the indefinite future. This time, the Attorney General agreed to a new settlement based on the legislature's action. In 1999, the citizens of St. Louis did their part by agreeing to a tax increase to help finance the settlement. A majority of voters in every ward, black and white, voted for the increase.

The actions of the State legislature and the citizens of St. Louis are quite remarkable, perhaps as remarkable as the 1983 settlement agreement.

When one looks back on the twenty year history of the case, it becomes apparent that this was not a partisan matter. Many Republicans as well as Democrats understood the wrong that had to be righted and the need to find ways to provide equal educational opportunity for African-American students. Dr. William Danforth made a great contribution and former Senator John Danforth supported the settlement at various stages of the litigation. Judge Steven Limbaugh and Judge George Gunn, both Republican appointees of President Reagan, moved the remedy forward in the face of continuing opposition from the State. In contrast, John Ashcroft fought every aspect of the remedy in the ways I have described and never offered to the courts any alternative program to advance educational progress and improve race relations. Nor in the years he has been senator has Mr. Ashcroft ever publicly reconsidered his positions or offered any support to the widely acclaimed 1999 agreement.

CONCLUSION

After reviewing the actions of John Ashcroft in the St. Louis case, I have concluded that they are strongly reminiscent of the actions of public officials during the era of massive resistance in the 1950s and 60s in the South. That is a period I witnessed as a civil rights lawyer and later as General Counsel and Staff Director of the U.S. Civil Rights Commission and most officials North and South now agree that it was a shameful period in American history. In some ways I think that the actions of John Ashcroft in massively resisting a remedy in the St. Louis case and using race issues for political advantage were worse. By 1980, there could be no valid claim that school desegregation was the product of imperial federal courts. The Civil Rights Act of 1964 had made equal opportunity and desegregation national policy and the era of obstruction and resistance had largely passed.

Nor as I have mentioned has John Ashcroft ever by word or deed provided any evidence that his views about these matters of equal opportunity have changed. To the contrary, in his recent embrace of racially extremist groups there is evidence of the continuity of his views.

Mr. Chairman I state the obvious when I say that it is not easy for me or for members of the Senate to seek action that will thwart the hopes and ambitions of a person for high office. But that is a necessary product of our constitutional system of "advise and consent."

During my long career in civil rights I have been privileged to witness a great deal of progress in the status of African-Americans and other historically discriminated-against people. Unfortunately, however there are constant reminders that race is still the problem that plagues the American conscience. Decisions about how and whether we will address continuing problems of discrimination are made in many ways—including the nomination of people to the offices charged with making civil rights policy and enforcing civil rights laws. Today, the rights of millions of Americans to be free of hate crimes, not to be racially profiled, to better educational opportunity, to housing choice, to equal opportunity in the workplace are at stake. Given his extensive record, there is no basis for believing that these rights would be effectively protected during his tenure as Attorney General. I do not think that confirmation-day conversions or pledges to enforce the law can counter the long history of opposition to civil rights that has been documented. I fear that installation of John Ashcroft as Attorney General would send a message of racial divisiveness throughout the nation, would jeopardize the rights of citizens and would set us back years in our continuing quest for equality of opportunity for all.

III. ASHCROFT'S STATE RECORD: REVEALING HIS STRIDENT RESISTANCE TO THE PROTECTION OF CIVIL RIGHTS

A. RACIAL DESEGREGATION OF MISSOURI SCHOOLS

Both as Attorney General and Governor of Missouri, John Ashcroft was well known as an opponent of school desegregation programs in St. Louis and Kansas City. Differences of legal and political opinion existed then and now on this subject, and such differences alone would not constitute significant grounds for opposing Ashcroft's nomination. But Ashcroft's conduct in Missouri went far beyond such differences of opinion. Ashcroft spent years and significant state resources in efforts to stymie voluntary St. Louis desegregation plans designed to enable city and suburban students and families to choose whether to participate on a complexly voluntary basis. He repeatedly tried to delay and reverse court orders, and his arguments were rejected in three appeals to the Supreme Court. He was threatened with contempt of court and was criticized and rebuked by federal judges. His conduct was likened to the Southern "massive resistance" that had followed the Supreme Court's decision more than two decades earlier in *Brown v. Board of Education*. Observers chastised him for exploiting his opposition to desegregation in his campaign for governor through rhetoric widely perceived as racially divisive. Even supporters and fellow Republicans criticized his tactics. And he failed completely to undertake meaningful efforts to solve the problems of state-created segregation, to resolve the litigation through negotiations or settlement, or to provide constructive leadership on the issue, all important qualities for a future U.S. Attorney General.

1. *An Attorney General's crusade to obstruct voluntary desegregation.* Ashcroft's significant involvement with desegregation in St. Louis began around 1980, for in that year both the federal court of appeals for the Eighth Circuit and the federal district court in St. Louis found both the State of Missouri and the City school board liable for continued segregation of the public schools. The State's liability was based primarily on state legal and constitutional provisions dating back to 1865, which mandated separate schools for blacks and whites (provisions not completely repealed until 1976); the mandatory transfer of black suburban students into segregated city schools to enforce segregation; and the state's failure to take effective action to dismantle the racially dual school system and its effects. See *Adams v. United States*, 620 F.2d 1277, 1280-81 (8th Cir.), cert. denied, 449 U.S. 826 (1980). As the district court recognized that year, "the State defendants stand before this Court as primary constitutional wrongdoers who have abdicated their affirmative remedial duty." *Liddell v. Board of Education of City of St. Louis*, 491 F. Supp. 351, 359 (E.D. Mo. 1980), affd, 667 F.2d 643 (8th Cir.), cert. denied, 454 U.S. 1081, 1091 (1981).

As part of its May 1980 order, the district court ordered desegregation in St. Louis to begin that fall. One provision of the court's order, as specifically suggested by the court of appeals, called on the City Board and the State to seek the Cooperation of suburban districts to enhance school desegregation by developing a "voluntary, cooperative plan" in which city and suburban students could choose to transfer between the city and the suburbs. 491 F. Supp. at 353.

The City Board and the suburbs promptly began to discuss such a voluntary plan. On behalf of the State, however, Ashcroft immediately announced he would appeal, seeking to overturn even the provision that called only for planning of a voluntary city-suburb program. The *St. Louis Post-Dispatch* (June 20, 1980). Despite the opposition of the City Board and the United States, which had intervened in the case on the side of the plaintiffs, Ashcroft asked the court of appeals to delay the order while the appeal was being heard. When the court of appeals turned Ashcroft down in August, he asked the Supreme Court for another delay. Ironically, he did not ask for a delay in mandatory student transfers within St. Louis, but did try to further postpone work on a voluntary city-suburb plan. The Court denied Ashcroft's request. years later, an expert witness involved in the case testified that the City Board and the state had enjoyed a brief period of cooperation in 1980, but that after the May 1980 order, Ashcroft told state education officials "not to talk with anyone." (*St. Louis Post-Dispatch* March 23, 1996).

Although the district court's order had directed the parties to work out a voluntary plan to begin in 1980-81, delays continued throughout the school year. After the state finally submitted an initial plan, the judge rejected it as lacking in specifics and called on the state to submit another, but the state did not do so. The NAACP and the City Board then filed a claim for mandatory interdistrict relief, based in part on the failure of the state to act. Ashcroft responded not only by opposing any such mandatory relief, but by declaring that voluntary efforts were now

impossible and by asking for another delay in submitting a voluntary plan. The *St. Louis Post-Dispatch* excoriated Ashcroft:

The logic of these arguments is mystifying. . . Even now, acquiescence in a voluntary program might dispense with the need for one ordered by court. . . As matters stand, a state that for more than a century required its schools to segregate the races now presents itself as unable to help them desegregate, even on a voluntary basis. . . Judge Meredith had asked the state to take the lead in developing suggestions for a voluntary program. Take the lead? The attorney general has put state leadership in reverse. (*St. Louis Post-Dispatch*, Feb. 1 and Feb. 4, 1981.)

Throughout this period, Ashcroft continually sought to thwart desegregation by failing to comply with orders and deadlines for submission of plans and seeking delays from the appellate court. Finally, in March, 1981, the district judge entered a blistering order threatening to hold the state in contempt if it failed to submit a voluntary plan within 60 days. The judge criticized the state's "continual delay and failure to comply" with the court's orders. *Associated Press, March 5, 1981*. "The court can draw only one conclusion," the judge explained, "the state has, as a matter of deliberate policy, decided to defy the authority of this court." *St. Louis Post-Dispatch* (March 5, 1981).

Although Ashcroft claimed that the state was working on a voluntary plan, he again asked the appellate court and then the Supreme Court for a delay, as he also sought to have the Supreme Court overturn an appellate court decision fully affirming the district court's May 1980 order. All these requests were denied.

As 1981 continued, Ashcroft persisted in his efforts to disrupt voluntary desegregation efforts. For example, when the court named Susan Uchitelle, a state education official, to oversee voluntary desegregation efforts, which could presumably have helped secure state cooperation, Ashcroft demanded her removal. The *Post-Dispatch* noted that the state could have felt "honored by the use of Ms. Uchitelle as a leader" in the voluntary desegregation effort, but "[i]nstead, Missouri's attorney general acts as if segregation is here to stay." *St. Louis Post-Dispatch (July 14, 1981)*. Around the same time, the Reagan Administration Justice Department submitted a plan to encourage voluntary desegregation by offering fee state college tuition to students who agreed to city-suburban transfers. The City Board agreed, several suburban districts and a state university official praised the idea, and the Reagan Administration received praise for suggesting a plan to promote voluntary desegregation consistent with its opposition to mandatory busing. Nevertheless, Ashcroft balked at the suggestion, basing his opposition on cost and on claims that the plan would result in the transfer of "the most motivated" black city students to the suburbs. *Newweek (May 18, 1991)*.

The federal proposal also produced another result for Ashcroft. He began to hold talks with Reagan Administration officials, which Ashcroft reportedly tried to keep secret, about the St. Louis and Kansas City cases. It was soon reported that Ashcroft was trying to convince Reagan Justice Department officials to switch sides and support the state in its latest effort to get the Supreme Court to reverse lower court rulings in the St. Louis Case. In the short run, those efforts failed, as the Justice Department suggested that the Court should not accept Ashcroft's request. When the Court again rejected Ashcroft's appeal, he remained defiant, proclaiming that "this fight is a long way from being finished." *UPI (Nov. 30, 1981)* The *Post-Dispatch* noted that legal contentions can be pursued on and on," but urged "the state of Missouri and its attorney general" to "begin working for desegregation instead of obstructing it." *St. Louis Post-Dispatch* (Dec. 1, 1981).

The new year of 1982, however, saw little change in Ashcroft's attitudes and tactics. In January, speaking to a suburban rotary club, he attacked desegregation and declared that busing is "unconstitutional discrimination against all groups." *St. Louis Post-Dispatch (January 13, 1982)*. He lost another appeal in which he contested again the state's liability and protested any voluntary city-suburb plan. The appellate court's opinion pointedly urged the state to participate in the desegregation budget process "so that the annual budget can be determined on a cooperative rather than an adversary basis." *Liddel, supra* 677 F.2d 626, 628 8th Cir.), cert. denied, 459 U.S. 877 (1982). For the second year in a row, the Supreme Court denied Ashcroft's request for a full review. One news article noted that Ashcroft was "making himself a familiar advocate before the Supreme Court, most often as the antagonist of civil rights interests." *St. Louis Post-Dispatch (Nov. 7, 1982)*. The article quoted civil rights lawyers who criticized Ashcroft's "zealous, litigate-to-the-end" approach, and noted that his frequent appeals to the Court were discouraging suburban districts from joining the voluntary city-suburb plan. Although noting that the Court's acceptance of a number of (non-desegregation related) appeals demonstrated

that Ashcroft's office was certainly not being frivolous, the article quoted one former assistant attorney general as highly critical of the "litigate-to-the-end" approach even in innocuous suits, comparing Ashcroft unfavorably to his predecessor, John Danforth.

The article noted Ashcroft's harsh and racially divisive rhetoric in court papers. For example, in his latest appeal to the Supreme Court, the article explained, Ashcroft call the lower court action "grossly unjust" and complained that if the defendant was "an individual, especially a minority, neither this court nor the court of appeals would have permitted" the procedures used. *Id.* Critics likened Ashcroft's handling of the St. Louis case "to the massive resistance that some Southern politicians mounted in the 1950's and 1960s to oppose desegregation." One attorney who asked not to be named stated that "[a] lot of what he does is to delay and harass" and that he "appeals everything to the Supreme Court." *Id.* School desegregation expert Dr. Gary Orfield was reported as testifying in court that the state's arguments reminded him of the defense of segregation in *Brown v. Board of Education* itself. Dr. Orfield stated that he had been reading the *Brown* transcript "where the attorney representing the government of South Carolina argued that it would be educationally better to leave the black children segregated." He explained that "I thought I wouldn't hear state government producing that argument again" but was "very disappointed to hear it" in the St. Louise case. *Id.*

In 1983, Ashcroft's efforts to obstruct voluntary city-suburban desegregation reached a new level. Shortly before the trial of the segregation claims against the suburban districts was to begin, the City Board, the NAACP, and the suburban districts announced a tentative settlement. The agreement called for significant expansion on the city-suburb voluntary desegregation program, as well as for additional efforts to improve education in city schools to help remedy the educational vestiges of segregation. Although the State department of education had reportedly made positive comments about the plan, Ashcroft and the City of St. Louis promptly opposed it. Ashcroft criticized the costs that would be imposed on the state, and asserted that mandatory transfers could occur in the future if the plan failed. He had critical letters had-delivered to each of the suburban districts. A source close to the negotiations reported that Ashcroft was not "telling the whole story" and was "trying to scuttle this agreement." *St. Louis Post-Dispatch* (April 2, 1983).

One of Ashcroft's major objections to the plan—his claim concerning its costs—was criticized not only by the *Post-Dispatch*, but also by St. Louis Archbishop John I. May. The Archbishop urged citizens to ignore the "hysterical figures" and to emphasize the positive "in place of the dirges we have been hearing from Jefferson City," the state capital. *UPI* (July 25, 1983). The Archbishop and 10 other prominent religious and public figures endorsed the plan. Although acknowledging Ashcroft's proper role in defending the state, then Senator and former state Attorney General John Danforth split with Ashcroft and announced his support for the plan. Suburban districts rejected Ashcroft's race-tinged claim that the plan would "subordinate education to other objectives" and his insistence that he would have preferred to litigate the case. In July 1983, despite Ashcroft's three-year efforts, the City board and all 23 suburban districts approved the plan, and the federal court accepted it.

Ashcroft and the City announced they would appeal and sought a district court order to delay the plan. Even though the school year had already begun, Ashcroft asked the court of appeals-to stay the plan—and effectively order thousands of students uprooted from the schools they had begun—in September. Although the court of appeals did temporarily limit the plan to students who had already transferred and did prevent any possible court action to change city tax rates, the appellate court firmly rejected most of the stay order that Ashcroft requested. As a result of such a stay order, the court explained, the "lives of thousands of students and teachers would be disrupted before this court had decided the matter on its merits." *AP* (Sept. 13, 1983).

In early 1984, the last year of his term as Attorney General, Ashcroft announced his intention to run for governor. In his announcement speech, he pledged to continue to fight "tooth and nail" to oppose the "just plain wrong" St. Louis desegregation orders, vowing that "this battle is not over." *UPI* (Jan. 4, 1984). Ashcroft soon received another court setback, as the full 8th Circuit Court of Appeals voted 7 to 2 to uphold most of the desegregation plan. The court painstakingly noted that on three separate occasions it had already rejected the state's arguments against the use of voluntary interdistrict transfers and that each time the Supreme Court had denied review, *Liddel, supra*, 731 F.2d 1294, 1302-05 (8th Cir.) (en banc), cert. denied, 469 U.S. 816 (1984). The appeals court nevertheless considered Ashcroft's arguments for the fourth time, and again rejected them *Id.* at 1305-1309.

The court did agree with Ashcroft that the state should not pay for voluntary integrative transfers of black suburban students from predominantly black to predominantly white suburbs, since that would not help promote desegregation in the city. Even though that part of the order affected only 311 students, Ashcroft moved immediately to cut off payments for those students, prompting fears that they would be forced to return to their former schools with only three months left in the school year. Critics called Ashcroft's actions a "cruel way to deal with students who had placed their educational hopes in their new schools." (*St. Louis Post-Dispatch Feb. 19, 1984*). A split court of appeals avoided such an outcome by ordering the state to continue the payments temporarily, subject to a later good faith effort among the suburbs and the state to allocate the costs. Ashcroft called the decisions a "gross miscarriage of justice" and predicted it would help his case in the Supreme Court. (*St. Louis Post-Dispatch March 6, 1984*).

Once again, Ashcroft sought review of the court of appeals decision in the Supreme Court, with the opposition this time joined by the League of Women Voters in the St. Louis area. Ashcroft did obtain a new ally, however, convincing the Reagan Justice Department to complete its reversal of position and join his efforts in the Court, as a result of what Ashcroft described as his "arduous effort" at persuasion. (*St. Louis Post-Dispatch July 24, 1984*). Nevertheless, the high Court turned Ashcroft down for a third consecutive year, prompting Ashcroft to claim that the Court had "wrongfully sanctioned the judiciary's usurpation of legislative authority" and to pledge to keep fighting. (*St. Louis Post-Dispatch Oct. 3, 1984*). The *Post-Dispatch* noted the progress made under the plan, with over 5,500 students participating in totally voluntary desegregation transfers plus better education in only its second year, all of "[d]espite the attorney general's efforts." (*St. Louis Post-Dispatch Oct. 3, 1984*).

In the meantime, Ashcroft was busily using the desegregation issue in his gubernatorial campaign. During the Republican primary campaign, Ashcroft and his primary opponent were "trying to outdo each other as the most outspoken enemy of school integration in St. Louis," and "exploring and encouraging the worst racist sentiments that exist in the state." (*St. Louis Post-Dispatch March 11, 1984*). Ashcroft publicly wore the threatened federal contempt citation against him as a badge of honor, arguing that it showed he had "done everything in my power legally" to fight the desegregation plan. (*UPI, Feb. 12, 1984*). Ashcroft criticized the St. Louis plan as "grandiose programs just to enhance a few students," ignoring the thousands who were being helped. (*Jefferson City Post Oct. 5, 1984*). In one debate, he called the plan an "outrage against human decency" and an "outrage against the children of this state." (*St. Louis Post-Dispatch June 15, 1984*). At one point, he appeared to compare desegregation to drug use, stating that the people who are against the desegregation plan also pay for it "[b]ut some people sell pot and think it should be legalized, and we fight against them with their tax money," and "I don't have any problem with that." (*Oakombia Missourian July 18, 1983*). Ashcroft's media consultant described an ad attacking alleged waffling by his primary opponent on desegregation as Ashcroft's "silver bullet." (*St. Louis Post-Dispatch Dec. 30, 1984*).

Newspapers on both sides of the desegregation issue were highly critical of Ashcroft, along with his primary opponent, for divisive rhetoric. The *Daily Dunklin Democrat*, which had supported Ashcroft's desegregation appeals, nevertheless criticized the Republican primary campaign as "reminiscent of an Alabama primary in the 1950s." (*St. Louis Post-Dispatch Oct. 26, 1984*). The African-American newspaper (*St. Louis Post-Dispatch Feb. 29, 1984*).

2. Ashcroft continues to battle desegregation as governor. Shortly after he was elected Governor, Ashcroft received yet another stinging rebuke for his handling of the St. Louis case—this time, from the federal court. Ashcroft's office had vigorously opposed a request for civil rights attorneys' fees to be paid by the state to the attorneys who had successfully litigated against him. (In fact, he had previously asked President Reagan to support legislation to limit state liability for civil rights attorneys' fees, using St. Louis as an example. (*St. Louis Post-Dispatch Nov 20, 1983*.) Ashcroft argued that the size to the bill, over \$3 million, was excessive and that much of the plaintiffs' attorneys' efforts were not necessary. Although the judge did substantially reduce the size of the award, he unequivocally rejected Ashcroft's claim and found that the work was "unquestionably necessary" because of the conduct of the state and its attorney general. The judge explained that the state had contributed significantly to the size of the award by its "opposition and repeated appeals." Ashcroft and the state had continued to "litigate what the other parties sought to settle, thereby increasing litigation costs for which it now seeks to avoid responsibility." In fact, the judge stated, "[i]f it were not for the state of Missouri

and its *feckless appeals*, perhaps none of us would be here today.” (*St. Louis Post-Dispatch*, Dec. 30, 1983, Jan. 3, 1985) (emphasis added).

Ashcroft also argued that the attorneys for the original plaintiffs had ridden the “coattails” of other parties to seek unwarranted attorneys’ fees. The court rejected this argument as well, with words aimed clearly at Ashcroft. “With equal validity,” he explained, “one might argue that counsel for the state voluntarily rode Liddell’s bus to political prominence.” (*Id.*) Although the size of the award was reduced on appeal because the court determined that the plaintiffs were only 75% successful, the appellate court otherwise affirmed the trial court’s decision. *Liddell*, supra, No. 85–1179 (8th Cir. July 9, 1985).

After he assumed the governor’s office, of course, Ashcroft’s direct involvement in the St. Louis case diminished. Nonetheless, he continued to urge vigorous opposition to the plan and to criticize the federal court rulings, particularly in election year 1988. Ironically, at a 1989 education conference in Washington, Ashcroft publicly supported the idea of public school choice in Missouri. The director of the St. Louis voluntary interdistrict desegregation choice program, whom Ashcroft had attempted to remove years earlier, responded in a way that aptly summarizes Ashcroft’s record and the accomplishment that he tried to thwart:

For nine years, Gov. John Ashcroft has been fighting the voluntary choice plan in St. Louis and St. Louis County. But now the light suddenly dawns. At the president’s education summit, Ashcroft announces he wants to offer Missouri school children the right to school choice.

Where have you been, governor? Without your help—indeed over your vehement opposition—St. Louis has had school choice. In fact, St. Louis has the largest and most successful school choice program in the country. To date, more than 22,000 students are making school choices, both within the city system with its magnet schools and among 16 suburban districts.

Ashcroft now says school choice could lead to more motivated students and higher achievement. He is right! We are finding the longer school choice students are in the program, the better they perform. All area schools can attest to improved curricula as a result of our voluntary school choice program.

But school choice does not just happen. It requires equitable access that will not upset racial balance. It requires available transportation so that all students will have the right to choice. It requires funds to improve urban districts. (*St. Louis Post-Dispatch* Oct. 8, 1989).

Gov. Ashcroft opposed all of the see and other features of the St. Louis plan, a situation that changed under his successor. Governor Mel Carnahan spent part of his first day in office discussing how to settle or end both the St. Louis and the Kansas City desegregation lawsuits. The settlement reached by the State and all other parties in early 1999 won widespread acclaim. *St. Louis Post-Dispatch* (Jan. 7, 1999).

Ashcroft’s direct involvement in the Kansas city case was less significant than in St. Louis because most of the key court proceedings and the resulting controversial remedies in that case occurred at the end of or after this term as Attorney General Ashcroft opposed any state liability in that case as well, a position rejected by the district court in September of 1984. As governor, Ashcroft continued to direct the attorney general to appeal orders calling for significant expenditures by the state, and he received much more political and legal support for his position, up to and including a 1995 Supreme Court decision in the case that he praised as a Senator.

Nevertheless, Ashcroft came under significant criticism, even from supporters and fellow Republicans, for his “continual harping against” desegregation in Kansas City and his failure to provide effective leadership and offer alternatives to remedy problems the state had helped cause. (*Kansas City Times*, Oct. 25, 1988). The president of the Kansas City board lamented in 1987 Ashcroft’s earlier failure to “offer viable alternatives when he had a chance to do so.” (*Kansas City Star* Nov. 10, 1987). A Republican state legislator from the area explained that she was “very disturbed that once the judge handed down his findings, the state was not more pro-active in finding a solution.” She stated that contacts with Ashcroft’s office on the subject were “not productive” because he did not appear to have a “philosophy that allows for different points of view.” (*St. Louis Post-Dispatch* Jan. 10, 1993). A former St. Louis school board member suggested that Ashcroft was partly to blame for increasing expenditures, noting that “you can’t help but wonder how soon this would’ve ended if (the governor) hadn’t been so concerned with fighting this and more concerned with finding a resolution.” (*St. Louis Post-Dispatch* Jan. 3, 1993). In short, the qualities displayed by Ashcroft in school desegregation controversies in Missouri, particularly in St. Louis, are not the qualities America has a right to expect from its Attorney General.

EDUCATIONAL CONSULTANT
ST. LOUIS, MO 63105
January 12, 2001

Mr. William Taylor
Attorney at Law
2000 M Street, NW, 400
Washington, DC 20036

Dear Mr. Taylor,

In response to your inquiry, I am forwarding to you the log I kept during the beginning days of the initiation of the St. Louis School Desegregation case in 1981. My contact at the State was Mr. William Wasson, the Deputy Commissioner of Elementary and Secondary Education for the State of Missouri. This information details the objections of State officials to my Court appointed position.

Sincerely yours,

SUSAN UCHITELLE

July 8, 1981

At 8:45 a.m. I received a call from Paul Rava asking me what school district or districts from the County would take the first step. Kirkwood and Ferguson are possibilities.

Wish the Judge had given greater specificity. He wants me to get commitments from some districts that will stand up. It won't totally solve the St. Louis problem, and they know it. They would be willing to put on ice for one year any litigation to those districts who are willing to participate. He would see if this could be worked out. He indicated that they would be willing to do so. Wants actively with anyone who is cooperating with us in a dimension that is mutually satisfactory. We talked for 15 minutes.

At 9:30 a.m. I went to see the law clerk in the Judge's office. I explained the difficult State situation.

I spent the afternoon in St. Louis at the Counselling and Recruiting Center finding out procedures.

At 3:20 p.m. Earl Hobbs, Clayton Superintendent, called. Clayton is preparing a response to the Court. They intend to cooperate on their own terms and will design a plan to present to the Judge by July 22, 1981.

At 5:00 p.m. Bill Wasson from State called to tell me that the State did not want me to take the job, that there was a conflict of interest and that the State (Attorney General and Gov. Bond) had mailed a motion to the Judge requesting a release (for me to vacate) from the job.

July 9, 1981

I talked with Bill Wasson and Commissioner Mallory early this morning. They did not want me to resign from the Department of Elementary & Secondary Education. They suggested that I not do anything, at least until the Judge rules on the motion to have me vacated filed by the Attorney General. The commissioner felt very strongly that I was needed in my own capacity as Supervisor of Instruction, and he requested that I hold on until next week. I should work on the implementation and do what I had to do.

I called some school districts to let them know that I was available to help them in any way.

July 15, 1981

Bob Moody of the Webster Groves Board of Education called wanting information about the Plan in some way.

Rev. Ben Martin called to say that some board members had called him wanting information and don't know how to get it.

I talked with Normandy to express my interest and concern in their position. Also talked with Lindbergh, Maplewood-Richmond Heights and Ferguson-Florissant. (I found out there was a Cooperating School Districts meeting with superintendents this morning.) I simply talked with these districts to get a sense of their own responses to the desegregation issue.

At 10:20 a.m. I talked with Gary Wright at Lindbergh. They had a very late meeting the night before and upon advice of counsel they decided to decline to participate in the Plan because there is no provision to drop any litigation.

At 11:45 a.m. Bill Wasson called me. He said that the State wanted me to come out in support of Ashcroft's motion to have me vacated from the job. They (State) would tolerate no action on my part—public meetings, school board attendance, any efforts to talk about the Plan. Ashcroft was about to send a letter to me stating strongly his position and insisting I resign from the Court or resign from the State, and if I resign from the State, I would never receive another appointment or job from them. I can't preach and still be a state employee. He said they would not act on my request for a leave of absence—they did not want to grant one. I told him it would need time to consider. The afternoon was spent working out legal alternatives with Skrainka and Sandweiss. I cancelled my appointment with Pattonville School District and also cancelled the appointment with Hope United Presbyterian Church where an informational meeting was [Note: material submitted ended in mid-sentence.]

W E & M

DEC 28 1984

12/29/84

H(3550)84

FILED

DEC 28 1984

EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 72-100C(3)
)	
THE BOARD OF EDUCATION)	
OF THE CITY OF ST. LOUIS,)	
STATE OF MISSOURI, et al.,)	
)	
Defendants.)	

ORDER

A memorandum dated this day is hereby incorporated into and made a part of this order.

IT IS HEREBY ORDERED that Liddell's claims for attorneys' fees and costs, H(2676)83 and H(3233)84, be and the same are granted in part and denied in part so that, for the present 12(c) interdistrict phase of the case, Liddell is awarded a total of \$122,049.25 in reasonable fees and a total of \$10,289.24 in reasonable expenses.

IT IS HEREBY FURTHER ORDERED that Caldwell's claims for attorneys' fees and costs, H(2677)83, H(3232)84, and H(3229)84, be and the same are granted in part and denied in part so that, for the present 12(c) interdistrict phase of the case, Caldwell is awarded a total of \$405,099.75 as reasonable fees, and a total of \$10,008.31 in reasonable expenses.

IT IS HEREBY FURTHER ORDERED that City Board's claims for attorneys' fees and expenses, H(2675)83, H(3074)84, and

Exhibit 3

a client. Sometime in 1972 or before, counsel for Liddell plaintiffs discerned the seed that germinated into this lengthy and for them largely successful litigation. The Court will not reduce the total compensated hours based upon the State's coattails argument.

The State contends the totals requested by plaintiffs should be reduced as excessive in light of Liddell's argument "that no additional proof was necessary for a mandatory inter-district remedy," H(3294)84 at 4-5, and plaintiffs' position that "further litigation to establish the State's liability was entirely unnecessary." H(2814)83 at 7.

If it were not for the State of Missouri and its feckless appeals, perhaps none of us would be here at this time. Further litigation to compel the State to meet its responsibilities was unquestionably necessary.

The State urges the Court not to award City Board fees for any hours reasonably expended after this Court's order approving the Settlement Plan. The State argues any results obtained after that order are due to activities in the appellate, rather than the district, court, and no fees should be awarded for services regarding budgets, otherwise the City Board has an incentive to dispute the budgets. The State further posits that services for budget disagreements between City Board and the State are not compensable via § 1988 as the disputes do not "arise" under the Civil Rights Laws but arise between two liable co-defendants.

The State argues that, due to City Board's status as a defendant in the intradistrict phase of the case, City Board should not now be awarded as costs City Board's share of the costs of court-appointed personnel. This argument is similar to the argument State defendants advanced for denial of City Board's status as a "prevailing party." This Court is not persuaded by this argument and will award City Board the full amount requested for its share of court-appointed personnel, except one-half of City Board's share of Orfield's expenses prior to July of 1981, which the Court deems applicable to housing issues.

After full consideration, the Court will award City Board \$462,230.48 in costs and expenses. See Appendix III--City Board, ¶ (G), for itemization.

(E) Apportionment

The State urges the Court to apportion the awarded fees so that the State defendants pay only their share of the total fees that might otherwise be awarded against all defendants, or not more than 1/32nd of the total award. See Southeast Legal Defense Group v. Adams, 657 F.2d 1118 (9th Cir. 1981).

The compromise settlement here was made possible through the cooperation of all parties but the State, which, through opposition and repeated appeals, has delayed implementation of a remedial plan designed to remove the last remaining vestiges of school segregation for which the State, through its constitution and statutes, remains responsible. It has continued to litigate what the other parties sought to settle, thereby increasing litigation costs for which it now seeks to avoid responsibility.

January 17, 2001

ADDENDUM TO THE TESTIMONY OF WILLIAM L. TAYLOR

In my testimony, I chronicle the history of the St. Louis school case which is a remarkable story of plaintiffs and local school officials voluntarily agreeing to remedy decades of discrimination by the State of Missouri and local school boards with a plan for voluntary desegregation. I will not read that testimony today, but I ask that it be made a part of the record of these hearings.

What I would like to focus on is the role of John Ashcroft in this case, first as Attorney General until 1984 and then as governor until 1992. In particular, I will address certain statements that Mr. Ashcroft has made in these hearings about the case and his role in it, statements that are contradicted by the record.

1. WAS THE STATE A PARTY WHEN IT WAS HELD TO BE A CONSTITUTIONAL WRONGDOER AND LEGALLY LIABLE FOR SEGREGATION OF THE ST. LOUIS SCHOOLS?

Mr. Ashcroft said it was not a party when he took over and therefore he had to litigate these findings. The fact is that the State was made a party in 1977 at the time Mr. Ashcroft was Attorney General. Thus, in 1980, when the Court of Appeals held that the state had violated the Constitution, Mr. Ashcroft had a full opportunity to litigate the issue before the courts and made a full-dress argument. *Adams v. United States*, 620 F. 2d 127, 1283 (1980) Nevertheless, he persisted in contesting state liability in appealing *Liddell* orders in 1981, 1982, and 1984. 667 F.2d 643,657 (8th Cir 1981); cert. denied 454 U.S. 1081; 677F2d.626 (8th Cir. 1982); cert. denied 459 U.S. 877; 731 F.2d 1294 (8th Cir 1981); cert denied 469 U.S. 816 (1984).

The Court of Appeals repeatedly rebuffed the State's appeals. In 1981, it said the State's appeals. In 1981, it said that the State's contentions that the 1980 decision did not settle the matter were "wholly without merit," 667 F.2d at 629. The 1984 decision recited again the constitutional misdeeds of the State. 731 F.2d at 1303, 1306.

It may be that Mr. Ashcroft has retracted his claim in dialogue with Senator Leahy on Wednesday, but I wanted to make the record clear that the State was a party and that it continued to press its claim long after the matter was seemingly settled.

2. IS IT TRUE THAT THE STATE HAD DONE NOTHING WRONG?

Mr. Ashcroft stated in his testimony that the state had "done nothing wrong" and was "found guilty of no wrong." These statements are astonishing and baseless. The Courts, on numerous occasions, had found that the State had done numerous things prior to 1954 to impose racial segregation on school districts, including participation in a scheme to have black children in the St. Louis suburban districts transported to school in St. Louis to keep the schools segregated. In the 1980 decision the District Court found that the State after 1954 "never took any effective steps to dismantle the dual system it had previously compelled." 491 F.Supp. at 351,357,359-601. The State, of course, had an affirmative constitutional duty to help dismantle the regime of segregation it had imposed on black children. Its past history and current abdication led the court to characterize it as a "primary constitutional wrongdoer with respect to the segregated conditions in the St. Louis schools." *Id.* This is hardly the picture of a blameless governmental entity that Mr. Ashcroft sought to paint.

3. IS IT TRUE AS MR. ASHCROFT CLAIMED THAT "IN ALL OF THE CASES WHERE THE COURT MADE AN ORDER, I FOLLOWED THE ORDER, BOTH AS ATTORNEY GENERAL AND AS GOVERNOR?"

Nothing could be further from the truth. one key period came in 1980 after the Court of Appeals asked the parties to explore the possibility of a voluntary inter-district remedy and Judge Meredith entered a formal order to begin the process. The State resisted the process at every turn. In March 1981, Judge Hungate, who had taken over the case, found that "the State as a matter of deliberate policy, decided to defy the authority of [this] Court" and that the State had resorted to "extraordinary machinations" in an effort to resist dismantling the dual system. H (11) 81 at 6. These findings came after a lengthy recitation of the numerous occasions on which the State had sought to delay and evade court orders. The Court considered holding the State in contempt, but decided to make one more effort to issue an order that might result in State to escape triumphantly from the consequences

of its defiance of Judge Meredith's orders. . . The Court would be doing much less than its duty if the State defendants were not held accountable for their actions." Id. at 7. This Order is included as Exhibit 4 to my testimony.

The resistance of John Ashcroft became quite personal. As I detailing my testimony, in July 1981, the Court appointed Susan Uchitelle, an employee of the State Department of Education, as interim director of a committee charged with devising a voluntary plan. The State objected strenuously to Ms. Uchitelle's appointment and filed formal objections with the Court which were later rejected. At the same time, the State sought to pressure Ms. Uchitelle to resign from this assignment. A contemporaneous log kept by Ms. Uchitelle reveals that a state education official relayed to her a threat from Mr. Ashcroft that if she chose to remain in the job she would have to resign her state job and, if she did, that she "would never receive another appointment or job from them."

Delaying tactics did not cease. Indeed, after our settlement with the 22 suburban school districts was reached and the State appealed again and continued to resist even after its appeals were exhausted, the District Court noted that the State had delayed implementation of the voluntary plan through opposition and repeated appeals and concluded that "were it not for the state and its feckless appeals, perhaps none of us would be here at this time." Order H (355)) 84 at 17,25 (December 28, 1984.)

These tactics continued through Mr. Ashcroft's tenure as governor. Judge Steven Limbaugh, a Reagan appointee to the bench, referred to conduct by the State that included "factual inaccuracies, statistical distortions and insipid remarks" regarding the Court's handling of the case. He warned the State to "desist in filing further motions grounded in rumor and unsubstantiated allegations of wrongdoing." and added that the State had even resorted to "veiled threats" toward the Court to try the "thwart implementation of the remedy." Order L (2311) 89 at 2.

In sum, contrary to Mr. Ashcroft's claim of following court orders, we have a pattern of resistance and evasion that persisted for almost a decade and that drew many court rebukes.

4. OTHER MATTERS.

While Mr. Ashcroft claims he was and is in favor of integration, he said nothing to support this during the conduct of the case. Indeed, he called the voluntary desegregation plan "an outrage against human decency." St. Louis Post-Dispatch, June 15, 1984. He opposed not only the desegregation aspects of the plan but the program to improve city schools as well, and he never offered a desegregation plan of his own.

At one point in his testimony, Mr. Ashcroft suggested that the plan was harmful because it drew middle class students out of city schools. This is flatly wrong. Seventy-five percent of children participating in the plan are eligible for free and reduced priced lunches.

Mr. Ashcroft has suggested that his conduct should be viewed along with the conduct of one of his successors as Attorney General, Jay Nixon, a Democrat. It is true that I have been critical of Mr. Nixon for his efforts to end the remedy. But there is one critical difference. In the end Jay Nixon joined with Governor Carnahan and a bipartisan majority in the Missouri legislature in successfully seeking state legislative appropriations to replace the court-ordered funding and allow the remedy to continue while the court ended active supervision, and Mr. Nixon entered into a final settlement agreement with the plaintiffs. This was eloquent testimony to the success of a plan that John Ashcroft fought at every step of the way. If he had prevailed, many thousands of St. Louis children would be denied the educational opportunities they now enjoy.

Separate schools shall be provided for white and colored children, except in cases otherwise provided for by law. Mo. Const. art. IX, § 1(a) (1945).

Several state statutes similarly required segregation in public schools. See, e.g., Act of February 6, 1847, § 1, 1847 Mo. Laws 103; Act of February 17, 1865, § 13, 1865 Mo. Laws 170; Act of June 11, 1889, § 7051a, 1889 Mo. Laws 226. For example, one statute in effect at the time Brown was decided provided that

Separate free schools shall be established for the education of children of African descent; and it shall herein be unlawful for any colored child to attend any white school, or for any white child to attend a colored school. Mo. Rev. Stat. § 163.130 (1939).

Until 1954, any school board in the State of Missouri attempting desegregation would have found itself in violation of the Constitution and statutes of the State of Missouri.

In these circumstances, the State of Missouri stands before this Court in a different light than do other parties in this case.

Eighth Circuit Court of Appeals Mandate: March 3, 1980

On March 3, 1980, the Eighth Circuit Court of Appeals found that the Board of Education of the City of St. Louis had failed to integrate the "state-mandated segregated [school] system" as required by the Supreme Court's mandates of Brown v. Board of Education, *supra*; 349 U.S. 294 (1955); Adams v. United States, *supra* at 1280. The Court of Appeals directed the district court to require "the Board of Education, in conjunction with the parties . . . to develop and implement a plan that will integrate the St. Louis public schools." *Id.*

District Court Orders

On May 21, 1980, Judge Meredith ordered State defendants, the United States and the City Board of Education [hereinafter "Politics"]:

12(a) To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the court for approval by July 1, 1980.

The Court hereby reaffirms Judge Meredith's Order in directing the City Board and the United States to cooperate in the preparation of such a plan.

Delay of Compliance with Court Orders

The questions here presented are not new to this Court. State defendants have repeatedly made application to this and other courts in an effort to delay compliance with Judge Meredith's orders.

It is clearly established that unconstitutional segregation of public schools must be remedied "with all deliberate speed." Brown v. Board of Education, supra, 349 U.S. at 201. See, e.g., Green v. County School Board of New Kent County, 391 U.S. 430, 439 (1968) ("The burden on a school board today is to come forward with a plan that promises realistically to work and promises realistically to work now."); Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 234 (1963) ("The time for mere 'deliberate speed' has run out . . .").

Notwithstanding a clear constitutional obligation, the following chronological review illustrates defendants' continual delay and failure to comply.

A. June 17, 1980: State defendants appealed Judge Meredith's Order to the Eighth Circuit Court of Appeals. On August 15, 1980, the Appeals Court denied the request for a stay.

B. June 20, 1980: Judge Meredith extended the deadline for filing a 12(a) plan until July 14, 1980.

July 14, 1980: Defendants submitted an Interim Joint Report and Judge Meredith granted defendants an extension until August 22, 1980, in which to file a final report.

August 22, 1980: Defendants submitted a Second Interim Joint Report.

C. September 2, 1980: Mr. Justice Blackmun denied the State defendants' request for a stay of Judge Meredith's May 21, 1980, ruling.

September 9, 1980: Mr. Justice Rehnquist denied the same request.

D. September 17, 1980: Judge Meredith amended paragraph 12(s) of the order dated May 21, 1980, "by changing the date of July 1, 1980 to December 15, 1980"

Inefficiency of Compliance

On December 15, 1980, State defendants filed a plan pursuant to the Court's May 21, 1980, order, as amended. On the same date, the City Board of Education and the United States filed a Joint Report Under Paragraph 12(a) of the Court's Order of May 21, as amended, stating:

[N]otwithstanding the efforts of all parties, it has proven impossible to arrive at the degree of consensus which is necessary for a Joint Report. Therefore, the United States and the City Board felt constrained to prepare and submit the present Report independently from the State defendants Several draft plans have been circulated by the State . . . but none of them addresses the requirements of the Order to a degree sufficient to reach or even approximate compliance.

Following a thorough review of the State's plan, Judge Meredith issued an order and memorandum, on December 19, 1980, stating:

It is the opinion of this Court that the plan submitted by the State of Missouri is insufficient for this Court to make a determination as to whether or not it is feasible to pursue further the voluntary avenues of integration with the County schools.

The Judge ordered the State of Missouri to "submit a new plan of voluntary and cooperative desegregation on or before February 2, 1981." Further, the Judge ordered:

The State of Missouri shall report back to the Court on March 2, 1981 as to those districts in St. Louis County, Jefferson and St. Charles Counties that are willing to participate in the plan.

Continuing Delay

On January 28, 1981, State defendants filed a motion for a stay of Judge Meredith's order of December 19, 1980.

The parties to this action have filed three motions in opposition to State defendants' motion for stay; one motion has been filed in favor:

1. In Opposition -- February 2, 1981, Response of the United States in Opposition to Motion for Stay of this Court's Order of December 19, 1980.
2. In Opposition -- February 5, 1981, Board's Response to State's Motion to Stay Order of December 19, 1980 and to State Report under Paragraph 12(a).
3. In Opposition -- February 12, 1981, Adams, Plaintiff-Intervenor's Memorandum in Opposition to All Motions for Stays and Further Delays.
4. In Support -- February 4, 1981, Suggestions of the Special School District¹ of St. Louis County in Support of State Defendant's Motion to Stay the Order of the Court of December 19, 1980.

On February 2, 1981, State defendants filed a Report Pursuant to the Court's Order of December 19, 1980. The Report states in part that State defendants are unable to file a "meaningful, workable, voluntary plan which is educationally sound," because State defendants were unable to gather necessary data and information due to the threat of future interdistrict litigation.

¹The Special School District is itself resisting an order of the Eighth Circuit Court of Appeals to integrate vocational schools. ("We see no reason to prevent the opening of a consolidated integrated vocational school at the beginning of the 1981-1982 school year." Liddell v. Board of Education of the City of St. Louis, supra, slip op. at 19.) In re Special School District of St. Louis County, No. 80-1456 (8th Cir., Aug. 15, 1980) (denying petition for writ of prohibition), reh. den. (8th Cir., Sept. 10, 1980). See also Special School District of St. Louis County v. Mallory, No. 80-876-C(5) (E.D. Mo., Sept. 23, 1980) (dismissing request for injunction and declaratory judgment); Special School District v. Mallory, No. 80-1155-CV-C (W.D. Mo., filed July 1, 1980) (petition for injunction and declaratory judgment).

On February 13, 1981, the Eighth Circuit Court of Appeals denied State defendants' motion for a stay of Judge Meredith's December 19, 1980, order. State defendants filed a notice of appeal of the December 19 ruling to the Eighth Circuit Court of Appeals on February 17, 1981. Notice was filed without a request for certification by the district court under 28 U.S.C. § 1292.

Eighth Circuit Court of Appeals Opinion: February 13, 1981

The Eighth Circuit Court of Appeals upheld Judge Meredith's May 21, 1980, Order, stating:

We note that the district court has found it necessary to extend the deadlines for filing the proposed plans under paragraph 12(a)-(c) and that it is apparently having some difficulty in getting complete and adequate proposals from the parties. We take this opportunity to stress the legal obligation of the State of Missouri, the United States and the Board of Education to develop and implement the plans contemplated by paragraph 12. It is imperative that the district court countenance no excuse for further delay.

Liddell v. Board of Education of the City of St. Louis, supra, slip op. at 20 n.6.

On February 26, 1981, this Court denied the motion which State defendants filed on January 28, 1981, for a stay of Judge Meredith's December 19, 1980, order. Judge Meredith's order required defendants to file a plan on February 2, 1981, and a report on March 2, 1981.

II. Grounds for Contempt Proceedings.

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

Let there be no misunderstanding. [This is not a simple case of a private litigant failing to take proper measures to comply with the Court's orders. This case is quite different. The public interest is involved to a much greater extent when a party's actions serve to undercut the implementation of the Court's desegregation orders.] See Morgan v. McDonough, 540 F.2d 527, 533-34 (1st Cir. 1976), affirming the district court's power to fashion

an extraordinary remedy to deal with intransigent and obstructionist officials who failed to engage in cooperative, voluntary efforts and continuously resisted desegregation in a pattern of defiance and delay.

[The constitutional dimensions, so important and so far-reaching in dealing with the rights of children and their parents and guardians in school desegregation cases, demand full respect of the federal court system.] See Harvest v. Board of Public Instruction of Mantee County, Florida, 312 F.Supp. 269, 274-75 (M.D. Fla. 1970), denying a motion to stay a mandatory injunction requiring school desegregation.

To grant the State defendants a stay would permit the State to escape triumphantly from the consequences of its defiance of Judge Meredith's orders. If the State's position rests on a correct view of the law, it follows that the law can be flouted and brought into disrepute by the defendants with impunity.

The Court would be doing much less than its duty if the State defendants were not held accountable for their actions. Where there has been willful disobedience to an order of the court and a measure of contumacy on the part of the defendant, inveterate principles of both equity and the common law mandate that the Court exercise jurisdiction to punish for contempt of court. See 8 Halsbury's Laws of England 20 (3d ed. 1968), delineating the punitive jurisdiction of court's contempt power as founded upon the good, not of the plaintiffs or of any party to the action, but of the public.

The power to punish for contempt is a drastic remedy. Contempt jurisdiction should be exercised with the greatest caution. If this Court's orders are complied with, there will be no need for contempt proceedings. If they are not executed, the Court will order the State defendants, the City Board of Education and the United States to show cause why they should not be found in contempt.

III. Avoidance of Contempt Proceedings
Compliance with Court Orders

The State defendants, in conjunction with the Board of Education of the City of St. Louis and the United States, [the Politics], shall comply with Judge Meredith's orders within sixty days of the date of this order, with an interim progress report to be filed within thirty days. If the Politics, jointly and/or individually, fail to comply, this Court may accept plans submitted by any parties to this suit or by a Special Master and/or a Review Panel appointed by this Court. Failure of State defendants, the City Board of Education, and the United States to submit an interim plan in compliance with this order within thirty days can result in the issuance of an order of contempt.

Failure of the Politics to submit a plan jointly and/or individually, will leave this Court no alternative but to initiate contempt proceedings against the recalcitrant Polity or Politics. This Court will be left no alternative but to adopt a plan to remedy the effects of constitutional violations. The power of the Court in this regard is well established. See Brown v. Board of Education, 349 U.S. 294, 300 (1955) ("In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs."); Morgan v. McDonough, *supra* at 533 ("A district court's power to fashion and effectuate desegregation decrees is broad and flexible and the remedies may be 'administratively awkward, inconvenient, and even bizarre.' Swann v. Charlotte-Mecklenburg Board of Education, 401 U.S. 1, 15-16 (1971)."); Morgan v. Kerrigan, 509 F.2d 599, 600 (1st Cir. 1975) ("The district court found pervasive violations of the constitutional rights The court's obligation is to rectify those violations, availing itself in so doing of the breadth and flexibility inherent in equitable remedies."); Davis v. School District of the City of Pontiac, Inc., 487 F.2d 890, 891 (6th Cir. 1973) ("Once a past constitutional violation has been established, 'the scope of a district court's equitable powers to remedy past

wrongs is broad"); Hart v. Community School Board of Brooklyn, 383 F.Supp. 699, 755-56 (E.D. N.Y. 1974), aff'd, 512 F.2d 37 (2d Cir. 1975) ("Having found a violation, the court has broad equitable powers to order changes designed to eliminate future misconduct and to reduce the effect of prior violations. . . . That a decree may require expenditure of public funds is no bar to corrective action."). See also Berger, Curtis J., Away from the Court House and Into the Field: The Odyssey of a Special Master, 78 Colum. L. Rev. 707 (1978) (delineating the extensive role delegated by the court to a special master in Hart v. Community School Board of Brooklyn, supra, to design a plan to desegregate schools in south Brooklyn, New York).

In order to ensure that a plan is in fact produced in a timely manner for this Court's consideration,

IT IS HEREBY ORDERED that Edward T. Foote, Chairman of the Desegregation Monitoring and Advisory Committee, shall prepare and file a plan by March 27, 1981, in accordance with Judge Meredith's orders of May 21, 1980, paragraph 12(a) and December 19, 1980.

IT IS HEREBY FURTHER ORDERED that Dr. Gary Orfield, the court appointed expert, shall review the study as submitted by the Chairman within ten days following filing of such plan, and report to the Court his findings and recommendations.

IT IS HEREBY FURTHER ORDERED that nothing herein relieves the obligation of the Parties to comply with the orders of Judge Meredith.

IV. Board's Motion to Stay Discovery

The Eighth Circuit Court of Appeals, on February 13, 1981, stated: "We see no reason to prevent the opening of a consolidated integrated vocational school at the beginning of the 1981-1982 school year." Liddell v. Board of Education of the City of St. Louis, supra, slip op. at 19.

In an effort to facilitate and expedite voluntary and cooperative planning, this Court grants a stay of discovery for a

period of sixty days from the date of this order, except insofar as discovery relates to the Special School District and requirements under paragraph 12(b) of Judge Meredith's May 21, 1980, order. Therefore,

IT IS HEREBY ORDERED that discovery is stayed for a period of sixty days from the date of this order, except insofar as discovery relates to the Special School District and requirements under paragraph 12(b) of Judge Meredith's May 21, 1980, order.

V. Protective Order

The Protective Orders issued by Judge Meredith on June 17, 1980, and October 6, 1980, remain in full force and effect, to-wit:

IT IS HEREBY SPECIFICALLY ORDERED that nothing any of the parties may do pursuant to these previously mentioned Orders will in any way prejudice their position on appeal and they will be deemed to have done such actions under order of the Court.

* * *

IT IS FURTHER ORDERED that any school district of St. Louis County that enters into a plan of voluntary cooperation with the School Board of the City of St. Louis will not in any way prejudice its legal rights to oppose or resist a suit or orders requiring compulsory cooperation.

And,

IT IS HEREBY SPECIFICALLY ORDERED that nothing any of the parties may do pursuant to the order of this Court of September 17, 1980, will in any way prejudice their position on appeal and they will be deemed to have done such actions under order of the Court.

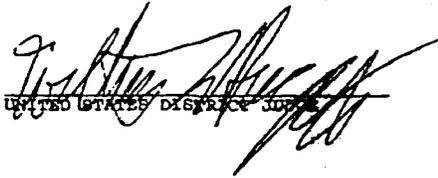
* * *

IT IS FURTHER ORDERED that any school district of St. Louis County that enters into a plan of voluntary cooperation with the School Board of the City of St. Louis will not in any way prejudice its legal rights to oppose or resist a suit or orders requiring compulsory cooperation.

In order to facilitate cooperative and voluntary planning in this suit, the Court emphasizes that:

IT IS HEREBY FURTHER ORDERED that any settlement discussions, negotiations, proposals, or responses to proposals arising in connection with the development of a voluntary cooperative desegregation plan shall not be used in evidence in this case.

Dated this 4th day of March, 1981.


~~UNITED STATES DISTRICT JUDGE~~

Chairman LEAHY. Ms. James, I understand from Senator Hatch that you have a conflict. You were supposed to be on a later panel, and to accommodate your schedule, we put you on this panel. Is that correct?

Senator HATCH. I don't know.

Kay, can you be here tomorrow? Because if you can, that would be better to have you.

Chairman LEAHY. I am trying to accommodate her.

Senator HATCH. Why don't we get the last three witnesses and have them give their testimony, and then if you can stay, that would be great.

Chairman LEAHY. I think we want to just keep to the—

Senator HATCH. Why?

Chairman LEAHY. We will start to question these witnesses, but, Ms. James, as I said to you, I would be perfectly willing to have her come here.

Why don't you give your testimony, Ms. James.

**STATEMENT OF KAY COLE JAMES, HERITAGE FOUNDATION,
WASHINGTON, D.C.**

Ms. JAMES. Thank you, Mr. Chairman, and I do appreciate your accommodation. I will try to speak at a little more rapid pace than would be my normal cadence to get it in, and I do understand that we are all operating under time constraints.

I want to thank you for the opportunity to testify on behalf of the nomination of John Ashcroft to be Attorney General of the United States.

My name, in fact, is Kay Cole James, and I am a senior fellow at the Heritage Foundation. I have known Senator Ashcroft for a number of years and in a variety of roles, beginning in 1991 as Governor and as head of the National Governors' Association, as a candidate, also as a member of the U.S. Senate, as a Presidential candidate, and as a conservative activist.

Albert Einstein once said it is the duty of every citizen according to his best capacities to give validity to his convictions in public affairs. John Ashcroft's long career not only exemplifies the virtue of devoted public service, but it is a testament to his efforts to give validity to his convictions.

I have watched these hearings and thought that there was an important distinction that needed to be made. There is an enormous difference between being an advocate for a particular viewpoint or course of action, an activist, and in actually serving in Government in an elected or appointed position. Each involves vastly different roles, different functions and different goals and processes. Many spend their entire lives as advocates and truly do not understand the very different role of governing or interpreting the law.

Being a State Attorney General or a Governor or a Federal Cabinet member is quite different from being an activist or a partisan. Many individuals are not capable of making the transition. However, by his testimony and by his record as Governor and Attorney General, John Ashcroft has demonstrated that he understands the difference between being an activist and being a public servant.

At the root of Senator Ashcroft's strong views is his religious faith which he has said is the bedrock of the principles which shape his life. Unfortunately, that faith has been dragged into the public debate and has been used to call into question his fitness for public service. This sentiment troubles me greatly as an American.

Senator Ashcroft's opponents of veered perilously close to implying that a person of strong religious beliefs cannot be trusted with this office, perhaps with any office, on the pure basis that such a person will be unable to resist the temptation to use the office to impose his religious beliefs on others. This assertion troubles me for many reasons more so than I would have thought that we as a Nation had long ago transcended such prejudices.

John Kennedy faced similar questions and attacks about a feared conflict between his Catholic faith and the duties of public office and demonstrated that ancient prejudices of this type have no place in our democracy.

Similarly, I was heartened by Senator Lieberman's many references during the recent Presidential Campaign to the importance of faith in his life and in the Nation as a whole and his refusal to be silenced by those who believed that mere discussion of personal faith in public life is a danger to be suppressed. Indeed, Al Gore professed wondering what would Jesus do when confronted with a difficult situation.

Several members of the Senate have questioned whether or not a man of strong personal faith and conviction can set aside his personal beliefs and serve as the Attorney General for all citizens. I would hope that this answer is obvious not only from John Ashcroft's 25 years of remarkable service, but from the history of our Nation as well. To the contrary, I believe that John Ashcroft is precisely the type of individual we need in the public arena, a man of strong principles, great integrity and intellect, who does not shirk from engaging in public discourse about the great issues of our day, and does so in a way that demonstrates not only his respect for others and divergent views, but an absolute and passionate commitment to the rule of law.

The system our founders designed, of course, is famous for its many checks and balances from which no public official is immune. Nevertheless, the charge is still made that these are insufficient to deal with a man of religious conviction, as such a person cannot be trusted to faithfully execute the laws, especially those which may conflict with his deeply held belief. I reject such religious profiling.

On this matter, let me attempt to reassure John Ashcroft's opponents by enlisting the very thing they profess to fear most, his religious faith. As with every other holder of public office, John Ashcroft must take an oath before assuming his responsibilities, and in this secular age, when even a hint of religion in the public sphere can arouse fierce opposition. We keep the religious element in our oath precisely because we understand the importance to the individual. John Ashcroft will raise his hand if he is approved by the Senate and voted on to become the Attorney General, and he will take an oath of office. And I think that it is great. I think that at this particular time in American history it is so important to all of us to have people with character, with integrity, that when they

raise their hand and they promise to defend and protect this great nation, we can count on them to do that.

Mr. Chairman, I have other comments, and I will reserve them for the question and answer period, and submit them for the written record. And thank you, again, very much for your accommodation.

[The prepared statement of Ms. James follows:]

STATEMENT OF KAY COLES JAMES, HERITAGE FOUNDATION, WASHINGTON, D.C.

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify on behalf of the nomination of John Ashcroft to be Attorney General of the United States. My name is Kay Coles James and I am a senior fellow at The Heritage Foundation. I have known Senator Ashcroft for a number of years and in a variety of roles, beginning in 1991: as governor and head of the National Governors' Association; as a candidate for and then as a member of the United States Senate; as a presidential candidate; and as a conservative activist.

Albert Einstein once said, "It is the duty of every citizen, according to his best capacities, to give validity to his convictions in public affairs." John Ashcroft's long career not only exemplifies the virtue of devoted public service, but it is a testament to his efforts to "give validity to his convictions."

I am tempted to focus my remarks on the reasons why Senator Ashcroft would make an outstanding Attorney General, for that would be a case that is both easy and enjoyable to make. If the vote to confirm were to rest on the nature of his character or his integrity, then I have little doubt that your decision would be a unanimous one. But, unfortunately, the public debate has become focused on other things. It has been diverted into areas that I believe not only are not founded on fact, but also are harmful to the larger process in which we are currently engaged. So, with your permission, I will use my time to address some of the wayward elements of the public debate that has unfolded outside these walls, a debate that I believe is profoundly miscast.

I have watched these hearings and thought that there was an important distinction that needed to be made. There is an enormous difference between being an advocate for a particular viewpoint or course of action—an activist, and in actually serving in government in an elected or appointed position. Each involves vastly different roles, different functions, and different goals and processes. Many spend their entire lives as advocates and truly do not understand the very different role of governing or interpreting the law. Being a state attorney general or a governor or a Federal Cabinet member is quite different from being an activist or a partisan. Many individuals are not capable of making the transition. However, by his testimony and by his record as governor and attorney general, John Ashcroft has demonstrated that he understands the difference between being an activist and being a public servant.

At the root of Senator Ashcroft's strong views is his religious faith, which he has said, is the bedrock of the principles which shape his life. Unfortunately, that faith has been dragged into the public debate and has been used to call into question his fitness for public service. This sentiment troubles me greatly as an American. Senator Ashcroft's opponents have veered perilously close to implying that a person of strong religious beliefs cannot be trusted with this office—perhaps with any public office—on the spurious basis that such a person will be unable to resist the temptation to use the office to impose his religious beliefs on others. This assertion troubles me for many reasons, none more so than that I would have thought that we, as a nation, had long ago transcended such prejudices. John Kennedy faced similar questions and attacks about a feared conflict between his Catholic faith and the duties of public office and demonstrated that ancient prejudices of this type have no place in our democracy. Similarly, I was heartened by Senator Lieberman's many references during the recent presidential campaign to the importance of faith in his life and in that of the nation as a whole and his refusal to be silenced by those who believe that the mere discussion of personal faith in public life is a danger to be suppressed. Indeed, Al Gore professed wondering "What would Jesus do?" when confronted with a difficult decision.

Several members of the Senate have questioned whether or not a man of strong personal faith and conviction can set aside his personal beliefs and serve as the Attorney General for all citizens. I would hope that the answer is obvious not only from John Ashcroft's twenty-five years of remarkable service, but from the history of the United States as well. To the contrary, I believe that John Ashcroft is pre-

cisely the type of individual we need in the public arena: a man of strong principles, of great integrity and intellect, who does not shirk from engaging in public discourse about the great issues of our day, and does so in a way that demonstrates not only his respect for others and divergent views, but an absolute and passionate commitment to the rule of law.

Since he is being considered for high public office, we might well ask: How would the Framers of the Constitution have looked upon a man of this type? The answer is obvious: We can assume they would have welcomed him as one of their own, for these characteristics describe those same men as well. I draw this comparison because it is directly relevant to the current debate and to the process of confirmation: Because the Framers could not foresee every eventuality, they designed a system they believed would be able to operate under virtually any condition. Being men of deep convictions and forceful character, their plans assumed that national offices would continue to be occupied by individuals with strong personalities and opinions, and especially by persons of faith. Not only were these men veterans of many sharp political battles, they expected that such conflicts would remain a permanent feature of the national government. I am certain that, far from being concerned, the Framers would be gratified that, two centuries later, the responsibilities of public office were still being entrusted to men of John Ashcroft's caliber.

The system they designed is, of course, famous for its many checks and balances, from which no public official is immune. Nevertheless, the charge is still made that these are insufficient to deal with a man of religious conviction, as such a person cannot be trusted to faithfully execute the laws, especially those which may conflict with his deeply-held beliefs. On this matter, let me attempt to reassure John Ashcroft's opponents by enlisting the very thing they profess to fear most: his religious faith.

As with every other holder of public office, John Ashcroft must take an oath before assuming his responsibilities. In this secular age, when even a hint of religion in the public sphere can arouse fierce opposition, we keep the religious element in our oaths, precisely because we understand its importance to the individual: the pledge is not only being made to the temporal world, but to one's Creator. Some may view these oaths as a dusty remnant of a longago age, the final ritual in a succession of formalities in the path to public office. I know that this is not Senator Ashcroft's view. I know—and, more importantly, he knows—that when he places his hand upon the Bible, the oath he will freely take will require him to faithfully execute the laws of the land, even those he himself might find repugnant. If there were any reservation in his heart regarding his ability to carry out his responsibilities, if he held some secret plan to betray the duties of his office, he would not take that oath; he could not take it. He could have no agenda higher than that which his oath prescribes for him. Such sentiments may appear a quaint notion to some, but they fill me with great confidence, and I would commend them to you as well.

Some activists have shamelessly played the "race card" and suggested that John Ashcroft is a racist, at worst, or insensitive, at best. I really doubt that there is any person who knows him who actually believes these charges. However, apparently there are some who believe that political advantage may be gained by attempting to portray him as such. Since the facts will not support a charge of this type, this goal can only be accomplished through innuendo, by halfspoken suggestions, carried forward by a cynical conviction that the public can be made to believe anything.

I'm certain we all can see the irony here: Ashcroft is a man whose integrity cannot be seriously questioned, a man whose forthright opinions are a matter of public record. For this reason, those of his opponents who would seek to discredit him must adopt an approach which is the very antithesis of the man whose character they hope to distort: they must imply things without actually saying them, they must whisper their allegations from the shadows in the hope and expectation that no one will shine a light on their charges.

Perhaps it would be best to ignore those charges, but I would like to comment on them nonetheless. I am an African-American woman. I was born in the South and grew up during a time when the dead hand of the past lay heavily on everyone who lived there. As a child and as an adult, I encountered racism on a daily basis. It was no abstract concept to be regretted: it structured every element of our lives. I lived with it, not merely in its overt, public, legally mandated forms, but in all of its subtleties, in all of its forms, in every crevice of life it seeped into. I know all of the shadings of racism; I understand its many manifestations and can see past the smiling face it often wears.

It is because of this first-hand experience that I can say that John Ashcroft is no racist. I know there are many who strongly disagree with Senator Ashcroft's views on various subjects, and they have every right to make their disagreements known. To disagree with someone philosophically is perfectly acceptable; as it is to differ

with their ideology; indeed, to hold someone accountable for their positions and actions is an important part of the “advise and consent” function of this body. However, all of these things can and should be done in a way that respects the conviction, person and beliefs of those with whom you disagree. This has been a hallmark of Senator Ashcroft’s career and I hope that the same consideration would be shown to him.

In 1761, a Boston lawyer, James Otis, wrote, “The only principles of public conduct that are worthy of a man are to sacrifice estate, ease, health, and applause, and even life, to the sacred calls of his country. These ... sentiments, in private life, make the good citizen; in public life, the patriot and the hero.” John Ashcroft’s life has been an honorable and devoted response to the “sacred calls of his country.” I am pleased to be here today to support his nomination and I respectfully encourage the Senate to confirm him as the next Attorney General of the United States.

Thank you.

Chairman LEAHY. Thank you, Ms. James. Again, so we know the schedule, we will go to 6. We will then—unless somebody is in the middle of an answer, of course, we will reconvene at 9, we will go without any breaks until we finish, if that is possible.

Ms. James, I hope you heard my opening statement on these, that no member of this Committee makes the charge of either racial or religious bias when it comes—when it refers to Senator Ashcroft, and I also stated that we all know better.

I would like to clarify a misperception that has created some comments during the testimony of Senator Ashcroft about the role of the late Mel Carnahan, the St. Louis desegregation case. Mr. Carnahan was the treasurer of the State of Missouri during the early 1980’s. The state was ordered to make payments to fund desegregation. Under Missouri law the treasurer could be held personally liable for making a payment without the warrant of the commissioner of administration of the State of Missouri. When Mel Carnahan was asked to sign a multimillion dollar check, he did ask on the state’s behalf—he waited for the U.S. District Court to issue an order telling the commissioner of administration to issue the necessary warrant, instructing him to do it. Once he had the legal authority, he went and issued a check, so I did not want anybody to have the impression that the late Mel Carnahan in any way sought to slow down the progress of desegregation in Missouri.

And Mr. Taylor, during his testimony, Senator Ashcroft criticized the Kansas City school desegregation litigation. He said it was not helping children. So let me ask you something about the St. Louis desegregation case.

While then Attorney General Ashcroft was litigating that case, he convinced the Eighth Circuit that the state should not bear the cost of transferring students from one suburban district to the other. That part of the court’s order covered only 300 students, who were just a few months from being in the school year. I understand that then Attorney General Ashcroft moved immediately to cutoff the state’s payments for those students, which severely disrupted the education of those 300 children.

If that is correct, is that something that would have helped children, and how did the court react to that?

Mr. TAYLOR. You are entirely correct, Mr. Chairman. It was during the middle of the school year that then Attorney General Ashcroft asked the children be sent back to the schools that they had transferred from, and it would have been enormously disruptive. And the court recognized that it would not have furthered

their education, and it was probably one of the more blatant of many actions which did not serve the interest of school children.

Chairman LEAHY. And I understand that he had called the voluntary desegregation plan an outrage against human decency, an outrage against the children of this state. That was in the St. Louis Post Dispatch in 6-15-84.

But then I understand that he made political use of the fact that he was nearly subject to contempt of court from a Federal judge, saying he had done everything in his power legally to fight the desegregation plan, and to prove his point he said, "Ask Judge Hungate, who threatened me with contempt." Is that the words of somebody who was supporting a plan of integration?

Ms. JAMES. It is not the words of somebody who was supporting a plan. These were statements he made during a Republican primary against—where he was running against Gene McNary, who was another opponent of desegregation, and they were in many respects echoing the words that I heard during the 1950's and the 1960's during an era of massive resistance.

I should add that Senator Ashcroft not only opposed this voluntary plan, but he also opposed other aspects of the court order that would require the state to pay money to improve the conditions of African-American children. He opposed funding for a school improvement plan in the central city, and issued a press release about that. And he never, never during the course of all the years that he was involved in the case, offered any kind of alternative program that he suggested would work better to provide educational opportunity for minority children.

Chairman LEAHY. Thank you. Mr. Henderson, the civil rights community's reaction to this nomination is what you have already stated. How does that compare to previous nominations for Attorney General, including nominations made by Republican presidents?

Mr. HENDERSON. Well, Mr. Chairman, I can assure you that many organizations within the civil rights community have never previously opposed an executive branch nominee for either the position of Attorney General, or for that matter, others. This is not something that is done regularly, very often. It is unusual. And what makes it especially disappointing in this instance is that many of us had hoped that with the new election, the opportunity to bring the country together in the spirit of cooperation and bipartisanship would have been a positive gesture.

Certainly there have been others who have been opposed in the past, but as I said to you, this is not a general matter that we undertake and we certainly don't undertake it lightly. And we see this as an only option when issues of principle, such as those involved in the direction of the Department of Justice are involved.

Chairman LEAHY. The red light is on, so I yield to Senator Hatch.

Senator HATCH. Well, let me just say I am pleased to have all of you here. I have listened carefully to your testimony, and I have been very interested in it. That is all I am going to say.

Chairman LEAHY. Then we will go to Senator Kennedy.

Senator KENNEDY. Thank you very much. And thanks very much to the panel for all of your comments.

Mr. Taylor, I hope Mr. Chairman, that Senator Ashcroft will be given Mr. Taylor's testimony and be invited to make comments on it, so that we have that record. Because what you have said is basically that Mr. Ashcroft said initially the state was not involved. And you have indicated that they were involved. He indicated that he had complied with all the court orders. You have given us chapter and verse of the actions that were taken, that would cast considerable question and doubt on that. He also indicated that he was just conforming to the law, I mean, trying to test the law, and doing it the way that it should be done, in the court of law. And your response on that is that the judges that have the responsibility in the court found that these were frivolous. Let me hear from you what the judges said when he kept repeating and repeating and repeating, challenging the court orders that were ordering him to come up with a voluntary desegregation plan.

Was he not ordered in 1980—was there not a court order requiring Attorney General Ashcroft to submit a plan for desegregation within 60 days?

Mr. HENDERSON. That's right. And he did not submit the plan, and—

Senator KENNEDY. Excuse me. Did he submit the plan?

Mr. HENDERSON. He did not submit the plan, and that I think was part of what led to this court order that I have quoted, which said that the State had defied the authority of the court and had resorted to extraordinary machinations in order to resist dismantling the dual system.

Senator KENNEDY. Now, this is how long after *Brown v. Board of Education*?

Mr. HENDERSON. This is 1981, so it is 26 years after *Brown*.

Senator KENNEDY. And spell out what was happening in the rest of the country? Was the rest of the country moving ahead in terms of trying to address this complex, difficult, and in many instances painful situation? I know it wasn't easy in my own city of Boston. But were they trying to move ahead in all parts of the country?

Mr. HENDERSON. Well, certainly, and there had been widespread desegregation throughout the South after the Supreme Court decided the *Green* and the *Swann* cases in the 1970's.

Now, Missouri was one of the de jure States. It was covered by *Brown v. Board of Education*, and yet in Missouri in 1980 and 1981, you still had a condition of widespread segregation that the court felt it had to deal with.

Senator KENNEDY. Well, is it fair to say that it was over 16 years, 8 years when he was Attorney General and 8 years a Governor, that this case wasn't settled?

Mr. HENDERSON. Well, it was settled over his objection while he was Attorney General and his appeals were rejected, and then the State continued, as Judge Limbaugh's order said, to try to obstruct implementation and not to fund the settlement that all the other parties had agreed to and that the court had said, had entered as a consent decree and said was the law of the case.

Senator KENNEDY. And did at some time this get settled after Governor Carnahan—

Mr. HENDERSON. Well, then, in the early 1990's, the State moved under another Attorney General to bring the case to a close, to

achieve what was called unitary status. And we went to trial in 1996, and the court then appointed William Danforth as the settlement coordinator in the case, and Danforth had made his own study, Dr. Danforth had made his own study, found that this was a very valuable and workable plan, and he suggested—and we then went by joint—I mean, going to the State legislature, and we got the legislature by a bipartisan vote and with Governor Carnahan's help to approve enough money to carry on the remedy, and then we entered into a new settlement, which I think is what you are—

Senator KENNEDY. OK. How are the students doing, very quickly?

Mr. HENDERSON. The students are doing—most of the students are doing fairly well. The students who have transferred to the suburban school systems—and I have to tell you that, contrary to what I think Mr. Ashcroft said, 75 percent of these kids are poor. They are free and reduced price lunch eligible students. They are graduating high school at twice the rate of students in the city of St. Louis and students in other places, and they are going on to college at a very great rate. So they are doing well, and that program is working well.

Senator KENNEDY. Finally, Pastor Rice, we want to thank you for your testimony and for your presentation. You are a man of deep faith and obviously committed to your community and equality for all.

Yesterday, we heard Senator Ashcroft respond to questions regarding his interview with Southern Partisan magazine and his speech at Bob Jones University. Both took place while he was representing Missouri in the U.S. Senate, a State with approximately 500,000 African-American residents. Would you tell the Committee what impact those events had on African-Americans in your St. Louis community? Were they surprised or hurt? Did they care?

Rev. RICE. Yes, Senator. They were past surprise. They were devastated, and they cared greatly. Not only did they care greatly, several petitions had been offered to the Senator through several different grass-roots organizations asking him to return that honorary degree to the Bob Jones University, and to this point, we have gotten no response. And so it was hurting and devastating to many of our community.

Let me just say for the record that some say that we cannot speak in one voice, but I want to say that it was over 93 percent of the St. Louis and St. Louis area and Missouri of African-Americans that voted against John Ashcroft in this last November election. I think that is pretty close to a good voice.

Chairman LEAHY. Senator Specter?

Senator SPECTER. Thank you.

Mr. Taylor, you have an extraordinary record for civil rights beyond any question, and I compliment you for that.

Mr. TAYLOR. Thank you, Senator.

Senator SPECTER. Senator Danforth, former Senator Danforth, testified yesterday that Senator Ashcroft in the litigation was doing his job as a vigorous advocate. Would you have any suggestion for how a Senator would evaluate the difference in judgments between you and Senator Danforth, without going into the voluminous

records and practically relitigating the case, at least on an individual basis?

Mr. TAYLOR. Well, I appreciate your remarks, Senator. I think the best way is to look at what the court said about then-Attorney General Ashcroft's performance, and I am not sure you were here when I—

Senator SPECTER. I was here. The follow-up question to that is: Did the court ever hold him in contempt?

Mr. TAYLOR. No, but it said that it was prepared to hold him in contempt, and it said that he had defied the orders of the court and engaged in extraordinary machinations.

Senator SPECTER. I heard you said that before, and those are tough words. Did the court ever impose sanctions?

Mr. TAYLOR. No. What happened after that was the Attorney General turned in—his responsibility was to turn in a plan, a voluntary plan, and the court looked at it and found it so sketchy and inadequate that it just decided to disregard it and go forward with the effort without the State's participation to bring about voluntary desegregation.

Senator SPECTER. Mr. Taylor, I raised the question as to whether the court ever acted—they can act, they can hold you in contempt, they can impose sanctions. When I was district attorney, I was held in contempt of court 1 day for pressing a sentence on a narcotics pusher, Arnold Marks, who got a life sentence when he had 280—he has several hundred thousand dollars' worth of heroin. So if a prosecuting attorney gets out of line in the eyes of the court, there are sanctions.

So I just wonder why, if it was all that bad, no sanctions were imposed on Ashcroft.

Mr. TAYLOR. Well, I think, Senator—I mean, I cheerfully concede that he was never held in contempt, and as far as I know, he was never sanctioned under Rule 11. But the court did evaluate his performance, and the record speaks for itself about how many times he sought to file motions, to relitigate questions that were already settled, and to do other things that the court said added up to a record of defiance.

And I don't know—you know, I don't think the sole standard is contempt. I would note that I am not sure what kind of attention former Senator—

Senator SPECTER. Mr. Taylor, let me pose it from a little different angle because there is very limited time here. Missouri is a pretty moderate State. In my day here, they sent Eagleton and Danforth and Bond.

Mr. TAYLOR. Right.

Senator SPECTER. And shortly before I came, they sent Symington. It is a State with a very moderate background, and Senator Ashcroft was elected five times, twice as Attorney General, twice as Governor, then again as Senator. If his conduct was so palpably outrageous, how in a moderate State could he be re-elected? If a Senator in Pennsylvania did what you say Ashcroft did, he couldn't be re-elected. And I think there are a lot of similarities between the States.

Mr. TAYLOR. Well, I might defer to my friend, Reverend Rice, to answer that question, but I would note that, moderate as it may

be, Missouri has a very long-term history of racial discrimination, which it has been struggling to eliminate. And some of the seminal cases, back to *Jones v. Mayer* and other cases of discrimination, came to the Supreme Court from the State of Missouri.

I can testify, Senator, because I spent a lot of time out there, that race relations have been in a very difficult state.

Senator SPECTER. I have one more question—and the warning light is on—for you, Mr. Woodson. You have heard what Mr. Taylor has had to say, and at least in his view—and he is a man of substantial standing in the civil rights area and describes Senator Ashcroft's conduct in very extreme terms. You say the African-American community doesn't speak with a single voice. How would you justify Senator Ashcroft's conduct in light of what Mr. Taylor has said?

Mr. WOODSON. There has never been—

Senator SPECTER. May the record show my red light just went on.

Mr. WOODSON. There has never been any single-mindedness on the issue of desegregation. Polls continually suggest, point out that in the black community from the late 1960's to forward, 50 to 60 percent of black Americans support desegregation in principle, but object to it in strategies in which it is carried out.

Senator KENNEDY's own city of Boston, in 1973, Judge Garrity, before he made his ruling, asked the community, Matapan and Jamaica Plain and all the grass-roots people, people who were suffering the problem, what they wanted. There were town meetings all over the city for about 9 months. The people in the community came back to Judge Garrity and said: We wanted the neighborhood schools strengthened; we do not want busing.

But the civil rights leaders told Judge Garrity, forget about the will of the majority of black Americans who said they didn't want busing, order the buses to roll, even though not a single civil rights leader had their children on those buses. They were in private schools.

And I recall, when I went there on behalf of the National Urban League to monitor this situation, talking to some of the white parents and some of the black parents. What we were doing, they said, is taking kids, black kids out of schools where there was a higher proportion going on to college and sending them into Southie, where white parents said bring your children into these schools, they will graduate as dumb as our kids.

But there has always been tension. In Atlanta, Georgia, the NAACP leader there struck a deal for the Atlanta plan. They negotiated to get a higher per capita expenditure on the black schools, and he was fired because—so that there is no moralistic thinking in the black community on the issue of busing. A large majority of blacks are opposed to forced busing for integration.

Chairman LEAHY. Thank you.

Mr. TAYLOR. Senator, I need 15 seconds, at the risk of offending the Committee. In St. Louis today, and in recent years, 12,000 to 13,000 children get on buses every day to go from the city to the suburban schools. Their parents have decided that they are getting a better education that way. So whatever statistics may be cited, those are the facts in St. Louis.

Chairman LEAHY. Senator Hatch and I have said we will come back at 9, but I understand Senator Feingold just wanted to make a statement.

Senator FEINGOLD. Mr. Chairman, I know that there is no time for my round at this point. I don't want the day to end without briefly first thanking all the panel for coming, including Ms. James. But I can't let the day end without just commenting on this notion that somehow the opponents of Senator Ashcroft have engaged in religious profiling.

Now, I decided to say some kind things about Mr. Ashcroft, including—I made the mistake of saying I had a good working relationship with him. And as a result of that, we have had a lot of meetings with a lot of people I care a lot about, both in private and in public, with every single group. Every single time not a single one has ever said anything about his religion other than to praise it, other than to admire it. This takes things to a level that I think is unacceptable, and as somebody that is, frankly, right in the middle of this, that is an unfair accusation with regard to the opponents of Senator Ashcroft.

I appreciate it, Mr. Chairman.

Chairman LEAHY. Well, with that, as we have stated—and I have found no objection from Senator Hatch on this—there is nobody on this Committee on the other side that has attributed the kind of racial things—

Senator HATCH. I agree with you—

Chairman LEAHY.—To Senator Ashcroft, and I agree with what the Senator from Wisconsin has said. Really I resent very much the suggestion that we raised any question about Senator Ashcroft's religion, because I hold my religion very, very dear to me, and I would resent anybody holding that against me. And I resent very much any suggestion that if you question a person's politics, their positions, their steps, the things they might do as Attorney General, that somehow you are attacking either their race or their religion. That has not happened from either Republicans or Democrats in this Committee, and I want that very, very clear.

Senator HATCH. Well, let me just say this: I interpreted Ms. James as saying that some of the commentators and others have been bandying this around like it is reality. I haven't heard anybody on the Committee or anybody in the Senate make any improper remarks.

Senator SESSIONS. Mr. Chairman, on that subject, I think the tone of some of the remarks that have been repeated, like deeply held beliefs, deeply held beliefs, and things of that nature, have suggested that because he has a rich religious faith that somehow he can't work within a legal system and comply with the law. That is my sensitivity to it. I think it has been suggested—

Chairman LEAHY. You are hearing a trumpet—

Senator SESSIONS.—And it is all right for this witness to reply to it. That is all I was saying.

Chairman LEAHY. You are hearing a trumpet that the rest of us do not hear.

Senator Hatch and I have both stated and made it very clear that neither we heard from this panel anybody who ascribes either

religious or racial bias to Senator Ashcroft, nor have we heard him say that about any of us.

With that, we will stand in recess.

[Whereupon, at 6:09 p.m., the Committee was adjourned, to reconvene at 9 a.m., Friday, January 19, 2001.]

**NOMINATION OF JOHN ASHCROFT TO BE
ATTORNEY GENERAL OF THE UNITED STATES**

FRIDAY, JANUARY 19, 2001

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:07 a.m., in room SR-325, Russell Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kennedy, Feinstein, Feingold, Schumer, Durbin, Hatch, Grassley, Specter, Kyl, DeWine, and Sessions.

Chairman LEAHY. Some have asked whether we are going to be able to finish all the witnesses scheduled today. We are going to finish all the witnesses, and Senator Hatch and I are determined to try to keep everybody on time, ourselves included. And so I am going to ask Senator Hatch to help with the people on his side of the aisle, and I will work on the people on our side of the aisle.

Judge MASON. We expect that you are going to speak softly.

Chairman LEAHY. Speak softly. That is Judge Mason's suggestion, speak softly, but I am carrying a big stick.

Senator Feingold is next to be recognized. Senator Feingold?

Senator FEINGOLD. Thank you, Mr. Chairman. And, again, I thank the panel.

What I would like to start with is to ask the panelists who are opposed to the nomination to say a little bit about some things that have been suggested to me over this process about Senator Ashcroft. What some folks were saying to me at the beginning was that he switched dramatically in his ideology and his approach in the last couple of years, that he became much more conservative and much more ideological for purposes of political reasons or whatever it might be.

During the hearings themselves, though, what seems to have been presented is more of a picture of somebody who has been consistently somebody who is what some refer to as very much on the right or very hard right and very aggressive about it.

I would like the three of you to address which is more accurate in your view, starting with Mr. Henderson.

Mr. HENDERSON. Thank you, Senator, and good morning. It is a difficult question because the dichotomy that was in evidence here in the hearing room between Senator Ashcroft's presentation to the Committee and the record of Senator Ashcroft accumulated over a 30-year period presented a very stark contrast.

To be perfectly frank, and meaning no disrespect to Senator Ashcroft in any way, his moderation was such that, you know, he

sounded as if this were a Clinton administration nominee to head the Department of Justice because of his emphasis on fairness and integrity and the desire to enforce the law as written. And yet, in looking at the zeal with which he enforced his responsibilities as Attorney General, as Governor, and during his term as a Senator here in the U.S. Senate, he showed a zeal, a passion, all of which is absolutely appropriate and a reflection of his personal views, but which pose a problem when, in fact, he is assigned responsibilities for enforcing statutes for which he has had the most significant hostility in terms of his previous statements.

It is hard to evaluate which of the two Senator Ashcrofts in evidence—

Senator FEINGOLD. But it doesn't sound like you see a dramatic shift as having occurred when he became a United States Senator.

Mr. HENDERSON. I really did not, Senator. Now, in fairness, I am not a personal acquaintance of Senator Ashcroft in any way. I can only evaluate the record accumulated over a period of time. But it is, I think, the record that has to be the basis of our reliance on what we can anticipate if and when Senator Ashcroft were to assume the position of Attorney General.

Senator FEINGOLD. Pastor Rice?

Rev. RICE. I think that there is a level of consistency, and it has been consistently, in our view, even as Attorney General, even as the Governor, and now as Senator, against those positions that African American views and against what I would consider the sensitivity of African Americans. He was consistent and very strong in opposition against the voluntary desegregation of the city of St. Louis for our schools and our children, his insensitivity toward the inflammatory remarks made to Judge Ronnie White, and then several times has given opportunity—I know our chairman, and others on this side of the aisle, has asked him to even return his honorary degree, and to this point he has refused to do that. That flies in the face of a community which he represents. And then his inconsistency as far as voter registration in the city of St. Louis.

So I would look at those views as that he has been opposed to many issues that African Americans care about.

Senator FEINGOLD. Thank you.

Mr. Taylor?

Mr. TAYLOR. Senator Feingold, I have not followed the twists and turns of Mr. Ashcroft's career throughout, but I did know him, I did know his work and his positions beginning in—at the end of the 1970's and the beginning of the 1980's. And I have to say to you that, however you characterize these ideologically, he was strongly in resistance to vindicating the rights of children that had already been declared by the courts.

Senator, I thought you set up a good stand on the first day of the hearings when you said that the test ought to be whether the nominee will take care that the laws be faithfully executed, because that is the President's duty and that is carried out through the Attorney General more than anybody else. And I would say you have to look at the whole record rather than any confirmation day pledge in that regard.

I don't have to remind the Committee of this, but it is not just Federal officials but State executive and judicial officers who are

bound by the Constitution and have to take an oath to support the Constitution. That is under Article VI, section 3 of the Constitution. And I would submit to you that Senator Ashcroft did not carry out those duties as Attorney General, that he was so in defiance of the law as to permit no other conclusion that he did not carry out his constitutional responsibility.

Senator FEINGOLD. I take it you feel he is not capable of faithfully executing the laws of this country.

Mr. TAYLOR. I would say you have to make that judgment in terms of the record, and I think the record is pretty clear.

Senator FEINGOLD. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

I apologize to my two colleagues. I have forgotten who was next. Has the Senator from Ohio already asked questions?

Senator DEWINE. I have no questions, Mr. Chairman.

Chairman LEAHY. The Senator from Alabama.

Senator SESSIONS. I would just want to point out that in his remarks on the floor about Judge White, there were some comments that he had called him pro-criminal or called Judge White that kind of name. But it is quite clear—and I am reading from his statement: “I believe Judge White’s opinions have been”—“and, if confirmed, his opinions”—I am quoting directly—“his opinions on the Federal bench could continue to be pro-criminal and activist.” And that was his concern, that the opinions were that way. Now, maybe it is reported a different way, Reverend Rice, and I appreciate your concern, but it is difficult—in shorthand, say pro-defendant and pro-criminal, bleeding heart liberal. I mean, how do you describe an opinion that tilts in your view more to the criminal side than the other? And I don’t think he meant that in a mean-spirited way. I just wanted to point that out.

Mr. Taylor, I know you were the litigation and the lawyer and a long-time person involved in this spasm of a case that lasted for decades—over a decade, I guess, and it was intense. But in my view, I do not believe it is fair to say that John Ashcroft didn’t care about children and education because he resisted your idea of what the kind of settlement in that case ought to be.

By the way, you indicated yesterday—and I wasn’t sure of your testimony—about a Federal district judge criticizing certain State filings. Do you remember going into that yesterday?

Mr. TAYLOR. Yes, I do, Senator.

Senator SESSIONS. And I believe you indicated those were in 1985 to 1992?

Mr. TAYLOR. Yes, but what I said—

Senator SESSIONS. Yes or no? Yes or no?

Mr. TAYLOR. This was during the period when Mr. Ashcroft was Governor. I did make—

Senator SESSIONS. All right. Well, when he was Governor, the filings that you criticized him for yesterday were when he was Governor, not Attorney General?

Mr. TAYLOR. I thought I carefully distinguished between what the court said during the period when he was Attorney General and they were dealing with his conduct directly and what Judge Stephen Limbaugh said during the period when Mr. Ashcroft was

Governor. If I didn't make that clear, I will make it clear right now.

Senator SESSIONS. Well, I didn't pick it up. Someone raised the question after the hearing, and we began to look at it. And isn't it the Attorney General that is the lead lawyer, the litigator for the State of Missouri?

Mr. TAYLOR. That is correct, and in my testimony I say—I think if you check the record, you will find I am correct. In my testimony I say I have no way of knowing what Governor Ashcroft's personal participation was in these matters. But I do say that it was a continuation of the policies of resistance and evasion that occurred when he was Attorney General.

Senator SESSIONS. Well, pardon me if I am offended. Pardon me if I am offended that you say now you don't know what his personal motives were and he wasn't the Attorney General, he—let me finish—he was the Governor, and these filings that you complained about and made a big deal about yesterday were not filed in his name, were filed in the Attorney General's name, successor Attorney General. And I believe that was an unfair, subtle mischaracterization that very few people hearing your testimony would have missed, and I believe it was stated in a way that you understood what you were doing, in my opinion.

Mr. TAYLOR. No, Senator, you—

Senator SESSIONS. You are still a lawyer. I don't believe you would have left that—

Can the witness answer the question, please? Could he be entitled to fairness—

Chairman LEAHY. The witness is entitled to answer the question.

Mr. TAYLOR. Senator, that is simply wrong. I quoted—

Senator HATCH. The comments, too, of the Senator.

Mr. TAYLOR. I quoted statements that were made by Judge Hungate in 1981 and Judge Hungate in 1984 when Senator Ashcroft was then Attorney General. Those are the bulk of my statements. At the end I quoted some statements by Judge Limbaugh when Senator Ashcroft was then Governor. I don't think I misled anybody in any way, and I think if you review the record, you will find that is the case.

Senator SESSIONS. Well, I was misled. Maybe most—you had to listen very carefully not to have been. I just think you as an attorney in the case could have made it much more clear had you desired to do so.

Mr. Chairman, I think my time is about up.

Mr. TAYLOR. May I just answer the first thing you said, Senator?

Senator SESSIONS. Yes, sir.

Mr. TAYLOR. You said that Mr. Ashcroft just opposed my solutions in the case. I point out to you that all of these quotations were from judges and that he never offered any alternative to the plan that was adopted and agreed to by 22 suburban school district, the city Board of Education, and the class of plaintiffs.

So I think the record will stand for itself on that.

Senator SESSIONS. Well, let me just add that, with regard to this order that you pointed out, just briefly—my time is about over, but it did direct—the order was to all government agencies, not just—the Attorney General wasn't the one—the Attorney General can't

do a plan that the other government agencies who are defendants don't participate in effectively. Am I correct?

Mr. TAYLOR. That is correct, Senator, but the court noted at one point that the Attorney General was thwarting the ability of the Department of Education to cooperate, that the Department of Education wanted to cooperate in the development of a plan, but essentially Mr. Ashcroft as Attorney General was directing them not to cooperate.

Senator SESSIONS. That is not what the court order said.

Mr. TAYLOR. I will furnish that for the record, Senator.

Chairman LEAHY. Again, I apologize to my colleagues down here. I have forgotten. Has the Senator from New York—have you questioned this panel?

Senator SCHUMER. I have not.

Chairman LEAHY. And the Senator from Illinois, have you?

Senator DURBIN. Yes.

Chairman LEAHY. You have not?

Senator SCHUMER. No. I am ready to.

Chairman LEAHY. OK. The Senator from New York?

Senator SCHUMER. Thank you, Mr. Chairman. Before I ask my questions, I just want to make a comment. I wasn't here for the discussion of religion, and I just want to make a statement here based on what happened last night.

First, I want to say I think that a person of deep doctrine, someone who had a deep faith, is an admirable person, and I respect it. I believe in God myself, and when God is talked about by public figures, I think that is a good thing. When Joe Lieberman did it, I was proud of that. I am proud when anyone of any faith—Christian, Muslim, any other faith—talks about God. I think that is a good thing. I think all of us and all of our families can use more of that.

That has very little to do with carrying out the laws of the land, and we have a separation of church and state. And for those who think that because someone has deep religious beliefs they shouldn't be asked when they are nominated for Attorney General, whatever religion they are, will they carry out the laws of the land, even if those might conflict with some elements of their faith, they are sadly mistaken. That is our obligation here. We are not a theocracy. We are a democracy where many people of deep faith participate, and participate actively, as they should. That is healthy for the democracy.

But I think to cross the line and say that we shouldn't ask questions about how someone will enforce the law, no matter what their faith is, or if they are an atheist, is wrong.

I mean, if there were a Quaker nominated to be Defense Secretary and that Quaker was a devout pacifist, we would be obligated to ask questions about whether they would try to unilaterally disarm the country, and no one would object to that. And it is the same thing here. So I just think we ought to put that argument to rest.

Let me ask a question. I would like to ask this particularly of Mr. Henderson and of Pastor Rice, but anyone can join in.

There has been a lot of conversation and feeling that, given the election, given what happened in Florida, given, frankly, this nomi-

nation, that African Americans, the African American community, by and large, feels aggrieved, not part of the process, not treated accurately—not treated fairly, and is worried, I guess, about the future, and a lot of our discussions here involved civil rights and the whole issue of race, which, as de Toqueville pointed out in 1830, was the poison of America.

I would like to ask first Mr. Henderson, but then others, a few things that you would recommend President-elect Bush to do and, if he were to become Attorney General, Attorney General Ashcroft to do to help heal that divide. I would like Mr. Henderson to go first, but I would open it up to anybody in the panel in that regard.

Mr. HENDERSON. Senator, thank you. That is a difficult and very challenging question.

I think as you will hear in the course of discussion in response to your question, African Americans have a variety of views on issues affecting our community. Having said that, however, I do believe that one can discern from the vote in this past election the depth of commitment in at least this instance to one of the two major Presidential candidates, and obviously we know that it was not the winner of this election.

The question of alienation among African Americans from a political perspective I think is very much in evidence. The desire to participate fully in the democracy of our country, to participate fully as participants in the body politic, is very, very strong, and it accounted, I believe, for the tremendous surge in voter registration among African Americans, particularly in communities where issues affecting the lives of ordinary people ran deeply, in Florida, in Missouri, and many States around the country.

I believe that the reports of voter irregularities, disenfranchisement among selected communities, both African American but other communities as well, indeed did reinforce a sense of alienation among some African Americans. And it has raised profound questions about whether we are full participants in the body politic.

If this had happened in 1865 or 1877, that would be a different matter. But this was in the year 2000, and so it really did reinforce in a very deep way the degree to which we are not full participants in the body politic.

We turn around now to look at appointments to be made by the new President, and the first among them in terms of a position that has broad impact on domestic policy and the enforcement of laws affecting every citizens is indeed the Attorney General. And I have attempted to distinguish the Attorney General's appointment from other Cabinet officers, not to say that other officers aren't important, but that the Attorney General's position has a special relevance.

Having said that, one would have expected a conservative. There is no question about it. You know, there is no question that we expected a conservative appointment. But conservative appointments are very distinct. A Senator Orrin Hatch is one kind of conservative appointment that people have great respect for and in positions of leadership, but that is not what we got. And the distinction I draw is one of fairness and balance, a willingness to reach out, to listen to people of the other side, even where you may have a

fundamental disagreement. And to have a candidate who has a record of not enforcing—let me take that back—of engaging in provocative activity around fundamental issues, whether it is school desegregation, voter rights and voter participation, the issue of integrity in how the nomination not just of Ronnie White but of other Presidential candidates was handled, all of that raises profound questions of what kind of leadership we can expect at the helm of the Department if this nomination is confirmed.

And so, you know, to be perfectly frank, I think that the skepticism and, indeed, the opposition to this appointment which is heard in many quarters in the African American community is grounded on the solid evidence of a public career accumulated over 30 years, that this is an individual whose sensitivity to the concerns of our constituency, of our community, notwithstanding gracious gestures that he may have taken with respect to his personal participation in various programs—we are talking now about policy, not about an individual's personal predilections to support particular programs. And in that respect, from a policy standpoint, we are saying that there are real concerns and they are grounded in the evidence that the record supports.

Chairman LEAHY. Thank you.

Senator SCHUMER. Mr. Chairman, could I just ask unanimous consent—because I know Mr. Woodson wanted to say something.

Chairman LEAHY. Oh, I am sorry. I didn't realize—

Senator SCHUMER. But maybe I could ask unanimous consent that everybody be allowed to submit answers to this in writing.

Chairman LEAHY. Also, if somebody—I don't want to cut any of the answers off. I am cutting off the questions, but I don't want to cutoff the answers. Did you want to say something, Mr. Woodson?

Mr. WOODSON. Yes, I did, because I think—

Senator SCHUMER. And Pastor Rice.

Chairman LEAHY. You and Pastor Rice, whoever wants to go first. Pastor Rice, then Mr. Woodson.

Rev. RICE. Thank you, Mr. Chairman. And, Senator, I think the question can be answered at least from our perspective as clergy and those that are responsible for several thousands of individuals in the State of Missouri that are members of the faith community. Let me say that this divide is greater than what I have ever witnessed in my lifetime with Senator Ashcroft. And, quite frankly, I would say that there are so many other qualified individuals in the Republican Party. I think that John Danforth and, of course, Senator Hatch and—I could go on and on, a litany of groups that would be qualified.

But I think that if you were to ask me what I would recommend humbly to now President-elect Bush, it would be to pull this one off as Attorney General, find another slot for the Senator, and to find someone that was not quite so controversial. This would allow us to do what one of his mandates says, and that is to pull our Nation together and to do what I think really needs to be done so that we can become more like one America. That would be my suggestion.

Mr. WOODSON. Yes, let me just say it is just fascinating, Senator Feingold, when you asked the question about whether or not he is hard right, as if that is a pejorative. But we don't ask that of

those—we can understand bigotry if it is closed in right-wing rhetoric, but we don't say this about the left, as if bigotry cannot be expressed on the left.

Let me just say this about the black community—and, again, everybody would be offended if somebody were to say, well, what is the opinion of white America on issues. There is no single opinion of white America, and there is no single opinion of black America. So I wish you would qualify it as far as the aggrieved.

I have submitted as a part of my testimony surveys by the Joint Center for Political and Economic Studies that surveyed the attitudes and priorities of black America, and what these surveys revealed, 28 percent, crime and violence; education, 32 percent; health care, another 20 percent; 2 percent registered race as the primary concern of them. And what you had in this campaign is a hate-filled, bigoted campaign that characterized George Bush as a bigot and as a racist, and that kind of—yes, I am talking about the ads showing a pickup truck dragging and chain and saying that because George Bush voted against hate legislation, he is a bigot. I mean, you should have heard the black talk shows.

The point is that black America's concerns are not defined by what you are describing here in terms of voter interest. The first three witnesses before the Civil Rights Commission were three black people who presented no evidence that there was any kind of conspiracy to deny them the opportunity to vote. And so I think that this is a red herring on the whole issue that somehow black America is sitting around their dining tables preoccupied with voter education. They have many more issues of concern. Nine thousand blacks are killed by other blacks in America, and only nine die as a consequence of hate crimes. The issue is what are our priorities in this country, and I think that is an important issue to put on the table.

We have found in our experience that Senator Ashcroft addresses the issues of faith-based healing agents, has been very supportive, and we think he will make an outstanding Attorney General, and that is the opinion of some black Americans who differ from other black Americans.

Senator SCHUMER. Thank you, Mr. Chairman.

Senator FEINGOLD. Mr. Chairman?

Chairman LEAHY. Yes.

Senator FEINGOLD. I would just like 10 seconds to respond to the reference to my remarks.

Chairman LEAHY. Go ahead.

Senator FEINGOLD. Mr. Chairman, I certainly did not refer in a pejorative way to John Ashcroft or his conservative views or views to the right. In fact, I stated specifically that I don't think conservative viewpoints, ideology, or votes is a sufficient basis to reject the nomination. All I asked was whether there had been a dramatic change in his approach since he became U.S. Senator, and I would like the record to reflect that.

Chairman LEAHY. Thank you.

Mr. TAYLOR. Senator, can I give a brief answer to Senator Schumer's question?

Chairman LEAHY. Yes. And then we will go to the Republican side.

Mr. TAYLOR. I just want to—there are many things, Senator, but I just want to offer one, and that is that I hope that whoever is the Attorney General of the United States will carry forward the policies embodied in *Brown v. Board of Education*, and in the Civil Rights Act of 1964, and promote the diversity and desegregation of public schools.

We have recently found the most curious and painful development, and that is after all the years of seeking to achieve compliance, there are a few Federal courts that are holding that if a—that if local officials seek to desegregate their schools and diversify their schools, they are improperly taking race into account.

This administration has fought—the current administration, the outgoing administration has fought to maintain diversity in the public schools. President Clinton said that the alternative to integration is disintegration.

This has been the battle—you know it as well as I—for—it's a century-long battle to end racial divisions in schools and in other aspects of our society, and it is very troubling at this point that it is coming back again in this form and in the form of a person being nominated for Attorney General who has a record as supporting segregation over so long a period of time. So that would be my hope for whatever happens in the future.

Judge MASON. Could I have just a couple of minutes to respond to Senator Schumer's question?

Chairman LEAHY. Excuse me, Judge. I have no objection. Senator Kyl is next, but go ahead.

Judge MASON. The question was what we recommend. First off, without doubt, since we clearly have a national interest in how our President is elected, there should be a discussion about the national process or some sort of acceptable standards to the electoral process, so that people in Wisconsin can be assured that the electoral votes won in Florida were done fairly and vice versa, and that should be thoroughly investigated by you. We should look at the types of machines in municipalities that we use to count votes to make sure that in the poorest areas of our country's there is equal access to effective voting processes that would be available to richer areas. And certainly, that's a national policy that we should begin.

We should encourage civil organizations that engage in voter registration to work equally as hard with voter education, so when people go into the polls they know something about a butterfly ballot, if it's still being used; they understand the importance of pressing hard so you don't have the dimpled chad or the pregnant chad, whatever you want to call it, and their vote will have a greater likelihood of being counted. Those are three things that can be done on a national level that I think could be very, very effective.

Two quick points. John Ashcroft has never been in favor of segregation. OK, he's never been in favor of segregation. I've never heard that man once say, "I don't want my kids going to school with black kids", or anything like that. You have to understand the nature of St. Louis, how the boundaries at the seat of St. Louis are very limited, how we have 70 or 80 other school districts outside the city of St. Louis, and the difficulty of forcing those school districts, which were the beneficiaries of white flight from St. Louis, to get their kids to go back into St. Louis. Many black people in

St. Louis have said time and time again, "Why don't we improve the schools in St. Louis so that the white residents of St. Louis, who are sending their kids into private schools and Catholic schools, would look at the public schools as a viable alternative?" That's where the integration would have been successfully occurring in the city of St. Louis, rather than when people who made their personal decision to live elsewhere—and their motivations may have been poor motivations, but nonetheless, you can't make people move. And that was one of the serious problems, which quite frankly, has never really been discussed or addressed.

Finally, I don't think anyone on this panel would say that a person who was a zealous prosecutor shouldn't be a judge, or a zealous public defender shouldn't be a judge. And Ashcroft was a zealous Attorney General, granted. I don't know if I would have done it the same way, but I may have done some other things differently. Nonetheless, we should not get in the business of saying that because somebody was a zealous lawyer, which they have a professional duty to be, that they cannot now set that aside in a different role. Otherwise, you would never have anybody who was a zealous advocate ever become a judge, especially a prosecutor or a defender, because people will assume that they are not capable of setting that aside, and we're called upon to do that all the time with judges. Many times I have made decisions as a judge that I would not make as a legislator, because the law is the law is the law. It is nonpartisan. And if you have somebody who comes before you and swears to you that they will follow the law, and you have no reason to think that they are a liar to you, then I think the appropriate approach is to advise the President over how that person should proceed, but to give the President your consent to their appointment.

Chairman LEAHY. Judge Mason, many would agree to that. I recall Bill Lann Lee coming before this Committee and swearing to uphold the law, and being told by Senator Ashcroft and others he did not believe him.

Mr. TAYLOR. That's politics and vengeance—

Chairman LEAHY. Let me finish. I am not talking about politics and vengeance. I am talking about Senator Ashcroft's standard, the standard he has established on this.

Incidentally, on your point on voting machines and so on, I might add one thing, that I would hope that all of us Republicans and Democrats could agree on, that we try to find some way to provide funding to the states so that each state could have one uniform way of voting within their state. I am not talking about a national thing that says Arizona has to have the same ballot as Vermont, but that within a state that they could have the same kind of ballot. Then you could give the same kind of education to everyone, about what the ballot will look like, whether the voter is in a poor section or a rich section, whether the voter is white, black or anything else. All areas, all polling areas would have the same access and the same up-to-date equipment, not just the affluent areas versus the poor areas, but every part of the state, no matter where you vote, affluent area, poor area, minority, non-minority, Republican, Democrat, every single place you vote is precisely the same,

the same type of equipment, the same type of ballot. I think we would all be better off with that.

Senator KYL?

Senator KYL. Thank you, Mr. Chairman. I do not have any questions. I do have two comments, one in view of what you just said with regard to what you attribute to John Ashcroft as his standard. He has denied it, but you are attributing to him a standard with respect to ideology, and frankly, I do not know whether you disagree with the standard or not because you seem poised to apply that precise standard to his confirmation here.

I would also ask my friend, Chuck Schumer, respectfully, to reconsider a view that he expressed a moment ago, that we have reason to question Senator Ashcroft's potential service because of his religious beliefs.

Senator SCHUMER. I did not say that. I did not say that.

Senator KYL. Well, I thought that is precisely what you said. If you would like to clarify it before I finish my comment, I would be pleased to have you do that.

Senator SCHUMER. I would. Let me clarify it right here. It is not because of—I respect his religious belief. We should ask any nominee for Attorney General whether they could enforce the law, and it is not because of his religious beliefs. It is because of what in his public life he has advocated in the past.

Senator KYL. Well, I hope that that is the case.

Senator SCHUMER. And I think—if I might continue—that Senator Ashcroft accepted that premise when he answered the question. And I did not say he could or could not. I was just asking him the question.

Senator KYL. Well, let me tell you why I raise the issue, Senator Schumer, because you said, "For example, we would question a Quaker about whether he would provide for a strong defense because of his belief in peace and so on." I thought what you were saying is that there might be something in the religious beliefs of a candidate that would cause us to question him about those beliefs.

Senator SCHUMER. No.

Senator KYL. Now, if I misunderstood the purport of your question—

Senator SCHUMER. You did.

Senator KYL. Then I am pleased not to ask you to question your view, but that is the way I heard it.

Senator SCHUMER. OK. Yes, you misinterpreted what I said.

Senator KYL. I am pleased that we are not then inquiring into the qualifications or the potential service of a person because of his religious beliefs.

Senator SCHUMER. No.

Senator KYL. Thank you. Thank you, Mr. Chairman.

Chairman LEAHY. Again, I beg the pardon of the senior Senator of California. I cannot recall, did you question this panel yesterday?

Senator FEINSTEIN. No, I did not.

Chairman LEAHY. You did not. Then you would be next, and then Senator Durbin would be next.

Senator FEINSTEIN. Thank you very much.

I would like to ask Mr. Taylor a question. As one who represented the NAACP in the St. Louis school segregation case, I think you have described Senator Ashcroft as an—and I quote—“a bitter opponent of school desegregation.” The question I would like to ask is in his response to Senator Kennedy, Senator Ashcroft contended that his actions were based on fiscal considerations as opposed to any opposition to desegregation. What is your reaction to this response, and what facts can you present to us in this area?

Mr. TAYLOR. Well, Senator, one, when Mr. Ashcroft, in 1984, ran for Governor, he described this—he described desegregation plans, voluntary desegregation plans as an outrage against human decency. That’s how he was quoted in the St. Louis Post Dispatch. That sounds to me like his objections were more than fiscal.

And I want to make clear that I recognize that I am a strong advocate as a lawyer, but what I have described is what the courts have said about Mr. Ashcroft’s defiance of laws. In the same campaign he said that he would be—he bragged that he was almost held in contempt by Judge Hungate.

Now, a few minutes ago Judge Mason—

Senator FEINSTEIN. Pardon me. Where did this happen? You said he bragged—

Mr. TAYLOR. It’s in my testimony. It’s in the—

Senator FEINSTEIN. No, no. Where did he do this?

Mr. TAYLOR. He did this on the stump in the Republican primary for Governor in 1984.

A couple minutes ago Judge Mason talked about alternatives to desegregation. I just want to point out that, No. 1, Mr. Ashcroft opposed funding of the magnet schools in St. Louis, which have turned out to be very successful in maintaining integration and improving education.

Senator FEINSTEIN. Did he give a reason?

Mr. TAYLOR. I don’t know what his reason was. But in our latest hearing, the state’s own witness, David Armor, said these magnet schools have been quite successful in St. Louis.

Secondly, he opposed—and I’ll make this a part of the record—he issued a press release in 1984 in which he said he was opposed to school improvements—to the court order for school improvements within St. Louis. Now, that may have been on fiscal grounds, but he described it in pejorative terms as just a shopping list. In fact, what the Court of Appeals had said is we need to—this agreement should have the kinds of programs supporting it that will get the schools up to triple A status in St. Louis with respect to their bonding authority.

And finally, it was not—when you say the suburbs were—the borders had to be disregarded if you have any meaningful—to have any meaningful desegregation, this was a voluntary agreement with 22 suburban school districts. And they all agreed, and the agreement has proved very, very successful.

So Senator Ashcroft opposed all of these measures across the board, described the voluntary agreement in the way I’ve described to you, Senator, and never offered any other alternative to achieve equal opportunity for the students.

Senator FEINSTEIN. I think Mr. Woodson wants to respond.

Mr. WOODSON. Just a quick comment, because what Mr. Taylor was saying, expressing Senator Ashcroft's view as if somehow that's extreme.

I'm a veteran of the civil rights movement, have gone to jail, worked 5 years at the Urban League. I can tell you, consistently since the late 1960's to today, there have been sharp divisions in the black community over the desegregation the way it was planned. We do not describe that the opposite of segregation is not integration, it's desegregation.

In Prince George's County and all over this country, the community has been in an uproar because we've been busing our children out and whites move further out. We had a magnet school in Prince George's County that had an opening for 500 children, and you had 2,000 black children wanting to get in that slot, but they were being held for white children in the name of integration. And some of us opposed that. We had our schools where 80 percent were black, when the test scores began to soar because they brought in competent administrators, engaged the parents, and the children were learning, the NAACP filed a lawsuit because the schools were 80 percent black, and so when I debated Julius Chambers, head of the NAACP Legal Defense Fund, and I said, "Julius, if we have a situation where we've got the presence of education excellence and the school is black, and there's diminished excellence in the second school that is, quote, integrated, where do we send our children?" He says, "To the latter."

So the point is that there's tension within the black community on that, and so this isn't something we ought to vilify Senator Ashcroft for holding to views that are shared by almost half of the black community.

Senator FEINSTEIN. Mr. Woodson, let me just respond to that. I mean, I am one that is undecided on this nominee. It would be very hard for me, for my one vote, to cast a vote for someone that was opposed to civil rights, basically, as the chief law enforcer.

Mr. WOODSON. I would agree.

Senator FEINSTEIN. It is hard for me to predict what may happen in the next 4 years that would need a strong Attorney General to enforce the civil rights law. I want to feel that the man that I support is going to be pro-civil rights, is going to take that position. And this is one of the areas, I think, where your basic philosophy will influence, regardless of how much you say you are going to enforce the law, will enforce the kind of body language you have as Attorney General, your vigor in moving, the directions you give to your staff, and so on.

Mr. WOODSON. I agree.

Senator FEINSTEIN. Now, I know you are a strong supporter of Senator Ashcroft, and I respect that. What would you say to somebody like me that really sincerely wants to have an Attorney General who is pro-civil rights?

Mr. WOODSON. What I would say to you, Senator, is that you need to listen to the full range of opinion in black America, not just to the, quote, "civil rights leaders." You need to listen to—I am a veteran of the civil rights movement. We had 150 black and hispanic low-income people travel 2 days on a bus to come here to support this nominee, and so therefore, you have to ask yourself why

would people go to such inconvenience to support a man if they did not feel that he was strong on civil rights. Civil rights is an emotional issue with me. I am a strong civil rights advocate, and I would not be sitting here if I thought for one moment that Senator Ashcroft was really weak on civil rights. I can tell you passionately I know this man. He has worked with us. He is strong on civil rights. He is a just man. So that's what I would say to you. Listen to the broad range of opinion in black America, not just those who are—express opinions on the left of center.

Senator FEINSTEIN. Thank you. I know my time has expired, Mr. Chairman, but Mrs. James and somebody at this end wanted to respond as well. Would you allow them to?

Chairman LEAHY. Yes. We have been trying to allow that. We have both those for Senator Ashcroft and those against him here, and I have been trying to make sure that both sides could get heard. So, Ms. James, you go ahead, and then Mr. Henderson, you go ahead.

Ms. JAMES. Thank you, and I will be brief.

Senator FEINSTEIN, thank you for that question. I agree with Bob Woodson in that I could not sit here in this chair and support Senator Ashcroft if I did not believe in his heart of hearts that he would enforce vigorously the civil rights laws of this Nation. I paid too dear a price. I was one of those students that walked past crowds of angry white parents to integrate the schools in the south. I was one of those students that had to take the abuse, that had to be bused into the white areas. I understand in a very real way what this means.

There are too many of us who are sitting at this table, who have been involved in the civil rights movement all our lives, and who care deeply about these issues. If I did not think that Senator Ashcroft could forcefully and vigorously enforce the laws of this land where civil rights are concerned, I wouldn't be at this table.

Senator FEINSTEIN. Why do you feel that when he opposed desegregation in St. Louis and then statewide?

Ms. JAMES. Because I am able to make the distinctions between the various roles that Senator Ashcroft has played in his life, as an Attorney General as a Governor, as a Senator, and the advocacy roles that he has had to play. I also understand some of the philosophical differences. I also understand, as Bob Woodson has said, that the opinions about these subjects are varied even in the African-American community. I can tell you this, that because you disagree with one particular plan, does not mean therefore that you are not in favor of equal access to education in America, and I believe that he is, and I believe that he will forcefully, forcefully, defend the civil rights of students in this country, of women in this country, and I wouldn't be at the table if I didn't believe that.

Senator FEINSTEIN. Thank you.

Chairman LEAHY. And, Mr. Henderson, you might go ahead.

Mr. HENDERSON. Senator Feinstein, I'll be very, very brief. First, let me say at the outset that the term "civil rights" encompasses all persons here in America, in the United States. It is not the exclusive province of African-Americans, even though as an African-American I recognize the importance of this issue for my constitu-

ency, but it affects every constituency and person in the United States.

We are an increasingly diverse nation, and the next Attorney General of the United States has to have a broad appreciation of the importance and responsibility of respecting the rights of all Americans.

Now, having said that, one would expect an Attorney General to have a commitment to a vigorous enforcement of the laws and constitutional principles that govern civil rights. The Attorney General has a responsibility for supervising litigation to achieve the constitutional promise of integration. The Constitution has promised equal opportunity, not just desegregation, that is, the absence of formal structured segregation. And yet, as you have heard, John Ashcroft posed a desegregation plan of voluntary desegregation, and did so without offering constructive alternatives that might have been used to achieve that objective, and did so in a manner that was inflammatory, that preyed, in terms of the rhetoric, on fears of many in the company to the worst effect.

The Attorney General has to responsibility to enforce the Voting Rights Act of 1965. And yet, as Governor, John Ashcroft vetoed legislation that would have enhanced voter opportunities in his state.

John Ashcroft has a responsibility—or the Attorney General has a responsibility to enforce laws related to persons with disabilities, and yet his opposition was strong opposition to statutes that would respect the rights of persons with disabilities, children in schools related to that has been a source of real concern.

He has a responsibility to respect immigrants, and yet he would offer legislation that would undermine the constitutional rights of naturalized citizens.

So I'm saying to you that, you know, an appreciation for civil rights has to be broad, and there has to be a demonstration that the Attorney General has a record that one could rely on to enforce these statutes.

And my last point is this. I think the most important function that the next Attorney General will play is in the selection of the Solicitor General and in establishing the structure to review and promulgate nominees for the Federal courts.

Senator FEINSTEIN. Could I stop you just for a second?

Mr. HENDERSON. Please.

Senator FEINSTEIN. You mentioned legislation having to do with immigrants. I just asked my staff what legislation was that. Could you be more specific?

Mr. HENDERSON. Yes, ma'am. The issue of Immigration and Naturalization Service is one of real concern. Now, there were many Senators who, as you recall, in debate on welfare reform, proposed limiting welfare reform even to legal immigrants, which we opposed and think needed to be changed, and I'm glad that Congress is making some structures.

Senator FEINSTEIN. I did as well, yes.

Mr. HENDERSON. I know you did. I know you did.

There is also a question, however, of even the rights of persons who are naturalized citizens, and the Senator has taken positions which have suggested that benefits, Federal benefits going to natu-

ralized citizens should be questioned. And we'll dig out those references and provide them here for the Committee for your review.

Senator FEINSTEIN. Thank you.

Mr. HENDERSON. And the question is this: Is a Senator proposing those initiatives? We may disagree, but that, as one of 100, does not then give you the right to impose it unilaterally. Obviously, it has to be enacted into law.

As the Attorney General, in the exercise of your discretion in determining which cases to bring, which cases not to bring, we ought to put emphasis in your own enforcement strategy. It is those personal views that can affect how the next Attorney General will use discretion, and all we are saying is at least have a record of an individual, conservative thought that individual may be, who has a demonstrated commitment to enforcing constitutional guarantees for all persons in the United States, and if you do a fair and broad review, we honestly don't believe that John Ashcroft measures up to that standard, and that, I think, is the most important standard of all.

Senator FEINSTEIN. My time is up. Thank you.

Chairman LEAHY. I understand everybody on the Republican side has asked questions. Senator Durbin, you have not.

Senator DURBIN. Thank you very much, Mr. Chairman.

I have listened to this carefully because I respect everyone on the panel for coming here and addressing this difficult issue of civil rights and whether John Ashcroft would fairly and impartially administer the civil rights laws of America, and we are trying to accumulate evidence of his life and public career to reach that conclusion. He has said he will. We expect that of every nominee, but you look into their background to determine whether or not that is something that can be believed.

I have tried to measure his life in this area from a couple of perspectives; first, missed opportunities. When has he had an opportunity as a public official to expand civil rights? When has he seized that opportunity? When has he ignored it?

Secondly, I think that over time, we seem to forget that the civil rights movement wasn't all that popular. There was a time when Martin Luther King's visit to Chicago was not a popular event, nor was it popular in many of the other cities that he visited.

Yes, we have a great breakfast. The Mayor of Chicago in his honor every year has a wonderful breakfast and brings in thousands of people who, I think, rightly praise him, but in his day, he was not popular, and the question in my mind, when in John Ashcroft's public career did he do something that was unpopular, but right in the area of civil rights? That is another yardstick that I would apply here in this case.

When I look at the opportunity for voluntary desegregation of schools, as unpopular as that was even as it was voluntary, I see resistance and efforts by John Ashcroft to stop that.

The same thing with voter registration. It would have been unpopular for a Republican Governor to sign a bill to expand an opportunity for voter registration in a Democratic city like St. Louis. Most of us agree it would have been the right thing to do. We should expand voter registration in every community, black, white, brown, you name it.

The same thing with the Bob Jones University visit. The fact that it is a religious university is secondary, maybe irrelevant. The fact that the leaders of that university had made a record of policies and philosophies against interracial dating, threatening if a homosexual alumnus came on campus that they would have him arrested for trespass, statements about my Catholic religion, about to her religions, those are the sorts of things. I think it was a missed opportunity by John Ashcroft to visit that university and not note that as a public official.

Ronnie White, I won't go through that. Again, a missed opportunity for a man with an extraordinary background to say to African Americans not only in Missouri, but across America, yes, you can do the right thing, you can work hard, you can be a success, you can be a Federal district court judge. The opportunity was missed for reasons that we still don't know.

Mr. Hormel as our Ambassador to Luxembourg, an opportunity for a man who was openly gay to serve this Nation in a post that frankly he could have served well in. The country was welcoming him, and it was resisted by John Ashcroft.

So, when I look to this issue of civil rights and whether or not when it comes to a hard decision under President Bush in the area of civil rights, whether John Ashcroft as Attorney General will stand up and say, "Mr. President, it may not be popular, but it is right," that is what I am looking for.

I would just invite comment from members of the panel about that. Mr. Henderson, if you would like to comment?

Mr. HENDERSON. Well, thank you, Senator.

I can't agree with you more that evidence of tough decisions that advance civil rights would certainly be one way of measuring the suitability of any candidate for this job.

You mentioned tough choices, and I know that when I responded to Senator Feinstein's question, I laid out various constituencies that are affected by civil rights matters.

You talked about tough choices today. One of the groups that experiences some of the most vitriolic response are gay and lesbian Americans. We see it here in the U.S. Senate in the struggle to pass a hate crimes statute that covers persons with disabilities, covers women, covers gays and lesbians.

We have a bipartisan bill. Not everybody supports it, obviously, but there are more people who do, and yet it is a tough sell in many ways because it includes gay and lesbian Americans even though the numbers of people who are affected by hate crimes, they are second only to African Americans in terms of sheer numbers. Immigrants are also growing.

But the Hormel issue which you touched on, I do think is worth responding to because it raises an important question. The Supreme Court did extend constitutional rights, civil rights to gay and lesbian Americans in *Evans v. Romer*, and one does expect the Attorney General to be responsive to all of those constituents.

The Hormel matter was troubling in terms of the outcome of this nominee, a well-respected businessman who is a gay American, but the point is, when he was reviewed in the Committee to determine his suitability for the position, as I understand it, and I stand to be corrected, Senator Ashcroft did not attend those hearings.

He did come out of the hearing, meaning Jim Hormel, on a vote of 16 to 2. He then requested an opportunity to meet with Senator Ashcroft by sending him a letter asking for an opportunity to sit down to exchange his views, and in the letter, he reminded Senator Ashcroft that he himself, meaning Jim Hormel, had been the dean of Admissions at the University of Chicago and had admitted Senator Ashcroft to that law school, I believe in 1964. He never got a response to the letter. That is OK, but the question remains that when he was voted against and when Senator Ashcroft spoke against him, he said it was the totality of the record that was the basis for his decision, and I want to know what was the totality of the record.

I mean, the question is if you have a hard time affecting the constitutional rights of any group of Americans, whether they be African Americans or women or Hispanic Americans and, in this instance, gay Americans, then the question is can you, in fact, enforce those laws that apply to every American citizen and to respect those laws in a way that we would want the Attorney General to do.

Senator DURBIN. Mr. Chairman, I would be happy to let the panel respond, at least we have in the past.

Chairman LEAHY. Mr. Woodson, did you want to comment?

Mr. WOODSON. Yes, just briefly.

First of all, Senator, I am not sure that just because something is unpopular, it means that is correct, and I think that the kind of leadership that you are talking about, taking unpopular position, Dr. King when he took his position in support of direct action was opposed by the mainstream civil rights organization.

Senator DURBIN. Did you think, Mr. Woodson, when you were involved in demonstrations and arrested that you were doing something that was popular?

Mr. WOODSON. No, not at all, but the point is what we look for in a leader like Dr. King is moral consistency which goes to the person's character.

Dr. King opposed the violence of the Klu Klux Klan, but he opposed with equal vigor retaliatory violence of the Black Panther Party which made him unpopular among whites and blacks. That is true leadership, but it also goes to his character, and where he is able to be morally consistent. I think that kind of moral high ground has been forfeited by the current civil rights leadership because they looked the other way when blacks engage in immoral or unethical behavior and they are defended as being targeted by whites as opposed to holding them to the same standard.

So I think that we would look for in Senator Ashcroft the kind of qualities that we saw in Elliot Richardson, who came into the President's office and said, "I will resign." So I think that is character and moral consistency that I find evident in Senator Ashcroft that would cause him to act in a situation courageously because the character issue is what I am impressed with.

Chairman LEAHY. Following the procedure that we have had, we have made sure that both those for and against Senator Ashcroft had a chance to answer the question. As we will keep it brief, that would be you, Pastor Rice, and then you, Mr. Taylor.

Rev. RICE. I certainly will, and let me just respond to one statement about Dr. Martin Luther King and his popularity among the African-American community.

I want to say that Dr. King overwhelmingly, just for the record, is extremely, still to this day, very popular among the African-American community.

Now, your question was missed opportunities, and I think you, Senator, have articulated those missed opportunities, and I would only like to mention four. One, his opposition to voluntarily desegregate the schools of the city of St. Louis, and I think Mr. Taylor can comment on that. Two, his unwillingness to apologize to the African-American community in Missouri in general for his insensitivity. Three, his visit to the Bob Jones University was, indeed, an insult to many African Americans especially in Missouri, and to this date, he has not to my knowledge openly, unlike President-elect Bush says, "Yes, I didn't know. I am sorry," he repudiated going. To this day, he has refused, to my knowledge, to even apologize for that or to send back the honorary doctor degree.

Then, to participate in interviews with a magazine that is so extreme on racism like the Southern Partisan magazine and yet not offer some type of apology for that to me is missed opportunities, and I think that had that happened, it would certainly help us along this way.

It is very interesting to me as I close that this nomination receives so much back-and-forth, so much uneasiness. Again, it would be an area that I think that we could bridge the divide if we would look another way.

Mr. TAYLOR. A couple of quick points, but I cannot refrain from saying that I knew Elliot Richardson for many years. We were colleagues for 17 years on the Citizens Commission on Civil Rights, and John Ashcroft is no Elliot Richardson.

But, Senator, to get to your point, I think that is a very important point that you make. We would have settled in St. Louis not for leadership from Mr. Ashcroft, but just for silence. We would have settled for something less. We would have settled for compliance for court orders. We would have settled for not fanning the flames of racial divisions by remarks that he made, but I also think it is important in the year 2001. We see so much lip service being paid to civil rights and Dr. King's memory, but does it get backed up by real leadership? Does it get backed up by efforts to deal with the situation that is facing so many people of color and people of color who are poor who still lack in this time the access to real opportunity? It is going to take something more than just silence on this. It is going to take real leadership, and the record does not support any notion that the nominee will provide that leadership.

Senator DURBIN. Thank you.

Chairman LEAHY. Senator Hatch?

Senator HATCH. Just let me make a couple of final remarks.

I would like to put into the record at this point, because I think it is very pertinent, an article about all this from the St. Louis Post Dispatch, a paper not known for its friendliness to Senator Ashcroft.

After quoting Mr. Taylor on Senator Ashcroft's record in this litigation, the story goes on to note the following, "Others paint a dif-

ferent portrait of Ashcroft's involvement in the case. Bruce LaPierre served as a special master in the case. In effect, LaPierre was a go-between for the two sides. LaPierre declined to comment Friday. However, a footnote to an article he wrote in 1987 for the Wisconsin Law Review said that, 'The State of Missouri participated in these negotiations on a limited, but very helpful basis.' Judge Innalokus, the attorney for the Papinsville and Vandiver school districts in 1983 said Ashcroft's representative in the case 'played a constructive role and helped bring about a settlement.' Ashcroft's representative was Larry Marshall, a former State Senator. With the two sides deadlocked over the payment of attorney's fees, Marshall suggested that the State pick up the tab. That was one of the final hurdles to the landmark agreement in 1983, much of which remains intact."

I just wanted the record to reflect that many people do not share Mr. Taylor's view of Senator Ashcroft's role in this litigation, but we have heard both sides, and, look, it is time to bring this to a closure.

We have had people on both sides of these issues, and I think there is enough here for any person of a reasonable mind who really wants to be fair to basically give the benefit of the doubt to Senator Ashcroft, and, frankly, those of us who know him go way behind that. But I am saying if you have any doubts, he ought to be given the benefit of the doubt because of what really is a remarkable record and a very good personal history.

So there are differences here, and we understand that, and I just want to thank each of you for coming. Each of you has added to this hearing. Each of you has contributed immeasurable help to us from your perspective and point of view, but I think the importance of this panel shows that there are two different or maybe more than just one liberal or one conservative point of view. I think that is important to know.

Thank you.

Chairman LEAHY. To emphasize the differences on that, just in fairness, Senator Hatch just put in an article from that newspaper.

We will also add to the record the editorial for that newspaper calling for the defeat of Senator Ashcroft for Attorney General.

I will also put in a number of endorsements of Senator Ashcroft, a number of articles opposing Senator Ashcroft. This includes a list given to me by my friend from Utah with supporting documents. All of this material will be placed in the record at the appropriate time, including a number of endorsements of Senator Ashcroft.

Senator HATCH. If the Senator would yield on that?

Chairman LEAHY. Of course.

Senator HATCH. I would like to put the endorsements, at least some of them into the record, endorsements of Senator Ashcroft, including the endorsements of a wide variety of Democrat and Republican Attorneys General, former and sitting Attorneys General, law enforcement agencies, minority groups, law professors, et cetera.

But in addition, I would like to put into the record a letter from the National Baptist Convention, USA, Inc., Civil Rights and Equal Justice Commission. This was sent to Senator Leahy and myself on the Committee on the Judiciary, and I will just read part of it. "The

Commission on Civil Rights and Equal Justice of the National Baptist Convention submits this letter in support of the President-elect Bush's nomination of Senator Ashcroft to be Attorney General of the United States. The National Baptist Convention has 8.4 million members and 33,000 churches, and we are America's third-largest religious denomination. With our first member church founded in the 1700's, the National Baptist Convention is the world's oldest and largest civil rights organization."

Let me just read a little bit more here. "Our commission takes the position of strongly held religious faith should not be a disqualifying factor for Attorney General or elected office. In fact, the commission believes that Senator Ashcroft's Christian faith and morality support his confirmation. As Governor of Missouri, Senator Ashcroft proclaimed Martin Luther King's birthday a State holiday," et cetera. It said, "None of Senator Ashcroft's appointees has raised a specter of racism. Senator Ashcroft received 50 percent more African-American votes in Missouri last fall than President-elect Bush. Senator Ashcroft's wife taught for many years at Howard University, an institution of higher education venerated by African Americans. Our churches serve working-class, urban, and rural neighborhoods that too long have been victimized by drug lords and other violent criminals," the point you have been making, Mr. Woodson. "We have opposed judges and politicians who seek to put these criminals back on the street where they can claim more innocent victims. Senator Ashcroft has shared this concern for sheltering our communities from violent crime," and then they state some of their hopes, but I will put the whole letter in the record. I think it is pretty important to understand it is the third-largest religious congregation in the country and a leading civil rights organization. So there are two sides that people can raise. We don't all agree on some of the things that have happened, but I respect your respective points of view. I know all of you, and I am just very grateful you all came.

Chairman LEAHY. We can all read in letters for and against, and I am going to resist the temptation—

Senator HATCH. I will resist, too. I have some more. I will resist it.

Chairman LEAHY.—To do so, the same as Senator Hatch. Eventually, the record will be replete with a number.

I would also note that Senators will have the opportunity to place into the record other materials, as Senators will have the opportunity following the normal practice of this Committee to submit follow-up, written questions to the nominee and panels, and I would ask everybody to do that as quickly as possible.

I thank the panel.

Senator HATCH. Could we have the questions in by the end of the day, though?

Chairman LEAHY. We can talk about that at the next break.

Senator FEINSTEIN. Mr. Chairman, may I give you my written questions?

Chairman LEAHY. I submit written questions from the distinguished senior Senator from California.

Senator SPECTER. Mr. Chairman, a brief addendum. When I was questioning Mr. Taylor yesterday with respect to the sanction or

contempt issue, I mentioned how sometimes prosecuting attorneys are held in contempt, and I made a very brief reference which I would expand upon.

I handled a case called *Arnold Marks* in 1969 as D.A. of Philadelphia, a major drug pusher who got a slap on the wrist, and I mentioned the fact that I was held in contempt, but I also wanted to mention that it was withdrawn.

[Laughter.]

Senator HATCH. I am glad to have that record clarified.

Senator SPECTER. The contempt citation was withdrawn under some extraordinary circumstances which I detail in my recent book, *A Passion for Truth*.

Mr. TAYLOR. Senator, may I just say that I appreciate that clarification, but I would say that somebody held in contempt in the heat of a tough trial, I find that more excusable than a pattern of actions of defiance of the courts that took place over a long period of time. That, I think, is the distinction that I would make in the case, and the court records speak for itself in that regard.

Chairman LEAHY. I would note that the distinguished Senator from Pennsylvania was not being held in contempt. He had been removed from that. I first met him when he was District Attorney of Philadelphia, and I was one of the officers of the National D.A.'s Association.

We will take a 5-minute break.

Senator SCHUMER. Mr. Chairman?

Chairman LEAHY. Yes.

Senator SCHUMER. I don't have a question, but for some of our staffs, it would be hard to get in questions by the end of today. Could we do it by the end of business Monday for all the panels?

Senator HATCH. Oh, no.

Chairman LEAHY. We are going to talk about that during the break.

Mr. TAYLOR. Senator, one last thing. Senator Kennedy asked last night about evidence of success of the program that Mr. Ashcroft called an "outrage against human decency," and I would like to submit for the record Dr. Danforth's report for the leading St. Louis business organizations and other material.

Chairman LEAHY. It will be accepted.

We will stand in recess for 5 minutes.

[Recess from 10:23 a.m. to 10:40 a.m.]

Chairman LEAHY. I had stated earlier when Senator Hatch was reading from the St. Louis paper, I have two editorials to put in the record from the St. Louis Dispatch, one from January 14th of this year, one from January 18th. I would read from the January 18th one in which they say, "The most disturbing part of Mr. Ashcroft's testimony was his misrepresentation of his opposition to the voluntary school desegregation program in St. Louis. He said the courts did not find the State guilty of wrongdoing, that the State had not been a part of the case. In fact, the Federal courts found the State was the primary constitutional wrongdoer, and the State was a party to the case, and in 1981, the Federal court criticized the State for deliberately deciding to defy the authority of the court."

They conclude by saying—I won't read it all, but they conclude by saying, "Mr. Ashcroft made some progress toward making himself more palatable as Attorney General, but the weight of his record and the tension between his beliefs and the laws of the land are hard to ignore."

Both of those will be made part of the record.

Senator FEINSTEIN. Mr. Chairman?

Chairman LEAHY. Yes?

Senator FEINSTEIN. May I submit for the record the testimony of the National Hispanic Leadership Agenda, which is a non-partisan coalition of major Hispanic organizations?

Chairman LEAHY. That will also be made part of the record.

Does anybody else have any submissions for the record?

[No response.]

Chairman LEAHY. Professor Dunn, what order do you gentlemen have—Mr. Barnes is a former member, and following the normal practice, Michael Barnes, you may begin, and then Professor Dunn, and then we will go to questions.

STATEMENT OF MICHAEL BARNES, PRESIDENT, HANDGUN CONTROL, WASHINGTON, D.C.

Mr. BARNES. Thank you very much, Mr. Chairman. My name is Michael Barnes. I am the president of Handgun Control.

As the Committee knows, Handgun Control is the Nation's largest citizen organization dedicated to preventing gun violence and making our neighborhoods safer.

Recently, some media reports have referred to Handgun Control as a "liberal" or a partisan group. But our members, like the victims of gun violence, are not limited by any ideological or party label, and poll after poll shows that the American people support our agenda by huge margins.

We are a non-partisan organization. Our staff includes Republicans and Democrats. Our Board of Directors includes prominent Republicans, prominent Democrats, and, in fact, as the Committee knows, the leaders and heroes of our cause and our organization are Jim and Sarah Brady, lifelong Republicans. Most Americans recall that Jim Brady served as President Ronald Reagan's press secretary, and many remember that terrible day 20 years ago in March when John Hinckley shot President Reagan and Jim Brady and two courageous law enforcement officers.

Mr. Chairman, I would like to submit a brief statement from Jim Brady for the record. I wish I had time to read it this morning, but as you can imagine, Jim didn't particularly appreciate Mr. Ashcroft calling him "the leading enemy of responsible gun owners." Jim Brady is not an enemy of responsible gun owners. He himself has been a responsible gun owner and a hunter. He and Sarah are enemies of irresponsible gun owners, and they are the ones who should be concerned about the views of Jim and Sarah Brady.

Through the work of Jim and Sarah, through the work of this Committee and the Congress, our Nation has made enormous strides forward in the battle against gun violence. The Brady law, the Federal assault weapons ban, and other common-sense laws have helped to reduce crime and gun violence in America.

We must build on this success, and we can't afford to turn back to weaker gun laws. As the Wall Street Journal reported just recently, more than 96,000 Americans are still killed and wounded each year by gun violence. The Attorney General's first responsibility, of course, is to enforce and defend Federal law. Regrettably, a careful review of Mr. Ashcroft's record shows a deeply felt hostility to Federal action against gun violence. Put simply, Mr. Ashcroft is unalterably opposed to the very gun laws he will be called upon to enforce and defend. For this reason, Handgun Control must reluctantly oppose his nomination. We have never before opposed a nominee for Federal office.

With this committee's permission, I will submit a more comprehensive analysis for the record. For now, I will briefly highlight just a couple of key concerns.

Let me make it clear that we do not oppose Mr. Ashcroft simply because he disagrees with us on gun policy. We oppose him because his opposition to strong Federal gun laws is unyielding and ideological. It is rooted in a troubling constitutional philosophy that promises to affect every decision he makes with respect to the enforcement of gun laws.

Mr. Ashcroft's voting record on guns as a U.S. Senator is very easy to summarize. Without exception, he supported the position of the pro-gun lobby and opposed measures supported by the vast majority of the American people.

In testimony before this committee, Mr. Ashcroft has tried to rehabilitate his record on gun issues. For example, he said that he supported mandatory background checks for gun show sales. But as members of the Committee may recall, that is a rather misleading statement.

As a U.S. Senator, Mr. Ashcroft had an opportunity to vote for strong gun show legislation, but he chose to support weak measures riddled with loopholes. First, he voted for an amendment that would have made background checks voluntary. That is right. He expected criminals and other prohibited purchasers to volunteer for background checks at gun shows. Then he voted for another weak measure that would have limited law enforcement to only 24 hours to conduct criminal background checks on gun show sales. This would have actually weakened current law, which provides law enforcement with 3 business days to carefully review gun sales by licensed dealers.

The difference between 24 hours and 3 business days is critical, according to law enforcement. Even though 95 percent of all background checks are completed in less than 2 hours, for the remaining 5 percent, law enforcement must check State and local records, some of which are not computerized and require a manual review.

The FBI looked at what would happen if it had just 24 hours to complete background checks. The Bureau found that in just 6 months, 17,000 criminals and other prohibited purchasers would have gotten guns—17,000 in 6 months.

On issue after issue, Mr. Ashcroft has voted with the gun lobby. He was one of only 20 Senators to vote against a proposal to require the sale of child safety locks with handguns to protect our children in America. And in a 1998 letter to our Chair, Sarah Brady, Mr. Ashcroft called the Federal assault weapons ban

“wrong-headed.” In that same letter, he summarized his views very clearly. He wrote to Sarah, “Gun control laws will not prevent criminals from acquiring guns.”

Well, don’t tell that to the people of every other civilized country in the world that have responsible gun control laws and do keep criminals from acquiring guns.

Not only did Mr. Ashcroft consistently support the gun lobby in the Congress, he has volunteered to champion the gun lobby’s agenda in his home State on an issue far removed from his senatorial duties. In 1999, he was featured in radio ads supporting an ill-conceived and extreme ballot referendum to legalize the carrying of concealed weapons in Missouri.

This referendum was so poorly written and riddled with loopholes that it would have allowed convicted child molesters and stalkers to carry semi-automatic pistols into bars, sports stadiums, casinos, and day-care centers. Numerous law enforcement organizations in Missouri stepped up to oppose it, but Mr. Ashcroft ignored their advice and did the gun lobby’s bidding. Not surprisingly, the voters of Missouri rejected this outrageous proposal.

Even more disturbing than Mr. Ashcroft’s unwavering record opposing gun safety are his views about the constitutional significance of guns. He has argued that the Second Amendment supports “good government” because an armed citizen—and this is a quote from Mr. Ashcroft—because an armed citizenry “is less likely to fall victim to a tyrannical central government...”

According to this extreme theory, popular with paramilitary militia groups—and they use it in the courts, or they try to; no court has ever accepted it—the Amendment’s purpose is to give individuals the means to take up arms against government officials if they become, in the gun owner’s view, “tyrannical” or “despotic.”

For the chief law enforcement officer of the United States to support this very extreme theory obviously raises very disturbing questions.

In conclusion, let me just say, Mr. Chairman, throughout his years in public service, Mr. Ashcroft has been strongly opposed to even the most limited and common-sense gun laws, laws that are supported by the vast majority of the American people. This opposition apparently arises out of his extremist interpretation of the United States Constitution. This Committee and the Senate should not expect Mr. Ashcroft to check these principles, which he apparently believes in very strongly, at the door to the Attorney General’s office. Quite simply, his record establishes that he cannot be counted on to vigorously enforce and defend our Nation’s gun laws that have helped to reduce gun violence, laws against which he fought here in the U.S. Senate.

This Committee and the Senate, we submit respectfully, should reject his nomination to be Attorney General.

Thank you very much, Mr. Chairman.

[The prepared statement and an attachment of Mr. Barnes follow:]

STATEMENT OF MICHAEL D. BARNES, PRESIDENT OF HANDGUN CONTROL AND THE
CENTER TO PREVENT HANDGUN VIOLENCE

Chairman Leahy, Ranking Member Hatch, Members of the Committee, thank you for giving me this opportunity to testify on the nomination of John Ashcroft to be Attorney General.

As the Committee knows, Handgun Control is the nation's largest organization dedicated to preventing gun violence and making our neighborhoods safer.

Recently, some media reports have referred to Handgun Control as a "liberal" group. But your members, like the victims of gun violence, are not limited by any ideological label, and poll after poll shows that the American people support our agenda by huge majorities.

We are a bipartisan organization. Our staff includes Democrats and Republicans. Our Board of Directors includes prominent Democrats and Republicans. In fact, the leaders of Handgun Control, Jim and Sarah Brady, are lifelong Republicans. Most Americans know that Jim Brady served as Ronald Reagan's Press Secretary, and they remember that terrible day, twenty years ago in March, when John Hinckley shot President Reagan, Jim Brady and two law enforcement officers.

Jim Brady was also invited to testify at this hearing and I would like to read a brief statement from him.

In addition to the Brady Law, we passed the federal assault weapons ban—Senator Feinstein and Senator Schumer were key leaders on this issue—in response to law enforcement concerns that these weapons were being used by drug gangs and other dangerous criminals.

And these stronger laws have helped reduce crime and gun violence. The Department of Justice reports that the overall crime rate is the lowest in 25 years, the murder rate is down more than 25 percent, and gun violence has declined by more than 35 percent.

We must build on this success, and we cannot afford to turn back to weaker gun laws. As the Wall Street Journal recently reported, more than 96,000 Americans are still killed and wounded each year by gun violence. The Attorney General's first responsibility is to enforce, and defend, federal law. Regrettably, a careful review of John Ashcroft's rhetoric and record shows a deeply felt hostility to strong federal action against gun violence. Put simply, Mr. Ashcroft is unalterably opposed to the very gun laws he will be called upon to enforce and defend. For this reason, Handgun Control must oppose his nomination.

With the Committee's permission, I will submit a more comprehensive analysis for the record. For now, I will briefly highlight our key concerns.

OPPOSITION TO STRONG GUN LAWS

Let me make it clear that we do not oppose John Ashcroft simply because he disagrees with us on gun policy. We oppose him because his opposition to strong federal gun laws is unyielding and ideological. It is rooted in a troubling constitutional philosophy that promises to affect every decision he makes on the enforcement of gun laws.

Mr. Ashcroft's voting record on guns as a United States Senator is easy to summarize: without exception, he supported the position of the National Rifle Association and opposed measures supported by the vast majority of Americans.

In testimony before this Committee, Mr. Ashcroft has tried to rehabilitate his record on gun issues. For example, he said that he supported mandatory background checks for gun show sales. But that is misleading.

As a United States Senator, Mr. Ashcroft had an opportunity to vote for strong gun show legislation but he chose to support weak measures riddled with loopholes. First, he voted for an amendment that would have made background checks voluntary. That's right, he expected criminals and other prohibited purchasers to volunteer for background checks at gun shows.

After public opposition to that approach, Senator Ashcroft voted for another weak measure that would have limited law enforcement to only 24 hours to conduct criminal background checks on gun show sales. This would have actually weakened current law which provides law enforcement with three business days to carefully review gun sales by licensed dealers.

The difference between 24 hours and three business days is critical for law enforcement. Even though 95 percent of all background checks are completed in less than two hours, for the remaining five percent, law enforcement must check state and local records, some of which may not be computerized and require a manual review. The FBI looked at what would happen if it had just 24 hours to complete background checks. The Bureau found that, in just six months, 17,000 criminals and prohibited purchasers would have gotten guns.

And because he valued easy access to guns over thorough background checks, Senator Ashcroft actually voted against the amendment that would have required background checks at gun shows and maintained law enforcement's ability to complete them.

On issue after issue, Mr. Ashcroft has toed the gun lobby line. He was one of only 20 Senators to vote against a proposal to require the sale of child safety locks with handguns.

In a 1998 letter to Sarah Brady, John Ashcroft called the federal assault weapons ban "wrong-headed." And in that same letter, he summarized his views very clearly: "Gun-control laws will not prevent criminals from acquiring guns."

SUPPORT FOR A RADICAL GUN LOBBY REFERENDUM IN MISSOURI

Not only did Mr. Ashcroft consistently support the gun lobby in the Congress, he has volunteered to champion the NRA's agenda in his home state on an issue far removed from his Senatorial duties. In 1999, he was featured in radio ads supporting an ill-conceived and extreme ballot referendum to legalize the carrying of concealed weapons in Missouri.

This referendum was so poorly written and riddled with loopholes that it would have allowed convicted child molesters and stalkers to carry semi-automatic pistols into bars, sports stadiums, casinos and day care centers. Numerous law enforcement organizations opposed it, but Mr. Ashcroft ignored their advice and did the NRA's bidding. Not surprisingly, the voters of Missouri rejected this outrageous proposal.

EXTREME VIEWS ON THE SECOND AMENDMENT

Even more disturbing than Mr. Ashcroft's unwavering record opposing gun safety laws are his views about the constitutional significance of guns. In 1998, he convened a Senate Subcommittee hearing on the meaning of the Second Amendment. At that hearing, he argued that the Amendment supports "good government" because an armed citizenry "is less likely to fall victim to a tyrannical central government. . . ."

According to this extreme theory, popular with paramilitary militia groups, the Amendment's purpose is to give individuals the means to take up arms against government officials if they become—in the gun owner's view—"tyrannical" or "despotic".

For the chief law enforcement officer of the nation to support this theory raises disturbing questions. If the Second Amendment's purpose is to keep government officials in check through the threat of armed revolt, then why does it not confer a constitutional right to own firepower-machine guns, hand grenades, surface-to-air missiles—to match that of the government? And this is not an academic question. Leaders of paramilitary groups have defended against federal gun-related charges on the ground that their training with military weapons is protected under the Second Amendment. Would Attorney General Ashcroft aggressively prosecute such groups, or would he be constrained by his constitutional convictions?

Similarly, would an Attorney General with such an extreme view of the 2d Amendment vigorously defend the nation's gun laws in court? Let me give you a specific example. The gun lobby challenged the federal assault weapons ban in court. A federal judge in Michigan recently dismissed this lawsuit and the Department of Justice is now defending that decision on appeal. In light of his criticism of the assault weapons ban and his 2d Amendment interpretation that guns promote good government, could a Department of Justice headed by John Ashcroft be counted on to defend this critical anti-crime law?

CONCLUSION

Throughout his years in public service, John Ashcroft has been strongly opposed to even the most limited and common sense gun laws, laws that are supported by the vast majority of American people. This opposition arises out of his extremist interpretation of the 2d Amendment. This Committee and the Senate cannot expect John Ashcroft to check these principles at the door to the Attorney General's office. Quite simply, his record establishes that he would not vigorously enforce and defend the nation's gun laws that have helped reduce gun violence. This Committee, and the Senate, should reject his nomination to be Attorney General.

STATEMENT OF JAMES BRADY

Chairman Leahy, Ranking Member Hatch, and Members of the Judiciary Committee, I want to thank you for inviting me to testify. I regret that a family medical problem prevents me from being with you for this important hearing. I wanted to send this brief statement to the Committee to address comments Senator Ashcroft made about me.

In a fundraising letter for his Senate campaign, Mr. Ashcroft called me the “leading enemy of responsible gun owners.” I found that remark reckless and offensive, even for a politician trying to raise money. We’ve heard a lot from President-elect Bush about changing the tone in Washington. It is too bad he’s nominated someone who sings a divisive tune. Most importantly, responsible gun owners know that they have nothing to fear from me. In fact, I was a responsible gun owner—I had a shotgun when I was a kid. And I have close friends who are responsible gun owners and I’ve worked with many responsible gun owners. My problem is the irresponsible gun owners—like the criminal who shot me and put me in a wheelchair.

Ever since that terrible day almost twenty years ago, I have worked with my wonderful wife Sarah to strengthen our nation’s gun laws. And with the help of this Committee we have made progress. We passed the Brady Law which requires licensed gun dealers to conduct background checks. Sarah and I were deeply honored that you gave that law our name. And we are so proud that the law is working, with more than 600,000 criminals and other prohibited purchasers stopped from buying guns. Looking back, it’s hard to believe there was such strong opposition to such a common sense idea.

We need to build on this success, and we cannot afford to go back to weaker gun laws. I am afraid that is what would happen under an Attorney General like John Ashcroft. With his extreme positions, he has stayed close to the gun lobby but moved far away from most Americans. I urge this Committee, and the Senate, to reject his nomination.

STATEMENT OF HANDGUN CONTROL

Handgun Control, the largest citizen organization working for stronger gun safety laws, submits this statement in opposition to the nomination of John Ashcroft as Attorney General of the United States.

An Attorney General’s first responsibility is to defend, and enforce, federal law. As Senator Orrin Hatch stated in explaining his opposition to a Clinton Administration executive appointee some years ago, “[t]hose charged with enforcing the Nation’s laws must demonstrate a proper understanding of that law, and a determination to uphold its letter and its spirit.”¹ When it comes to the nation’s gun safety laws, John Ashcroft will be the fox standing guard over the chicken coop. Far from “a determination to uphold the letter and spirit” of the nation’s gun laws, an Ashcroft Justice Department poses a clear and present danger to the protection, and vigorous enforcement, of those laws. Handgun Control opposes Ashcroft not simply because he is opposed to sensible laws to reduce gun violence, but because his opposition springs from a radical pro-gun ideology, including an extremist view of the Second Amendment to the Constitution. That ideology inevitably will infect every policy and law enforcement decision he will make concerning the control of firearms, to the detriment of public safety.

ASHCROFT AND THE GUN LOBBY

THE ASHCROFT RECORD IN CONGRESS

John Ashcroft’s record on guns demonstrates one incontestable proposition: he is joined at the hip with the National Rifle Association and other extreme pro-gun groups. This is evident from both his rhetoric and his record. During his unsuccessful campaign for re-election to the Senate, he called former Reagan Press Secretary James Brady “the leading enemy of responsible gun owners.” (*See Attachment A.*) In key Senate votes on gun legislation, he was in lock step with the gun lobby, voting against common-sense gun safety proposals 13 out of 13 times.

¹ 143 Cong. Rec. S 11617–05 (daily ed. Nov. 4, 1997) (statement of Sen. Hatch).

His votes against public safety include:

- Voted against closing the gun show loophole in 1999. The Lautenberg Amendment to S. 254, the Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act (a.k.a., the Juvenile Justice Bill) would have closed a loophole in our federal gun laws by requiring background checks on all sales at gun shows. Under current federal law, only licensed gun dealers must conduct background checks on buyers; private individuals can sell guns at gun shows without conducting the checks. This loophole enables criminals and juveniles to buy guns without fear of being detected.
 - In 1999, voted *twice to weaken existing law* by removing the background check requirement on pawnshop redemptions and by allowing dealers to sell guns at gun shows in any state. The Craig and Hatch/Craig Amendments to S. 254 would also have weakened existing law by reducing the amount of time law enforcement has to complete criminal background checks for dealer sales at gun shows and by granting special civil lawsuit immunity to negligent gun sellers at gun shows.
 - Voted *twice* against requiring child safety locks to be sold with all guns sold by licensed dealers, once in 1999 (the Kohl Amendment to S. 254) and once in 1998 (the Boxer/Kohl Amendment to the FY 1999 Commerce, State and Justice Appropriations bill).
 - Voted against regulating Internet firearm sales (the Schumer Amendment to S. 254 in 1999).
- Voted *twice* against a ban on the importation of large capacity ammunition magazines (the Feinstein Amendment to S. 254 in 1999 and the Feinstein Amendment to the FY 1999 Commerce, State and Justice Appropriations bill in 1998).
- Voted for a measure that would have impaired implementation of the National Instant Check System in 1998. The Smith Amendment to the FY 1999 Commerce, State and Justice Appropriations bill would have prohibited the FBI from keeping records of gun transfers for a reasonable length of time, thereby inhibiting the FBI's ability to audit the system to ensure that prohibited persons are denied guns and qualified persons are cleared for purchase.

Although Ashcroft portrays himself as a “tough on crime” law enforcer, his “toughness” appears to have limits when it comes to guns. Senator Hatch had sponsored a bill—the Violent and Repeat Juvenile Offender Act of 1997 (S. 10)—that would have expanded authority to prosecute illegal gun traffickers. Ashcroft sought to strip from the bill a provision that would have added federal firearms violations to the list of offenses that would trigger prosecution under the federal Racketeer Influenced and Corrupt Organizations (RICO) statute. Ashcroft sent a handwritten note to Larry Pratt, executive director of the extremist Gun Owners of America, thanking Pratt for “bringing to my attention the RICO (2nd amendment) problems with the juvenile justice bill.”² He assured Pratt, “I am working to see that the RICO provisions are stripped from the bill prior to floor consideration.”³ GOA had called the bill “Hatch’s Horror.”⁴ The bill later was amended to weaken the provision.

ASHCROFT’S SUPPORT FOR HIDDEN HANDGUNS

Not only did Ashcroft unswervingly support the gun lobby in the Congress, he has reached out to champion the NRA’s agenda in his home state. In 1999, he was featured in radio ads supporting an ill-conceived, extreme (and, fortunately, unsuccessful) ballot referendum to legalize the carrying of concealed weapons in Missouri. Proposition B was so poorly written that it would have allowed virtually anyone to carry a hidden handgun virtually anywhere. It was so riddled with loopholes that it would have allowed convicted child molesters and stalkers to carry semi-automatic pistols into bars, sports stadiums, casinos, and day care centers. The proposal would have allowed people to obtain a permit to carry a concealed handgun with minimal training; applicants would not even be required to hold a gun.

Although Ashcroft’s radio ads claimed Proposition B’s safeguards were “plenty tough,”⁵ most of Missouri’s law enforcement community strongly disagreed. Proposition B was opposed by the Missouri Police Chiefs Association, the Missouri Peace Officers Association, the Kansas City Police Department, the Kansas City Metropolitan Crime Commission, the Greater St. Louis Police Chiefs Association, and the St.

² See <http://www.gunowners.org/news/nws9805.htm> (last visited Jan. 2001).

³ *Id.*

⁴ *Id.*

⁵ See Scott Charton, “Concealed guns backer Ashcroft had ‘grave concerns’ about proposal,” Associated Press Newswires, Apr. 11, 1999, available at Westlaw, newsworld-pro database, 4/11/99 APWIRES 22:01:00.

Louis and Kansas City Chapter of the National Organization of Black Law Enforcement Executives.

Proposition B also was opposed by many in the business community, including the Chambers of Commerce in Missouri's largest cities. Even the major league sports franchises in the state—the Kansas City Chiefs, the Kansas City Royals, the St. Louis Rams and the St. Louis Cardinals, as well as the Major League Baseball Players Association and the National Football League Players Association—opposed it. These business and sports interests were deeply concerned about the prospect of thousands of people carrying concealed weapons into restaurants and stadiums, venues where alcohol is sold and consumed.

Proponents of the ballot initiative emphasized that Ashcroft had volunteered his time and effort to support the initiative. That Ashcroft would volunteer to do the NRA's bidding, while ignoring the concerns of law enforcement and the business community, on an issue far distant from his responsibilities as a U.S. Senator, demonstrates his unyielding fealty to the gun lobby. Fortunately, the voters of Missouri heeded the warnings of law enforcement and business interests, and rejected Proposition B.

SUPPORT FROM THE GUN LOBBY

Ashcroft's work in support of the gun lobby's agenda has not gone unrecognized. During the 2000 Senatorial campaign, the NRA gave Ashcroft an "A" rating, with NRA chief lobbyist James Jay Baker telling *The Hill* newspaper, "We plan to do whatever it takes to make sure John Ashcroft retains that seat."⁶ Baker was true to his word. The NRA and other pro-gun groups reportedly spent close to \$400,000 on his unsuccessful bid for a second Senate term.

Other extreme pro-gun groups have recognized Ashcroft as well. In March 1998, the Citizens' Committee for the Right to Keep and Bear Arms gave Ashcroft its "Gun Rights Defender of the Month"⁷ Award for leading the opposition to Dr. David Satcher's nomination as Surgeon General of the United States. Pro-gun groups opposed Satcher because he had served as head of the Centers for Disease Control during a period when CDC was funding groundbreaking research into the dangers of guns in the home. Much of this research was published in prestigious peer-reviewed journals such as the *Journal of the American Medical Association*.⁷

ASHCROFT AND THE SECOND AMENDMENT

Even more disturbing than Ashcroft's unwavering record opposing gun safety laws are his stated views about the constitutional significance of guns. In 1998 he convened a Senate Subcommittee hearing on the meaning of the Second Amendment to the U.S. Constitution.⁸ At that hearing, Ashcroft set out his view of the purpose of the Amendment:

Indeed, the Second Amendment—like the First—protects an important individual liberty that in turn promotes good government. A citizenry armed with the right to possess firearms and to speak freely is less likely to fall victim to a tyrannical central government than a citizenry that is disarmed from criticizing government or defending themselves.⁹

The Senator thus aligned himself with what has been called the "insurrectionist" view of the Second Amendment.¹⁰ According to this extreme and discredited theory, the purpose of the Amendment is to give individuals the means to take up arms against government officials if they become—in the gun owner's view—"tyrannical" or "despotic."

No court has adopted the insurrectionist theory. Indeed the federal appeals courts, including the United States Supreme Court, unanimously have held that the Second Amendment guarantees a right to be armed only in connection with service in a

⁶*The Hill*, May 10, 2000, at 3.

⁷See, e.g., Arthur Kellerman et al., *Suicide in the Home in Relation to Gun Ownership*, 327 *New Eng. J. Med.* 467–472 (1992); Arthur Kellerman et al., *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 *New Eng. J. Med.* 1084–1091 (1993).

⁸The Second Amendment reads: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. Amendment II.

⁹*Hearing before the Senate Subcommittee on the Constitution, Federalism and Property Rights of the Committee on the Judiciary*, 105th Cong. 3 (1998) (statement of the Honorable John Ashcroft).

¹⁰See Gary Wills, *A Necessary Evil: A History of American Distrust of Government*, at 205–21 (1999); Carl T. Bogus, *The Hidden History of the Second Amendment*, 31 *U.C. Davis L. Rev.* 309, 386–404 (1997); Dennis A. Henigan, *Arms, Anarchy and the Second Amendment*, 26 *Val. U. L. Rev.* 107, 110 (1991).

state-organized militia.¹¹ As historians and legal scholars have recognized, to read the Constitution as sanctioning insurrectionist activity is to invite anarchy. Dean Roscoe Pound prophetically wrote more than forty years ago:

In the urban, industrial society of today a general right to bear efficient arms so as to be enabled to resist oppression by the government would mean that gangs could exercise an extra-legal rule which would defeat the whole Bill of Rights.¹²

As Pulitzer Prize winning historian Gary Wills more trenchantly put it, “[o]nly madmen, one would think, can suppose that militias have a constitutional right to levy war against the United States, which is treason by constitutional definition (Article III, Section 3, Clause 1).”¹³

It is deeply troubling that the nominee to become the chief law enforcement officer of the United States would ascribe to the view that the Constitution contains within its own text a guarantee of the right to prepare for resistance to government authority. Ashcroft’s sometimes extreme statements about the federal government heighten this concern. For example, as reported by the pro-gun Citizens Committee for the Right to Keep and Bear Arms, he has likened “today’s power brokers and policy wonks” in the federal government to “the European despots from whom our Founding Fathers fled,” and has explained that individuals be allowed to “keep and bear arms” because, “I am fearful of a government that doesn’t trust the people who elected them.”¹⁴ In objecting to a decision striking down a term limits law, he also has referred to the Supreme Court as “five ruffians in robes” who “stole the right of self-determination from the people.” He also vowed, “I will fight the judicial despotism that stands like a behemoth over this great land.”¹⁵ Such comments could be dismissed as merely overheated rhetoric, were it not for Ashcroft’s firmly-held conviction that individuals have the right to be armed in preparation for violent struggle against “despotism.”

Ashcroft’s endorsement of the insurrectionist theory, and his strong condemnations of the federal government, raise disturbing questions. If the Second Amendment’s purpose is to keep government officials in check through the persistent threat of armed revolt, then why does it not confer a constitutional right to own firepower—machine guns, hand grenades, surface-to-air missiles—to match that of the government? And why would the Amendment not protect the right to form private military forces that engage in preparation for civil war?

The implications of the insurrectionist theory have direct relevance to Ashcroft’s willingness to use federal power against extremist groups that threaten violence. In *Vietnamese Fisherman’s Association v. Knights of the Ku Klux Klan*, 543 F. Supp. 198 (S.D. Tex. 1982), the KKK invoked the insurrectionist theory (unsuccessfully) to argue that the Second Amendment protected its right to maintain a paramilitary force. Paramilitary militia groups continue to use the same arguments to justify their stockpiling of weapons. For example, one militia leader in Colorado was successfully prosecuted for illegally possessing a machine gun; another in Michigan stockpiled an arsenal of weapons.¹⁶ How aggressive would Attorney General Ashcroft be in moving against such extremist groups that are preparing for civil

¹¹The United States Supreme Court held in *United States v. Miller*, 307 U.S. 174, 178 (1939) that the “obvious purpose” of the Second Amendment was “to assure the continuation and render possible the effectiveness” of the state militia, and it “must be interpreted and applied with that end in view.” Every federal appeals court has agreed that the Second Amendment does not entitle individuals a right to be armed for private purposes unrelated to service in a government-sponsored militia. No court has held that the Second Amendment ensures the right to be armed in preparation for insurrection against the government. See *Thomas v. City Council of Portland*, 730 F.2d 41, 42 (15th Cir. 1984); *United States v. Toner*, 728 F.2d 115, 128 (2nd Cir. 1984); *United States v. Graves*, 554 F.2d 65, 66 n.2 (3^d Cir. 1977); *Love v. Peppersack*, 47 F.3d 120, 124 (4th Cir. 1995); *United States v. Johnson*, 441 F.2d 1134, 1136 (5th Cir. 1971); *United States v. Williams*, 446 F.2d 486, 487 (5th Cir. 1971); *Stevens v. United States*, 440 F.2d 144, 149 (6th Cir. 1971); *Gillespie v. City of Indianapolis*, 185 F.3d 693, 710 (7th Cir. 1999); *United States v. Nelson*, 859 F.2d 1318, 1320 (8th Cir. 1988); *Hickman v. Block*, 81 F.3d 98, 101 (9th Cir. 1996); *United States v. Oakes*, 564 F.2d 384, 387 (10th Cir. 1977); *United States v. Wright*, 117 F.3d 1265, 1273 (11th Cir.), cert. denied, 522 U.S. 1007 (1997); *Fraternal Order of Police v. United States*, 173 F.3d 898, 906 (D.C. Cir.), cert. denied, 528 U.S. 928 (1999).

¹²Roscoe Pound, *The Development of Constitutional Guarantees of Liberty*, at 91 (1957).

¹³Gary Wills, *Why We Have No Right to Bear Arms*, *The New York Review of Books*, Sept. 21, 1995, at 69 (emphasis in original).

¹⁴Statement prepared for POINT BLANK, reprinted at <http://www.ccrkba.org/defend1998.htm> (last visited Jan. 2001).

¹⁵Speech to Conservative Political Action Committee (“CPAC”) on “Judicial Despotism,” March 6, 1997.

¹⁶See Peter G. Chronis and Katherine Vogt, “Militia suspect pleads guilty,” *The Denver Post*, Feb. 11, 1998, available at 1998 WL 6102040; Brian Wheeler, “Militiaman’s appeal ‘utterly meritless’ Federal appeals court upholds Battle Creek man’s conviction, finding he must finish out sentence,” *The Detroit News*, July 7, 2000, available at 2000 WL 3483670.

war? Would he be constrained by his deeply felt views of the meaning of the Second Amendment?

ASHCROFT AND THE DEFENSE AND ENFORCEMENT OF GUN SAFETY LAWS

The gun lobby is never content to try to block gun safety legislation from being enacted. Once the National Rifle Association loses in Congress, it challenges the laws in court. It is the Attorney General's responsibility to direct the legal defense of gun laws. For three years, the NRA supported lawsuits against the Brady Act. Would Attorney General Ashcroft have fought the gun lobby for three years to protect this sensible public safety law? How can John Ashcroft be trusted to vigorously defend and enforce laws that he believes to violate our Constitution? How can he be trusted to oppose the legal attacks of the very organizations to which he is beholden for past political support?

In courts throughout the nation, important federal gun laws are under legal attack. For example, in *United States v. Emerson*, 46 F. Supp. 2d 598 (N.D. Tex. 1999), *on appeal*, No. 99-10331 (5th Cir.), the NRA has filed a legal brief supporting the defense of a Texas doctor who threatened his estranged wife and daughter with a semi-automatic pistol (and threatened to kill his wife's friends with an assault weapon). The NRA is fighting the doctor's indictment for possessing a gun while under a domestic violence restraining order, arguing that the federal law barring such possession violates the Second Amendment. Will an Ashcroft Justice Department agree with this criminal defendant that the statute is unconstitutional? Would it have even brought charges against this defendant?

In 1994, the NRA launched a constitutional attack on the federal assault weapon ban, arguing that Congress did not have the power to enact the ban. The NRA was dismissed as a plaintiff because it lacked standing to sue. *NRA v. Magaw*, 132 F.3d 272 (6th Cir. 1997). Gun manufacturers and dealers took up the constitutional attack and their challenge also was dismissed. *Olympic Arms v. Magaw*, 91 F. Supp. 2d 1061 (E.D. Mich. 2000). The case is now on appeal. During Ashcroft's 1994 Senate campaign, he said he would have opposed the assault weapon ban.¹⁷ In a 1998 letter to Sarah Brady, he called the ban "wrong headed." (See Attachment B.) According to the insurrectionist theory of the Second Amendment, assault weapons are the kinds of military guns needed by the citizenry to keep the government in check. Can we count on Attorney General Ashcroft to vigorously defend this statute, which has stopped the gun industry from flooding our nation's streets with high-firepower military guns? How vigorously will he enforce a statute he so strenuously opposes?

In *Springfield Armory v. Buckles*, 116 F. Supp. 85 (D.D.C. 2000), *appeal docketed*, No. 00-5409 (D.C. Cir. Nov. 30, 2000), the gun industry is challenging the Clinton Administration's ban on the importation of assault weapons that use highcapacity ammunition magazines. A federal judge upheld the import ban and the Justice Department is defending it on appeal. Will Attorney General Ashcroft be vigilant in protecting the public from foreign-made assault rifles?

Given his record and rhetoric on guns, it is difficult to imagine an Attorney General so ill-suited to be the nation's defender, and enforcer, of our gun laws.

CONCLUSION

Despite great progress against gun violence in the past several years, America still faces levels of gun violence unheard of in the rest of the industrialized world. Our nation loses over 30,000 lives every year to gun violence, including over 3,000 children and teenagers. Because guns travel easily across state lines, an effective national strategy against this plague requires a strong federal response. Such a response requires strong laws and determined efforts to protect, and enforce, those laws. The American people support strong gun laws and strong enforcement of those laws.

John Ashcroft is opposed to the very laws he will be charged to protect and enforce. His opposition is doctrinaire, unyielding and rooted in his own deeply held constitutional philosophy about the role of guns in society. His endorsement of the "insurrectionist" theory of the Second Amendment is wholly outside the mainstream of American legal thought and dangerous in its implications. We do not question the sincerity of Ashcroft's views; indeed, it is that very sincerity that counsels against confirmation. In the final analysis, it will not be possible for him to set aside his deep philosophical convictions about "gun rights." Those convictions are fundamen-

¹⁷See Terry Ganey, "Three Senate candidates stake claim to job observers of Ashcroft predict his spot in ideological spectrum," *St. Louis Post-Dispatch*, Oct. 24, 1994, available at 1994 WL 8205549.

tally incompatible with the aggressive federal role in fighting gun violence that the American people strongly support.

John Ashcroft will put our federal gun safety laws at risk. It is a risk not worth taking.

MICHAEL D. BARNES
President, Handgun Control

DENNIS A. HENIGAN
General Counsel, Handgun Control

Chairman LEAHY. Thank you.
Professor Dunn?

**STATEMENT OF JAMES M. DUNN, VISITING PROFESSOR OF
CHRISTIANITY AND PUBLIC POLICY, WAKE FOREST UNIVER-
SITY, WINSTON-SALEM, NC**

Mr. DUNN. Thank you, Mr. Chairman, members of the committee. I deeply appreciate the opportunity to present testimony before this distinguished Committee and respectfully announce at the outset that I am opposed to the confirmation of Senator Ashcroft to be Attorney General. I testify for myself because I am not representing Wake Forest University, but I now teach at the Divinity School of Wake Forest University.

From my perspective, the long history of Senator Ashcroft's identification with and approval of the political agenda of right-wing extremism in this country convinces me that he is unqualified and unreliable for such a serious trust.

I speak primarily of one of his most notable initiatives, the so-called Charitable Choice legislation. A full frontal assault on the First Amendment mars Senator Ashcroft's career. He has favored government-prescribed religious exercises in the public schools, posting some version of the Ten Commandments, thereby secularizing sacred Scripture, and paying public monies for private and parochial schools. These outrageous initiatives, they pale compared to one being considered to contribute Charitable Choice schemes. Senator Hatch has rightly and vigorously insisted, and I quote, "those charge with enforcing the law must demonstrate the proper understanding of that law." And that is the point at which I contend that Senator Ashcroft has amply demonstrated that he does not understand the first freedom: Congress shall make no law respecting an establishment of religion.

He has come down against settled law that he speaks of frequently, case law, and the American way in church/state relations. It seems that he just doesn't get it.

Now, that is the kindest and most generous interpretation of his opposition to church/state separation. Either he has a blind spot, a lapse, or he is one of those who would willfully and intentionally destroy the doctrine of church/state separation that we have known in this country.

He was also a party to an incredible abuse of the Free Exercise Clause, keeping Missouri the only State in the Nation to exempt church-sponsored day-care centers from fire, health, and safety regulations. One State-exempt center in St. Louis was found to have 100 children with two adults caring for them. Dog pounds in that State have more State supervision than church-based child care.

When government advances religion in any way, it inevitably becomes involved in religious practice. Charitable Choice, so-called, allows and perhaps compels State governments to provide taxpayer-funded social services through pervasively sectarian institutions. My doctoral studies and 35 years of serving Baptists in social justice agencies gives me a heightened appreciation of the separation of church and state as an essential protection for both vital and voluntary religion.

As the principal architect of Charitable Choice legislation, Senator Ashcroft tacked it on to welfare reform in a last-minute vote in August 1996. I and many others have been challenge the constitutionality of this legislation because we believe that the dumping of tax dollars on faith-based programs is dangerous. We cannot afford to abandon the separation of church and state. It is the greatest contribution of the United States to the science of government. And we cannot deny that the American way in church/state relations, which involves the separation of institutions of religion from the institutions of government, has been good for both the church and the state.

It is clear that religious liberty's essential corollary is the separation of church and state. When anyone's religious freedom is denied, everyone's religious freedom is at risk.

Having one's tax dollars taken by government coercion and turned over to pervasively sectarian outfits to do good threatens everyone's civil and religious liberties. Some truisms are true: "He who pays the fiddler calls the tune." And there is no religion-related regime that I know of that wants the rules and regulations or even the reporting that goes with government-handled money. It is clear that most ministries sell their souls for a mess of politics-tainted pottage the very day that they embark on the course of government gimmies.

One cannot assume that tax dollars will not change the nature, even the freedom and effectiveness, of faith-based programs. It requires a leap of faith that even Kierkegaard couldn't muster to think that the source of funds will not shape to some degree the programs that those funds pay for.

Practical partnerships between government and religion abound already, but most Americans have absolutely no idea how significantly Charitable Choice schemes would and are changing current law, or, worse, eviscerating religion's vitality by developing a dependence upon tax money for church-based programs. Such plans permit exactly what the Supreme Court repeatedly has prohibited—the use of government money to finance religious activities. They offer an invitation to federally funded proselytizing with a legal license thrown in to boot.

Now, I am acutely aware of the traditions of this august body and generally appreciative of the high degree of mutual respect and forbearance exhibited by Senators in their interaction with one another. And that is precisely what concerns me, because I see the possibility that the U.S. Senate could sacrifice religious liberty, civil rights, civil liberties on the altar of senatorial civility. I pray that you will not do that, and I appeal to you not to confirm Senator John Ashcroft as Attorney General.

[The prepared statement and attachments of Mr. Dunn follow:]

STATEMENT OF JAMES M. DUNN, PROFESSOR OF CHRISTIANITY AND PUBLIC POLICY
AT WAKE FOREST UNIVERSITY, WINSTON-SALEM, NC

Mr. Chairman and members of the Committee, I deeply appreciate the opportunity to present testimony before this distinguished Committee against the confirmation of Senator Ashcroft to be Attorney General. I'm profoundly aware this is not a matter to be taken lightly and recognize and appreciate the profound seriousness of rising to oppose any president's nomination to one of the most important posts in our nation.

However, the long history of Senator Ashcroft's identification with and approval of the political agenda of religious, right-wing extremism in this country convinces me that he is utterly unqualified and must be assumed to be unreliable for such a serious trust.

While others are calling attention to his abuse of power in the confirmation process (not unlike the exercise in which you are engaged at this time), his support for concealed weapons, his opposition to therapeutic abortions even in the most compelling cases, and his outspokenness against other civil liberties, I speak simply to my concerns about one of his most notable initiatives, the so-called "charitable choice" legislation.

When government advances religion in any way, it inevitably becomes involved in religious practice. It seems that "charitable choice" is a frontal assault on the First Amendment's Establishment Clause that forbids government from advancing or becoming entangled in religious affairs. Yet "charitable choice" allows and perhaps compels state governments to provide taxpayer-funded social services through pervasively sectarian institutions. My doctoral studies leading to a Ph.D in ethics and 35 years of serving Baptists in social justice agencies, gives me a heightened appreciation for the separation of church and state as an essential protection for vital and voluntary religion.

The principal architect of "charitable choice" legislation, Senator Ashcroft, tacked it on to welfare reform in a last-minute midnight vote in August 1996. I and many others challenge the constitutionality of this legislation and the idea that it is simply allowing churches to use federal tax dollars for social programs that would otherwise be funded by government. This dumping of tax dollars on "faith-based" programs is extremely dangerous.

One cannot reconcile Senator Ashcroft's role as reckless innovator with his history as a rigid ideologue. And, although it's been one of his most irresponsible initiatives, it has been almost ignored by media critics.

As a people we cannot afford to abandon the separation of church and state, the greatest contribution of the United States to the science of government. We cannot deny that the American way in church-state relations has been good for the church and good for the state.

It is clear that religious liberty's essential corollary is separation of the structures of state from the institutions of religion. When anyone's religious freedom is denied everyone's religious freedom is endangered.

Having one's tax dollars taken by government coercion and turned over to pervasively sectarian outfits to do good threatens, at least a little bit, everyone's civil and religious liberties. Some truisms are true, like "he who pays the fiddler calls the tune." There is no religion-related regime that wants the rules and regulations, even the reporting, that goes with government-handled money. It is clear to most ministries that they sell their souls for a mess of politics-tainted pottage the very day they embark on the course of government gimmies.

One cannot assume that taking tax dollars will not change the nature, even the freedom and effectiveness, of faith-based programs. It requires a leap of faith even Kierkegaard couldn't muster to think that the source of funds will not shape to some degree the programs paid for.

Religious leaders recognize the dangers inherent in "charitable choice." Among the national organizations opposed to "charitable choice" provisions are Protestant and Jewish groups such as the American Baptist Churches, the American Jewish Congress, the Baptist Joint Committee on Public Affairs, Central Conference of American Rabbis, Church of the Brethren, United Methodists, Presbyterian Church USA, United Church of Christ, and the Unitarian Universalist Church.

While opposition to "charitable choice" does not automatically indicate that any organization opposes the confirmation of Senator Ashcroft as Attorney General, it does reflect the seriousness with which this mixing of church and state is seen.

Attached is a splendid article by Dr. John M. Swomley from *Christian Ethics Today*, May-June, 2000, in which Mr. Ashcroft's revisionist understanding of the religion clauses in the First Amendment is highlighted. Also attached is the position statement of the Baptist Joint Committee on Public Affairs in the same vein. While

the Baptist Joint Committee has never endorsed or opposed a nominee or appointee, the attached resolution regarding "charitable choice" reflects the Committee's serious concern with this divisive issue.

It's ironic that a face card for faith like Senator Ashcroft is so willing to ignore the first freedom: "Congress shall make no law respecting an establishment of religion". It's not too much to call him a reckless innovator.

But then there's the rigid ideologue side of the Senator. When it comes to civil rights, civil liberties, concealed weapons, and abortion issues, he is clearly a right-wing extremist.

I am acutely aware of the traditions of this august body and generally appreciative of the high degree of mutual respect and forbearance exhibited by Senators in their interaction with one another. I am concerned, however, about the possibility that the United States Senate could sacrifice civil rights and civil liberties on an altar of senatorial civility. I pray that you will not do that. I appeal to you not to confirm Senator John Ashcroft as Attorney General.

"CHARITABLE CHOICE:" AN ANALYSIS, BY JOHN M. SWOMLEY

When the welfare reform bill was before the Congress, Senator John Ashcroft of Missouri amended it with what is known as the "Charitable Choice" provision. On the surface the idea of involving charitable religious or other private organizations in work with poor or needy persons sounds like a worthy cause, but it is not what it pretends to be.

It is first and foremost an effort to have federal and state governments pay churches, synagogues, and other charitable enterprises for what they are already doing.

This device requires religious and other groups to sign government contracts which make them become government agents rather than private organizations doing good and helpful work as a part of their religious mission or reason for existence.

Therefore it is essential to examine carefully any legislative efforts to have government finance and direct religious and charitable enterprises which were organized as non-governmental agencies and religious, sectarian, or other ministries to people.

1. The Charitable Choice provisions are part of a larger public law which is entitled The Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The legislation provides for federal "Block grants to states" as well as a state program "funded under Part A of Title IV of the Social Security Act." What this means is the states would be forced to enter contracts with and engage in government oversight of religious institutions, however sectarian. The word "forced" is used because any religious organization could sue a state on the same basis as any other non-governmental provider that wanted a government contract. That suit is possible because the law specifically provides that "neither the Federal" government nor a State receiving funds under such programs shall discriminate against an organization which is, or applies to be, a contract. . . on, the basis that the organization has a religious character."

2. If the State of Missouri, for example, were to provide any financial aid to religious organizations, it would violate the State Constitution and make it vulnerable to lawsuits. That Constitution states "[No] money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such. . ." The State could be sued if it violated its Constitution because the Constitution refers to "public" money—not just State money.

3. One of the "Charitable Choice" provisions would permit the provision of government social services in a house of worship and grant religious contractors a right to display "religious art, icons, scripture or other symbols" in any area where government-funded service are provided.

4. The "Charitable Choice" provisions would permit religious contractors to discriminate for or against employees based on their religious beliefs, even though they are paid with government funds.

5. Under the "Charitable Choice" provisions the religious organization, receiving and expending funds shall be subject to government financial regulations and audits unless it sets up a separate organization to do its work and disburse government funds.

6. The same law provides that no government contracts funds “shall be expended for sectarian worship, instruction, or proselytization.” Yet it provides no enforcement mechanism and explicitly forbids government control over the “practices and expression of its religious-beliefs.” In any event, the provisions against “worship, instruction or proselytization” is unenforceable because government may not monitor or censor what churches express in their worship or other expression.

7. Although this law specifically provides that beneficiaries of religiously transmitted government assistance who object “to the religious character of the organization” can “within a reasonable period of time after the date of such objection” receive “assistance from an alternative provider” nothing in the legislation provides for notice to be given to beneficiaries to inform in them of such a right or of the right not to be subject to compulsory religious worship or proselytization.

8. The “Charitable Choice” legislation is likely to do serious damage to the religious mission of churches that already provide benefits to needy individuals with private funds. If other religious organizations in the same area are funded by the government more lavishly, there will be religious competition and in effect encouragement or “coercion” of non-participating churches to get into the government program.

9. If churches become government agents, one likely result will be less active participation by church members and increased dependence on government funds. Many European countries have already gone down this slippery slope, thereby gravely damaging the attendance, stewardship, and spiritual vitality of their churches. Finally, in almost every city and country there are numerous churches. Presumably state governments cannot furnish each of them with funds either equally or equitably. Undoubtedly the churches, sects, or denominations with the most political influence would get government funding. When the government choose one or more churches or other religious organizations over others or when churches seek government funds, there is thereby an establishment of religious organizations by the government.

It is evident that this legislation would seriously damage or destroy separation of church and state by nullifying the First Amendment clause the government “shall make no law respecting an establishment of religion.” This measure not only authorizes federal and state governments to fund churches and other religious institutions “on the same basis as any other non-governmental providers” but also to make them agents of the state.

Are there alternatives to this blatant invasion of religious liberty? There certainly are. One is for government directly to fund its own welfare program with paid employees who are trained for social service to persons in need.

Another is to provide a channel for religious and other charitable organizations to make referrals to government agencies and even to share information about existing programs.

Still another is for legislatures to encourage private giving by tax incentives which would allow income tax deductions for non-itemizers to deduct 50 percent of their charitable gifts over a specified amount, such as \$400 or \$500.

Still another alternative is for religious organizations to form separate entities to provide secular social services with tax money. This is already being done by the Salvation Army, Church World Service, Lutheran Services, and Catholic Charities.

Among the national organizations opposed to “Charitable Choice” provisions are Protestant and Jewish groups such as the American Baptist Churches, the American Jewish Congress, the Baptist Joint Committee on Public Affairs, Central Conference of American Rabbis, Church of the Brethren, United Methodists, Presbyterian Church USA, United Church of Christ, and the Unitarian Universalist Church.

Among the secular groups opposing this scheme are the American Civil Liberties Union; American Federation of State, County and Municipal Employees, Americans United for Separation of Church and State, Americans for Religious Liberty, the National Education Association; the National Black Women’s Health Project; N.O.W Legal Defense and Education Fund; People for the American Way; and others.

It is significant that not one far right religious organization opposed it, such as the Christian Coalition, James Dobson’s Focus on the Family, or the Catholic Right to Life movement. Was it because they oppose separation of church and state, or because one of their chief spokesmen in the Senate, Senator Ashcroft, was advancing their agenda?

Certainly this “Charitable Choice” scheme violates the Establishment Clause of the Constitution, numerous Supreme Court decisions, and the whole idea that people of religious faiths and none should not have their taxes used to support government financing of religious organizations or any religion.

In short, the “Charitable Choice” concept strikes a heavy blow against the American doctrine of separation of church and state. Although the Congress has now passed this legislation and the President has signed it into law, it is to be hoped that the courts will overturn it on the clear basis that it is an egregious violation of the First Amendment to the Constitution, the very cornerstone of our liberties.

RESOLUTION ON THE CHARITABLE CHOICE PROVISION IN THE NEW WELFARE ACT

From the founding of our country, Baptists have opposed the use of tax dollars to advance religion. Baptists believe that, when the government funds religion, it violates the conscience of taxpayers who rightfully expect the government to remain neutral in religious matters. Knowing that the government always seeks to control what it funds, Baptists have long rejected government’s handouts for their religious activities. Government subsidization of religion diminishes religion’s historic independence and integrity. When the government advances religion in this way, it inevitably becomes entangled with religious practice, divides citizens along religious lines and prefers some religions over others.

For these reasons, the Baptist Joint Committee opposes the so-called “Charitable Choice” provision recently signed into law as part of the Welfare Reform legislation. It is a frontal assault on the First Amendment’s Establishment Clause which forbids the government from advancing religion or becoming entangled in religious affairs. This provision will allow and perhaps compel state governments to (provide taxpayer-funded social services through pervasively sectarian institutions. If the aid is vouchered, it can be used to fund religious worship and education. Finally, this provision may well supersede state constitutional provisions that would prohibit these funds from being used to advance religion.

There is a place for religious organizations in delivering welfare services with public funds. But it should be done through separately incorporated affiliates that do not engage in religious education, proselytizing or discrimination. That way, religious groups can preserve their theological purity and organizational autonomy, while cooperating with government to deliver services to those in need.

The “Charitable Choice” provision runs counter to the interests of religious liberty and church-state separation. Accordingly, the Baptist Joint Committee calls for repeal of the “Charitable Choice” provision of the Welfare Reform legislation.

DWIGHT JESSUP, CHAIR

Chairman LEAHY. Thank you, Professor Dunn. I note from your bio you served as a pastor and a campus minister and a college teacher, served on the Baptist Joint Committee and so on. I was struck by something you said in your testimony about the child-care centers.

I am a parent, as are many on this panel, and I’m also blessed to be a grandparent. I have always thought children are the most vulnerable of our society and we should do everything possible to protect them. We don’t ask what religion they are or anything else. We just make sure they are protected, whether they are going to school or they are going to a child-care center or anywhere else. So could you elaborate just what the situation was that you were talking about? I think one thing that would unite every one of us on this Committee is that we want our children protected.

Mr. DUNN. Yes, sir. For a number of years, there have been attempts to bring child-care centers in Missouri under the fire, safety, and health regulations that apply to non-church-related child-care center, and Senator Ashcroft has consistently opposed that and continued to insist, as long as he had any influence in that realm, that church-related child-care, day-care centers were exempt from those State-imposed rules and regulations for fire, safety, and health protection.

Chairman LEAHY. What are some of these fire and safety things?

Mr. DUNN. Crowding, the number of children that would—overcrowding in the facility, the number of children that would relate to each adult, the ratio between children cared for and the adults.

The fire protection facilities that are required in other public facilities, even though they are in church—

Chairman LEAHY. Fire escapes and things like that?

Mr. DUNN. Fire escapes and doors and windows and so on.

I am not completely at sea over this issue because for 10 years, when I was the director of the Christian Life Commission in Texas, Lester Roloff and Corpus Christi fought the State regulations for fire, health, and safety that were proposed in Texas and finally passed. After a survey was done, only three of over 600 church-related day-care centers opposed those protections.

I was outraged when I learned that the Missouri law had exempted church-related day-care centers, which account for a great number of day-care centers, from the laws that protect children in regard to fire safety and health regulations, food preparation, all that sort of thing.

Chairman LEAHY. Am I misstating your position to say that if a child is going to be in a child-care center, he or she should have the same level of protection wherever he or she is?

Mr. DUNN. Absolutely.

Chairman LEAHY. His or her religion makes no difference.

Mr. DUNN. Absolutely.

Chairman LEAHY. A child is a child is a child.

Mr. DUNN. That is right.

Chairman LEAHY. Congressman Barnes, like a number of others on this committee, I am a gun owner. I would guess that the majority of Vermonters are. I enjoy target shooting. To the chagrin of some, I remind everybody I have a pistol range in my backyard of my home in Vermont. I also believe, however, that in this nation there are certain restrictions we are allowed under the Second Amendment. Our legislative bodies have to vote on those things. Some States require gun registration. Some do not. We have the Brady law, and we have a number of other things for checking on who can own a weapon, whether he or she is a felon or not.

We usually have pretty heated debates getting to those laws, but if we pass them, we pass them. Then it is left to somebody to enforce them. The Attorney General gets to enforce them in each State, and at the national level.

This applies not only for gun laws. The Attorney General also gives advice and opinion on questions of law, as required under 28 U.S.C. 511, throughout the executive branch. You served here in the Congress, and you know what is like. Somebody will come before you from Health and Human Services or from HUD or anything else saying, well, we have an Attorney General opinion saying under the law you passed, this is what we are allowed to do.

Now, Senator Ashcroft said he would follow all of the laws and so on. He has stated some very strong views on civil rights, reproductive rights, and other matters, gun laws and so on in the past. How confident are you that, as Attorney General, when a department, whether it is HUD or U.S. attorneys or anybody else, regarding gun laws or anything else, comes in and asks Attorney General

Ashcroft, "how do you interpret this?" what are we supposed to do? What are your views that the response will be objective?

Mr. BARNES. Well, thank you for the question, Mr. Chairman. That is an extraordinarily important question, because the nominee that the Committee is considering is an individual who has expressed a view with respect to gun laws that is so extreme that it goes beyond even many of the pro-gun groups in the United States that advocate here before the U.S. Senate. The view that he has expressed is known as the so-called insurrectionist view, and that is that Americans have a constitutional right to own guns so that they can defend themselves against government officials if they believe those government officials are tyrannical or despotic.

When I came here to the U.S. Congress a couple of decades ago, there were no guards at the doors. There were no barricades. There were no metal detectors. It is hard to think that that was just so recent, but there were no guards at the doors here in the government buildings. But over the past couple of decades, there have been tragedies here in these very buildings on Capitol Hill that caused the government to have to install metal detectors and guards and all the rest. And that has happened at every Federal facility in America because there are Americans who are prepared to take violence against their government.

This is an extremist view of the Constitution which is held by only a very tiny percentage. Perhaps one one-hundredth of 1 percent of the American people believe that the reason the Founding Fathers put the Second Amendment in there is so that we can take up arms against our government. But that is the view that Senator Ashcroft has expressed and defended before this committee. And he distorted the views of James Madison in order to defend that view. He referred to James Madison's writings in a way that was directly contradictory to what every constitutional scholar believes Mr. Madison was saying. Mr. Madison was saying the opposite of what Mr. Ashcroft was saying to this Committee in Federalist Paper No. 46.

So this is a very troubling matter for American citizens who want an Attorney General who will, in fact, in a responsible manner enforce the laws, and as you suggest, when asked to interpret the laws, will do so in a way consistent with American precedent and consistent with every court decision that has ever been made on this matter. No Federal court has ever agreed with Mr. Ashcroft's view of the Second Amendment, and the Supreme Court has said, and I quote, that it is "obvious" that this is not the correct interpretation of the Constitution.

Chairman LEAHY. Thank you, Congressman Barnes.

Senator Hatch?

Senator HATCH. Well, Mr. Chairman, I will put my statement in the record. Just let the record show that I disagree very strongly with both of your characterizations of John Ashcroft and his voting record.

With that, that is good enough for me.

Chairman LEAHY. Senator Kennedy?

Senator KENNEDY. Thank you very much. I thank both of you for your statements.

Mr. Barnes, as I understand it, there are 12 children that die from gun accidents every single day. Is that your understanding?

Mr. BARNES. Well, thank goodness, it is a little better now. It is just under 11 children a day in the United States dying from gun violence.

Senator KENNEDY. And one of the great challenges that we are facing as a society is how, as a society that cares about children, we are going to free ourselves from those kinds of terrible situations that scar families with human tragedy.

What does your own research show in terms of availability and accessibility of guns to children? Does your research and does your organization feel that the availability, the easy accessibility of firearms to these children contribute to that fact?

Mr. BARNES. Well, thank you for the question, Senator. I can't help but note—and I apologize to you, Senator for this, but I can't help but note that your presence in this room is a reminder to every American that none of us is free from the danger of gun violence, not a President of the United States, not a Senator, not an Attorney General. Your family and our country have suffered enormously because of gun violence.

There was a recent survey asking junior high school students in the United States how long it would take them to get a gun, and they said they could get a gun within a couple of hours. And that is true virtually everywhere in America. This is not just a problem in inner cities. It is a problem in our suburban communities.

In the last 24 or 48 hours, we have had school shootings in California, in Washington, D.C., in Maryland, a young boy killed in the playground outside his school in my home State of Maryland the day before yesterday. This is a terrible tragedy that affects our children in every community in this country, and we as a Nation obviously need to do much more to protect our children.

Senator KENNEDY. Well, when we have a record that is against an effective closing of the gun show loophole the way that you have described it, a record of opposition to the assault weapons ban calling it “wrong-headed legislation,” a record against child safety locks, for banning the importation of high ammunition magazines—

Mr. BARNES. Against banning.

Senator KENNEDY. Against banning the importation of high ammunition magazines—and then took out ads in favor of making guns more available and acceptable and concealable in the State do you think that kind of record sends a message to parents who are concerned about the safety and security, even in schools or in their homes or in the main streets of this country, that their children are going to be safer or more secure?

Mr. BARNES. Well, unfortunately, it actually has been a priority for Mr. Ashcroft to fight against common-sense provisions that would make our communities and our children safer. It has been a priority for him. This is something he has focused on throughout his career, and if it were just a matter of his voting along with other Senators, perhaps our organization would not have felt compelled to, for the first time in our history, come out in opposition to a nominee for a Federal position.

Senator KENNEDY. Well, now, let me ask you this: Senator Ashcroft has indicated that in the three cases that are currently

now out on the Brady bill and challenging the assault weapons ban, that he will enforce the law, and also that he will support the assault weapons ban. Should that be enough for those who are concerned about the proliferation of weapons in our society? I am accepting the given that we need to have vigorous prosecution at the Federal level and at the State and local level. We will put that aside. We are all in support of that. But just on the questions of availability and the accessibility, now that he has said that this is his position, should that be enough to ease our anxiety on this issue?

Mr. BARNES. Well, we don't believe so, Senator. The Attorney General sets the priorities for the Department with respect to the litigation. The U.S. Government under administration after administration, Republicans and Democrats, has vigorously attempted to enforce these laws and to defend cases.

Based on Mr. Ashcroft's record, there is no reason to believe that he would want to do that. In fact, he opposed all of these laws. So even though he has testified that he will enforce them, there is certainly no reason to believe that he would do so with any enthusiasm or would instruct the United States attorneys to vigorously defend these laws, as they are currently doing in case after case across the country.

Senator KENNEDY. So you think there would be—my time is up. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

The Senator from Arizona, Senator Kyl.

Senator KYL. Thank you, Mr. Chairman. I join Senator Hatch in strongly objecting to the views expressed by Mr. Barnes with respect to the Second Amendment and will join in his submission to the record to clarify the real historical basis for the Second Amendment. And I would also like to insert a piece in the record that appeared in today's Washington Post, a column by Charles Krauthammer, which more than refutes the biased and extremist comments of Professor Dunn.

I have no questions.

Chairman LEAHY. The senior Senator from California, Senator Feinstein.

Senator FEINSTEIN. Mr. Barnes, first of all, let me thank you for your very good work. You know I am a fan of your organization and of what you are doing, and I think in many respects everything you do will hopefully make this Nation a safer place for people.

I am concerned on the issue of concealed weapons, and I am concerned as a person that has actually had a concealed weapon permit. In 1976, I was the target of a terrorist organization. They put a bomb at my house, and they actually shot out windows. And so I had a concealed weapon permit from the chief of police, a weapon, and trained in the use of that weapon. I was also young enough and at the time strong enough to really believe that I could make a difference if someone came after me. You know, I didn't want to be held hostage. I had a different view of things.

I gave up that permit when arrests were made and have never possessed a weapon since that time. I want to make that clear because certain organizations use that against me. But I learned a lot about guns, having a gun, carrying a weapon, knowing what it

could do, knowing what it couldn't do, being trained at a police range by police officers.

Having said that, I can think of nothing worse than letting everybody have concealed weapons, with no training. Having watched the increase of road rage, having seen people kill each other over parking spots, a concealed weapon philosophy to me is the height of irresponsibility.

Could you spend a few moments more in detailing that proposition that was on the ballot, what it actually would do, and comments that were made by Senator Ashcroft about it at the time?

Mr. BARNES. Well, thank you for your question, Senator, and thank you for your leadership on this issue. I, too, know a little bit about what guns can do. I served in the United States Marine Corps and was trained in the use of some pretty high-powered weapons and had the same sense that you do about this question.

In 1999, the gun lobby sought to get enacted into legislation in Missouri a very extensive concealed weapons carry law that would permit the citizens of that State to carry guns virtually anywhere.

Senator FEINSTEIN. How would they get a permit?

Mr. BARNES. I don't know the specific procedure by which they would receive that permit under the law that was sought. As I understand it, the legislature passed; the Governor vetoed it. Or perhaps the Governor's threat of veto caused the legislation not to pass it. I am not positive on that.

But, in any event, Governor Carnahan was opposed, and so the gun lobby took this to initiative and put it on the ballot. It was the only item on the ballot. It was in April when nothing else was being voted on, there were no other elections, nothing else being voted on, and the gun lobby was confident that their supporters would come out and vote for it and that it would easily pass.

But citizens of Missouri organized opposition to it, and it was defeated, and it was defeated because people came to understand that they did not want to go to a football game in St. Louis or Kansas City and know that large numbers of other people there would be carrying hidden guns. And they didn't want to go to bars or restaurants or other places and know that large numbers of people would be carrying weapons.

Senator Ashcroft argued that Missourians would be safer if more people were carrying guns, and he supported this through personal appearances and radio ads. I don't know what the members of this Committee believe, but I don't know that I would feel safer in this Committee room if we thought that half the people here were carrying handguns. But that is the view of some people, and that is apparently Senator Ashcroft's view.

It was defeated by the voters of Missouri.

Senator FEINSTEIN. Do you have any information on his record or his thinking with respect to felons being able to get so-called relief from disability and obtain weapons?

Mr. BARNES. Yes. This is another controversial issue. The gun lobby has argued and its supporters in the Congress have argued that felons, convicted felons, after serving their time, should be able to get the privilege of carrying a gun back. And Senator Ashcroft has had that view.

Senator FEINSTEIN. Thank you very much.

Thanks, Mr. Chairman.

Chairman LEAHY. Thank you, Senator.

The senior Senator from Ohio, Senator DeWine.

Senator DEWINE. Thank you, Mr. Chairman.

Professor Dunn, to summarize your testimony, I take it that you are vehemently opposed to Charitable Choice.

Mr. DUNN. Yes.

Senator DEWINE. And you disagree with Senator Ashcroft on the issue. Correct?

Mr. DUNN. Profoundly—

Senator DEWINE. Yes or no? Yes or no? This is summary.

Mr. DUNN. Yes, I disagree with him on Charitable Choice.

Senator DEWINE. Thank you.

Chairman LEAHY. Did you want to elaborate?

Mr. DUNN. I would like to add one short paragraph, two sentences. I am absolutely convinced—

Senator DEWINE. I think I understand your testimony. I just want to make sure. My only point is that is your testimony, that is a summary of your testimony, and we appreciate it for that fact. You are welcome to elaborate, but—

Mr. DUNN. The only elaboration—

Senator DEWINE. That is my summary of your testimony, and it is a legitimate public policy debate that we can have.

Mr. DUNN. My point is simply on Charitable Choice that we have not had a legitimate public policy in either the House or the Senate on the issue of Charitable Choice. And with all due respect, I would like to suggest or challenge the Members of the House and the Senate to do their homework about the very dangerous issue of dumping tax dollars into pervasively sectarian institutions. We have debated vouchers and other issues, but I don't think we have yet begun to debate the Charitable Choice issue, and I hope you will do your homework on some of the things that need to be done on Charitable Choice.

Senator DEWINE. Professor, I appreciate it. It is a legitimate public policy debate. Thank you.

Mr. DUNN. I hope we have it. I don't think we have had it yet.

Chairman LEAHY. The Senator from Illinois.

Senator DURBIN. Thank you, Mr. Chairman. I thank the members of the panel.

I would say at the outset I am glad that—I don't think he is here at this moment. I wish Senator Kyl were here. But I read the Krauthammer piece in the Washington Post this morning. I don't know if you have had a chance to read it, Professor Dunn. But I thought the point he was making was somewhat different than your point. He was arguing for tolerance of religious belief, and you are raising the question about taxpayers' funds going to religious institutions.

Mr. DUNN. Exactly. A very different point.

Senator DURBIN. Two different points as I see them, too. And let me say at the outset, Senator Ashcroft is very proud of his religious beliefs and heritage, as he should be. He made a point of that in his opening statement and noted his father's work in his religion. And I frankly do not know the tenets of his religion. If I were asked, I couldn't tell you what they are. I know from reading press

accounts that he doesn't dance and he doesn't drink. I don't think that is relevant to the position of Attorney General as to whether or not you imbibe or dance. I don't know what Attorney General Reno's position is on dancing and drinking, and I really don't care.

I think that—I want to make it clear for the record so that there is no misunderstanding. I don't think anyone in the course of this hearing has raised any question about Senator Ashcroft's religious beliefs, nor should they. And the chairman has repeatedly made that point and admonished the witnesses who suggested it that that is not relevant to this debate. What is relevant is the public record of John Ashcroft, period.

Mr. DUNN. I agree completely, and I am concerned about extremism, whatever its source might be. I am not interested in the deep motivations or the theological presuppositions that bring one to extremist public policy positions. But my bias and extremism that Senator Kyl referred to is largely verbatim right out of the United States Supreme Court decisions.

Senator DURBIN. Well, I am anxious to—I hope the Committee accepts your invitation to have a hearing on this Charitable Choice, because I come to it with mixed feelings, and I would like to try to sort out a position that is a sensible one and consistent with our constitutional principles. And I hope that we will invite you back for that purpose.

I would also like, Mr. Chairman, at the request of Senator Feingold, I understand there was a hearing last night in St. Louis of the Women's International League for Peace and Freedom that had a long list of invitees, and Senator Feingold has asked me, since he can't be here at the moment, to request that a transcript of that hearing be made part of the record, if there is no objection.

Chairman LEAHY. Without objection.

Senator DURBIN. Let me also direct a question, if I can, to Congressman Barnes.

Congressman Barnes, we served together, and I am glad to see you here in this capacity, and thank you for good work. But I would tell you that your rendition of John Ashcroft's record on gun issues is John Ashcroft B.C.—before confirmation. John Ashcroft B.C., in fact, did everything that you have said, but in the last few days, we have heard a different approach. He has said: I am in a new role, I am no longer an advocate, and, therefore, I will enforce many of the laws that I actively campaigned against and voted against. And if I am not mistaken, he specified three that I might remember here: the Brady law, triggerlocks, and the assault weapons ban.

And so he is suggesting that even if he opposed them, as Attorney General he can enforce those laws and used examples as Missouri Attorney General when, despite his own personal and religious beliefs about the distribution of religious material, he stopped that from happening in his State.

Now, that question has been raised, but I think it is worth revisiting. Why do you feel that he cannot draw this clear line between past conduct and past public record of 25 years and his suggestion that as Attorney General he will take a different approach?

Mr. BARNES. Well, thank you for your question, and it was an honor to serve with you in the House.

Let me answer in two parts. First goes to an earlier question, and that is, what would the priorities be of an Attorney General, and based on his 25 years of fighting against all of these laws—and not just being against them, but being a leader in the fight against them—one would assume that he would not make a priority of the enforcement of the law. That is just common sense.

The second part of my answer would be that he has explained in the past and before this Committee that his view of the Constitution is such that he would have a difficult time in rendering opinions as Attorney General with respect to gun laws, rendering opinions that are consistent with the past practice of the Department of Justice under both Republicans and Democrats and consistent with the court rulings of every Federal court in our history. He takes a very extremist view of the constitutional—of the way in which the Constitution addresses the issue of gun ownership in America. And it is on the basis of this extremist ideology—and it can only be described in that way because his view goes beyond that of even some of the pro-gun organizations with which we are all familiar—that we believe it is almost impossible to believe that he would aggressively enforce these laws which he fought against.

Senator DURBIN. I guess the question that keeps returning is this whole notion of settled law, and it comes up again and again. And it was, I guess, the underpinning of John Ashcroft's promise, that if it is settled law, I will enforce it.

In the area of choice, when we went into specifics, his answers were not so specific and final. And I worry about those.

But when it comes to the question of our laws and court decisions relative to firearms, I think it is fair to say that there will be cases testing State laws and new concepts on a regular basis, and the new Attorney General will have to decide when the Solicitor General will weigh in and how they will weigh in, whether there will be an amicus brief filed, whether there will be some memo filed, provided to Members of Congress and the administration, the enforcement by U.S. attorneys, the involvement of U.S. Marshals in enforcing law. I think on a regular basis there will be a question of how much will be dedicated to it and in what way.

I hope that that is a fair characterization of what you have just described as the responsibilities that he might face.

Mr. BARNES. Well, that is right, and it is not an academic question. The Attorney General faces these decisions almost on a daily basis. There is an important case with respect to the constitutional issue of gun ownership wending its way through the Federal courts at this very time, and the Justice Department is vigorously defending the law. Would Attorney General Ashcroft direct his subordinates to continue that vigorous defense? Based upon his view of these issues, as articulated in the Senate and in speeches that he has made and in writings, one would believe that that is unlikely.

Senator DURBIN. Thank you very much.

Thanks, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Sessions?

Senator SESSIONS. Well, Senator Ashcroft has stated clearly that the Constitution protects an individual's right to keep and bear arms. That view is supported by me, Senator Feingold, Senator

Schumer, I think Chairman Leahy. I know he votes less than half—I see one number, less than half the time for handgun control. And according to recent polls, a majority of Americans agree with that.

I am concerned, Mr. Barnes, that your distortion of his quote about James Madison's view of the Second Amendment is not correct, and I think it was read in the record here the other day and explained adequately.

I would note that at the hearing recently in that constitutional law Subcommittee, of which Senator Feingold, I believe, is the ranking member, Senator Feingold said this about the purposes of the Second Amendment: "The purposes include self-defense, hunting, sport, and some certainly would say, as would I, the protection of individual rights against a potentially despotic central government."

Well, I think that is what James Madison had in mind. I think whether we agree with that or not, I believe that is an accurate history of the Constitution. I believe Professor Laurence Tribe, the liberal Harvard professor, agrees with that. So I just want to say that.

No. 2, there was a suggestion about an Attorney General opinion. When he was Attorney General of Missouri, he issued an opinion that I will tell you, as an Attorney General in Alabama, was a tough opinion to issue. And that was that assistant district attorneys were not, I assume—in Alabama the rule is they are not law officers and they could not carry weapons, which is a tradition of many prosecutors. They believe—they are trying cases, they are calling these people criminals in court. They are afraid for their lives. He issued an opinion contrary, I am sure, to the overwhelming number of prosecutors in his State they could not do so under the law of Missouri. That doesn't sound like somebody who will refuse to obey the gun laws.

There is a chart up here, Mr. Barnes, that shows gun prosecutions under Reagan and Bush. I was a Federal prosecutor during that time. Those gun prosecutions went up every year. It was a high priority of my office as a Federal prosecutor. It was a high priority of every office because the Attorney General insisted on it.

Have you criticized, ever, the Clinton-Gore Department of Justice, Janet Reno's Department of Justice, for allowing those prosecutions to plummet as they did?

Mr. BARNES. We have consistently urged strong prosecution of the—

Senator SESSIONS. Have you ever criticized the Democratic Department of Justice for allowing those prosecutions to fall publicly? If so, I would like to hear where it was.

Mr. BARNES. We have criticized those here in the Congress, including Senator Ashcroft who voted against funding for the ATF and the Justice Department to adequately enforce the laws.

The administration requested funds for additional prosecutors, additional ATF agents. The gun lobby fought against this, as I am sure the Senator is aware. Senator Ashcroft helped lead the right against adequate funding for prosecution of gun laws. I do not know what the source of this chart is—

Senator SESSIONS. Mr. Barnes?

Mr. BARNES.—but the statistics that I have seen—

Senator SESSIONS. I have had hearings.

Mr. BARNES.—indicate there has actually been an increase of at least 16 percent in Federal gun prosecutions under Attorney General Reno.

Senator SESSIONS. I have had hearings on it.

Mr. BARNES. That is the information I have seen from reputable independent sources.

Senator SESSIONS. That is the source of Syracuse University, but I had hearings on it in my Subcommittee. I have raised it with Attorney General Reno every time she appeared before the committee, the 4 years I have been in this office.

This administration, while condemning people who won't pass more and more laws that burden innocent law-abiding citizens, has allowed gun prosecutions to decline precipitously. They have come up in the last 2 years after all the hearings we have held and after taking a lot of abuse, but it is disappointing to me that a supposedly non-partisan organization like yours would criticize Senators who have serious constitutional problems with some of the legislation that comes forward. You would criticize them and their integrity and mine because I didn't vote for all of these laws, but I had a task force to prosecute gun prosecutions.

I put out a newsletter to local police and sheriffs to tell them what kind of cases I would take, and our prosecutions went up dramatically because I believed in enforcing laws against guns that are legitimate and all laws against guns, whether I believed they were legitimate or not, and I did so—

Mr. BARNES. That is our view as well, Senator, and we commend you for your effort to strengthen the prosecution of gun laws. We strongly support that.

Senator SESSIONS. Well, Senator Ashcroft has committed before this panel publicly to reverse this decline and get the numbers up, and I believe we will have a lot more effect on gun crime by prosecuting criminals with guns than to always passing more laws that burden honest people. That is my view. You may disagree.

I would note that he did vote for the gun show ban which was hotly disputed by some people on final passage of the juvenile justice bill. That was a pretty intense vote, wasn't it, Mr. Barnes?

Mr. BARNES. Well, he voted against it when it mattered.

Senator SESSIONS. He voted with Senator Hatch's bill the first time, and on a close vote, the other bill prevailed, the Lautenberg bill, and he voted for it on final passage. To say he is an extremist on guns is not correct. There are a lot of people that would disagree with that, and I think you are being unfair to him and I question whether you are nonpartisan for not criticizing the Department of Justice for a massive failure to prosecute.

My time is up. Thank you.

Chairman LEAHY. Finish your thought.

Senator SESSIONS. For not criticizing them for failure to prosecute, but criticizing Senator Ashcroft for wrestling with some tough constitutional questions about where the Second Amendment properly applies.

Mr. BARNES. Mr. Chairman, could I just have 30 seconds to respond on the first point the distinguished Senator made with respect to this constitutional issue?

Chairman LEAHY. Of course. You may respond.

Mr. BARNES. Let me just quote from former Chief Justice Warren Burger, who as the Senator may know was a lifetime hunter and gun owner who was appointed by Senator Nixon, and he emphasized the danger of perpetuating the view that Senator Ashcroft has stated before this Committee with respect to the Second Amendment to the U.S. Constitution.

Chief Justice Burger said this is, and I quote, "One of the greatest pieces of fraud, and I repeat the word 'fraud.'" That is his repetition, not mine, "One of the greatest pieces of fraud, and I repeat the word 'fraud,' on the Americans public by special interest groups that I have ever seen in my lifetime." That is a quote from Chief Justice Burger about this extremist view of the Second Amendment that has been articulated by Senator Ashcroft, and it is a dangerous view, Senator Sessions.

I would just suggest to you that the United States Senators and, God forbid, an Attorney General saying to people, you have a constitutional right to take up arms against your Government if you think it is despotic or tyrannical, that is a bizarre view. Do we really believe that our Founding Fathers put in the Second Amendment a right to do this when they put in the Constitution other more reasonable ways to change your Government if you don't like it?

Senator SESSIONS. I just noticed a disputed view, and Senator Feingold disagrees.

Mr. BARNES. You can vote against. We have elections in this country. That is how you change your Government, not by using guns. We have a process to amend the Constitution of the United States. That is how you change your Government, not by using guns. It is bizarre to believe that our Founding Fathers thought that American citizens should have the right to weapons in order to defend themselves against their Government. That was not James Madison's view. That was not the view of any of our Founding Fathers, and every court that has ever looked at this issue in the history of our country has said that that was not a constitutional view.

Chairman LEAHY. The distinguished Senator from Alabama has mentioned crimes rates again. As I said before, I would hope that if Senator Ashcroft is affirmed as Attorney General, then he would pay some attention to what the current administration has done because, while we saw a consistent rise in violent crime for the 12 years prior to the Clinton administration, we have seen a consistent drop in the violent crime rate since the Clinton administration arrived. I think that should be noted.

I also note that the Senator from New York is here, but before we go to that, Senator Hatch read into the record various items and letters. I will put into the record a letter of January 18th, 2001, from Ambassador James Hormel to both Senator Hatch and me.

I wish to read a couple points in it that are pertinent to the debate we have had here. "In response to Senator Leahy's question"—

this is Ambassador Hormel speaking—"In response to Senator Leahy's question about why Mr. Ashcroft was willing to vote against my nomination without attending my Committee hearing or submitting any written questions for me to answer, and subsequently refusing to meet with me, Mr. Ashcroft responded, 'I had known Mr. Hormel for a long time. He had recruited me to go to the University of Chicago Law School,' and then Mr. Ashcroft stated several times he had voted against me 'based on the totality of the record.'" Ambassador Hormel says in his letter, "I want to state unequivocally and for the record that there is no personal or professional relationship between me and Mr. Ashcroft which could possibly support such a statement. I cannot recall ever having a personal conversation with Mr. Ashcroft. I have had no contact with him of any type since I have left my position as Dean of Students at the University of Chicago Law School nearly 34 years ago in 1967. For Mr. Ashcroft to state that he was able to assess my qualifications to serve as Ambassador based on his personal long-time relationship with me is misleading, erroneous, and disingenuous. Furthermore, in my role as Dean of Students, I did not recruit students to the law school. For Mr. Ashcroft to state that he recruited me to the law school implies a personal and direct relationship which simply did not exist," and he concludes with, "I find it personally offensive, Mr. Chairman, under oath in response to your direct questions would choose to misstate the nature of our relationship, insinuate objective grounds for voting against me, and deny his personal viewpoint about my sexual orientation by any role in his actions. Sincerely, James C. Hormel."

It will be part of the record.

Chairman LEAHY. I yield to the distinguished senior Senator from New York.

Senator SCHUMER. Thank you, Mr. Chairman.

I guess my first question is aimed at Mr. Barnes, and "aimed" being an appropriate verb, I guess, unintentional, but appropriate.

I guess the question I have is let us say, hypothetically, we have an Attorney General who would implement the wishes of the NRA as Attorney General. How would enforcement and how would policy in the administration change?

Mr. BARNES. Well, thank you, Senator, for the question. Thank you for your important leadership on trying to make our community safer. You have been a true champion for many years.

This is not an academic question either because Senator Ashcroft has a very close relationship with the National Rifle Association. The NRA said last year that it was among their highest priorities to get him reelected to the U.S. Senate, and they and other gun groups spent many hundreds of thousands of dollars in support of his reelection last year. He has, to my knowledge, never taken a position as a U.S. Senator in opposition to the NRA. So it is a very important question.

Obviously, the National Rifle Association and other groups of that type strongly oppose all these laws that the Attorney General is called upon to enforce and would seek the weakest possible enforcement thereof since they oppose them strongly and oppose their continuation.

They have been sending out information to their supporters that they will have a “pro-gun” Attorney General if Mr. Ashcroft is confirmed, and they are obviously very much hoping that he will be, that they will have an Attorney General who would be listening to them and paying attention to their concerns and their views.

This would be of enormous concern to those of us who support the laws that are on the books that he strongly opposed as a United States Senator.

Senator SCHUMER. Could you give us some specifics? Are there workings within the Justice Department, within the ATF, where, of course, the Attorney General doesn't have jurisdiction, but, at least from my experience active in this issue, often has a lot of say because the two agencies work together?

Mr. BARNES. There is a case right now in the Federal courts that the Justice Department has been very vigorously defending in which a citizen of Texas was accused of violating Federal gun laws, and this individual has been claiming a constitutional right to not abide by Federal gun laws. The Justice Department has been very strongly making the case to the courts in Texas, Federal court and now in the appellate court, that these gun laws should be enforced.

One wonders whether in this particular instance, for example, which is going on right now, a very important case, an Attorney General with the views that Mr. Ashcroft has would vigorously continue that.

Senator SCHUMER. The NRA is sore of anomalous to me. They believe in enforcement in terms of sentencing criminals who have guns. It is something I support.

Mr. BARNES. We all support that.

Senator SCHUMER. We all support that.

Mr. BARNES. Everybody supports that.

Senator SCHUMER. But when we try to go after gun dealers, my office came up with a study which I think raised a lot of eyebrows and changed our direction that 50 percent of the crime of guns came from 1 percent of the dealers.

The NRA has been reluctant to either affirmatively provide a support provision of the resources to do that, and, second, actually they support things that put barriers in the way. You cannot computerize records. An ATF record cannot be on the premises of a gun dealer, all sorts of things like this.

Do you have any knowledge? We did not have enough time to get into asking Senator Ashcroft those questions, although I have to say I was glad to hear that he thought that registration and licensing was not unconstitutional under the Second Amendment. I give him credit for saying that.

But do you have any idea of the direction that he as Attorney General might—and obviously, this is speculative—pursue in terms of going after errant dealers?

Mr. BARNES. Well, again, one would have to assume, based on his record, that this would not be a priority. It is a very important issue, as you point out, Senator. There is a tiny minority of gun dealers in America who really provide the vast majority of guns for criminals, and the Federal Government should be progressively pursuing them. Based upon Mr. Ashcroft's history and the fact that

his supporters in the gun lobby would oppose those kinds of actions, one would doubt that he would vigorously take those actions.

Senator SCHUMER. Thank you, Mr. Chairman.

Chairman LEAHY. Senator Specter?

Senator SPECTER. Congressman Barnes, in my discussions with Senator Ashcroft, he has stated to me a keen interest in a number of the operations which have been conducted in Richmond, the Eastern District of Pennsylvania, on Federal court prosecutions of people who violate the laws with guns.

We have the armed career criminal bill which has brought the Federal Government, as you know, into prosecution which relates to street crime if you have three or more serious offenses, and that includes burglary and robbery if caught in possession of a gun, you can get what is the Federal equivalent of a mandatory life sentence of 15 years to life. That is one of the items which many of us have been pressing to deal with people who violate the law with guns on the career criminal category where it is estimated that as many as 70 percent of violent crimes are committed by career criminals.

To what extent would you give Senator Ashcroft credit on the g understand issue for activism on that point?

Mr. BARNES. We strongly support efforts to increase prosecution and to go after the career criminals as the Senator suggests, and we would commend any Senator, Senator Ashcroft or any other Senator that would support that.

Senator SPECTER. Well, that is one of the points which has concerned me over the years, the issue of sentencing. At one time as D.A., I asked the Board of Judges of Philadelphia County to put out a directive of a 1-month sentence of somebody who is convicted of carrying a concealed deadly weapon which seemed to me very, very nominal, the kind of battle which I fought in the 1960's and 1970's on the issue of sentencing.

One of the first bills that I produced when I came to Congress was the armed career criminal bill. I had a lot of trouble finding any support for bringing the Federal Government into the issue of street crime, but we had many of these career criminals who were given very light sentences in State courts and I wanted to send some of them down to the Federal court to get a mandatory life sentence, 15 years to life, and then they go back to the State courts, they would enter guilty pleas, maybe 5 to 10 or 7- $\frac{1}{2}$ to 15, but I think Senator Ashcroft's commitment there is an important item on the issue of dealing with guns.

Mr. BARNES. This is an interesting dynamic, and that is that everybody supports strong enforcement of the gun laws. Certainly, we do, but there is a contradiction here that many say that that is all we need to do, and that we do not need child safety locks to protect our children, do not need to close the gun show loopholes to keep criminals from getting easy access to guns at gun shows, we do not need an assault weapons ban, we do not need to ban cop killer bullets, et cetera, et cetera.

Our view is that we need both. We need common-sense restrictions on easy access to weapons by people who shouldn't have them, and we need very tough enforcement.

You mentioned Richmond and Philadelphia. I have had conversation with the police chief in Richmond about the good work that

they are doing there in cooperation with the Federal authorities there, including the United States Attorney, to crack down on crime, and they have had some real success in Richmond.

So we strongly support those initiatives that you and others have taken a leadership role on, Senator.

Senator SPECTER. Professor Dunn, on the issue of freedom of religion—and I appreciate your comments that we had a little discussion during the break before you started to testify—it is a matter of obviously enormous importance in this country.

There has been a question of religious profiling which I do not think has been undertaken by anybody on this committee, and the two aspects of the First Amendment freedom of religion deal with freedom to pursue one's own religion and to stop the Federal Government from intertangling the Government with religion.

Do you think that there is any limitation on appropriate inquiry in the confirmation process about allowing one's religious views to be one's private matter, but any limitation on saying how is that going to affect your duty to enforce the other half of the First Amendment to keep Government out of religion?

Mr. DUNN. I think the confirmation process obviously has a great deal of freedom to pursue the philosophy and the constitutional understandings and the political advocacy of anyone who comes before this committee. Not only this committee, Senator Specter, but our whole Nation has a stake in one's philosophy of public policy and how it is shaped.

I was in Texas in 1960 when there was an appropriate anxiety about John F. Kennedy's religion, and he dealt with it in the most wonderful and frank and forthright way. He met with those who were questioning whether his philosophy about public policy and the Constitution and Government would be unduly affected by his religious background.

He met with those folks and assured them, 500 preachers in Houston, Texas, that he would stand for the First Amendment as an advocate of church-State separation and religious freedom, and then he did it very courageously in one or two instances that were notable, and I think it is appropriate to ask, just as Congressman Barnes has, about one's philosophy of extremism regarding the Second Amendment.

I have concluded—and I know you don't all agree with this—that Senator Ashcroft has an extremist philosophy regarding the First Amendment which would slight the importance of church-State separation and misunderstand the importance of the free exercise as he did with contending consistently that Missouri could be the only State in the Nation that does not require church-based day care centers to abide by health, safety, and fire regulations. So I think it is a legitimate question that we look at the outcomes and the public policy philosophy. I don't agree that we ought to probe into their religious beliefs. I believe very strongly in Article VI that there should be no religious test for public office, and we certainly have no basis for doing that.

Senator SPECTER. A brief concluding comment. There have been some who have said that opposition to Senator Ashcroft arises because of his deeply held religious views, almost a question of religious profiling. And I think it is important to give America assur-

ance that that is not what is going on here, and that there is a line of inquiry to be sure that there will be separation of church and state as he would carry out the duties of Attorney General if confirmed, and that there is not any heavy hand of religious profiling or any inappropriate inquiry as to Senator Ashcroft's religious views.

Mr. DUNN. I would agree with that completely.

Senator SPECTER. Thank you.

Chairman LEAHY. Senator Hatch, do you have anybody further on your side?

Senator HATCH. I think we are completely through.

Chairman LEAHY. And let me check with the staff here. Senator Feingold? On his way. Let us just wait.

Just so I understand where we are—incidentally, to follow up on what the Senator from Pennsylvania said, I would emphasize again what both Senator Hatch and I said at the outset of these hearings, that there are no religious tests here. We probably have about every religion possible represented on this panel, and this would be the last panel in the world to have any.

We are going to hear questions from Senator Feingold, then dismiss this panel, and have a couple of final statements from Senator Hatch and myself.

Senator HATCH. Could I just take one moment, Mr. Chairman?

Chairman LEAHY. Of course.

Senator HATCH. I read Mr. Hormel's letter, and he admits he was dean of students, admits that he had gone to various universities, maybe not to recruit, but at least talk about the University of Chicago, and then he implies that the only reason John Ashcroft had for voting against him was because he was a gay individual.

Now, as one who supported him as Ambassador for Luxembourg, I have to say this. I remember at least one professor at my law school 40 years ago, was so bigoted, I would not support him for dog catcher. And it was because of the experience I had in law school. So for him to just say—believe that everything is coming down at him because he is gay is just wrong, especially since Senator Ashcroft said that was not what entered into his decision-making, or at least certainly, I thought, made it clear to me.

So I just wanted to set that record straight. I mean, I would not have supported this one law professor, like I say, for anything, because he was a total bigot, political bigot as well, and a very smart guy, and that was 40 years ago. I have to say I had a relationship with him in the sense of knowing him, taking classes with him, and taking discussions with him. I suspect that that is in the context of what Senator Ashcroft meant. I just wanted to make that clear.

Chairman LEAHY. The letter, of course—the letter speaks for itself.

Senator HATCH. Yes, I think it does.

Chairman LEAHY. And it does say—Ambassador Hormel says, "I want to state unequivocally and for the record that there is no personal or professional relationship between me and Mr. Ashcroft which could possibly support such a statement."

Senator HATCH. I can accept that.

Chairman LEAHY. And—

Senator HATCH. But I can see how John meant the law, you know, in law school. Go ahead.

Senator KYL. Mr. Chairman, I know we are waiting for Senator Feingold as the last person to ask questions. Might I just ask what the Chair's intention is, since we are now essentially at—apparently at the conclusion of the hearings, and what is the Chair's intention?

Chairman LEAHY. That is a good question.

Senator KYL. How long tonight will the record be open? What else needs to be done and how will we be proceeding?

Chairman LEAHY. I think some of this may have been mentioned. Well, you were out. I should emphasize again for the record, as I have said several times, that a number of Senators from both sides have had to go in and out because we have got a number of confirmation hearings going on at the same time.

We are waiting for the final part of the nominee's paperwork to come in. Assuming that it is going to be in today—and I understand from Senator Hatch that he has assurances that it will be completed today—instead of doing the normal procedure of leaving the record open for a week, we are going to keep the record open until close of business Monday so that we can have any follow-up questions—some have already been submitted—but follow-up questions to the witnesses and to the nominee. Of course, the time for any Committee meeting would be in the purview of Senator Hatch next week. Our normal meeting days I think are Wednesdays.

Senator HATCH. I intend to mark this up next Wednesday, and I want everybody to be aware of that.

Chairman LEAHY. Thursday. Thursday. I am sorry.

Senator HATCH. What is next Thursday?

Chairman LEAHY. I said the normal day was Wednesday.

Senator HATCH. I hope we are not going to rely on technicalities. I mean, my gosh, this is a cabinet-level position.

Chairman LEAHY. It is going to be your choice to call—

Senator HATCH. I told you Wednesday. I have said it for a week now, and I do not see any reason why to delay.

Chairman LEAHY. Orrin, Orrin, Orrin, now calm down, calm down.

Senator HATCH. I am not calm.

Chairman LEAHY. Calm down. You can call the meeting any time you want.

Senator HATCH. No, I want some cooperation, and I feel you will, and I intend to mark it up on Wednesday. I hope we can do that.

Chairman LEAHY. The staff, both staff reminded me when I said our normal meeting day was Wednesday, that it is Thursday.

Senator HATCH. Sure.

Chairman LEAHY. I just did not want to leave it on the record to suggest that it is otherwise.

OK. Senator Feingold apparently is not coming. Then I would—we have a couple more comments to make, but certainly these two witnesses have been extremely patient, having stayed here for a long time. You have our thanks and our gratitude from the committee. I will let you step down.

Mr. BARNES. Thank you, Mr. Chairman.

Mr. DUNN. Thank you.

Chairman LEAHY. This hearing has something of a—I am trying to think of the best way to state this. It has something of a modern-day Cinderella quality. You know, as the clock approaches midnight, that part. It seems like many things are not what they actually appear to be. The Senator Ashcroft we have come to know over the past 6 years was an implacable foe of a woman's right to choose, of affirmative action, of equal rights for gay citizens. He was a determined, tireless, and, I note, effective advocate for his point of view.

What we have seen over the past 4 days, however, has in many ways been breathtaking. In Senator Ashcroft's mind, *Roe v. Wade* is now settled law. Senator Ashcroft not only endorses the assault weapons ban, he will now lobby President-elect Bush to extend it. He will now apparently have no qualms about aggressively enforcing laws to protect gays and lesbians. He will now apparently enforce the laws and programs on affirmative action, the same laws and programs that he opposed for so long, having taken the same oath of office that the Attorney General of the United States takes.

Now, in the spirit of bipartisanship, and given all of our pledging to work well together—and we have tried to do that in this committee—I will not characterize what we have seen during the first 2 days of these hearings as a confirmation conversion. I might suggest that it is a confirmation evolution, in fact, a fairly rapid confirmation evolution. We have pressed ahead since Tuesday afternoon to hear from the nominee, and, by my count, 12 witnesses in support of this nomination, and a representative sampling of witnesses strongly opposed to this nomination. We have accommodated the witnesses that the Republicans have requested to testify. We even interrupted our proceedings on different occasions to hear from Republican Senators and Representatives, both in office and out of office, who wished to be heard.

We are concluding, as I said, at noontime because somebody else needs this room, and I am trying to be respectful of the Inauguration that takes place tomorrow, because the focus tomorrow should be on the new President. He deserves that and the country deserves that.

And at noon tomorrow, in accordance with Senate Resolution 7, the chairmanship of this Committee will revert to Senator Hatch.

I might say on a personal basis that I have enjoyed working with him on our reversal of roles, and I understand even better what Senator Hatch has said to me—oh these many times during the past few years—“Pat, do you think it is easy being chairman of this place? Do you think it is easy trying to keep everybody in line?” Orrin, I should have listened more carefully.

Senator HATCH. I do not care if you listened. Just be more tolerant in the future.

Chairman LEAHY. I want to thank all of our witnesses, both for and against for their testimony, and for cooperating with the Committee under these extraordinary circumstances. I want to thank especially Congresswomen Maxine Waters and Sheila Jackson Lee for staying past 9 o'clock on Wednesday night in order to be heard.

I want to apologize in a way to the last panel, Professor Dunn and Michael Barnes. The schedules forced us to cut into their time,

and they have had to stay here way beyond the time we thought they would.

Now we are going to assemble the record and all the submissions that have been made to it. The members of the Committee should now have the opportunity to review the record and do written questions for the nominee and other witnesses. Once the record is complete, and the nominee's paperwork is complete, I am going to work with the incoming chairman, Senator Hatch, so we can have prompt consideration of this important nomination by the committee.

I understand the nominee's financial disclosures and other aspects of the standard submission remain outstanding. We were only provided with a sample of speeches and writings, rather than the comprehensive submission that this Committee has insisted upon, and as the nominee, himself, has insisted upon in prior years for other nominees. I note that one of my questions to the nominee was about his speech on judicial despotism. The nominee had not included this in his submission, but I felt it was important because I thought it contained inflammatory comments about his view of the role of the courts and thus is relevant to consideration of his nomination.

To go back to the opening part of my statement when I said the clock reaches midnight in this Cinderella saga, I wonder what will happen when the clock does strike midnight. At the time the Senate votes on Senator Ashcroft, will everything go back to what it was? You know, the coachmen turn into mice, the carriage turns into a pumpkin—whether where old policy positions become dominant, and whether the John Ashcroft we have seen over the past few days perhaps reverts to the John Ashcroft we have watched vote all these years.

Frankly, as I said before, I wish our incoming President had sent a nomination for Attorney General who would unite us rather than divide us. I wish that there had been another position in his incoming administration where he could have used the talents of Senator Ashcroft. That did not happen. This was the nomination before us. And our Committee has done the best we could to handle this nomination fairly and fully. It has been difficult. We all know John Ashcroft. We have served with him. I do not know a Senator who does not like him. I do not know a Senator who does not respect him and his commitment to his family, and appreciates the friendships he has with so many of us in both parties. As we said before, however, we should not operate under club rules. We operate under the Constitution to advise and consent.

There are 280 million people in this country—a very diverse 280 million. The President-elect has said he wants to unite us, not divide us. Of those 280 million Americans, only 100 get to vote on this question. The 100 of us must look deeply into our souls, and make sure that we are representing the country as best we can. In many ways, on a variety of levels, I have been unsettled by the testimony this week, and I know when I go back to my home in Vermont after this weekend after the Inauguration, I will look forward to the solitude of the mountains and the fields, and my farmhouse, where I can sit and think about this, and I would encourage all members of the Committee to do the same.

Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman. I want to thank you for conducting decent and honorable hearings, and for the good efforts that you have made to work with me and other Republicans and Democrats on the committee. I think we have had a good cross-section of people and their particular viewpoints and views with regard to Senator Ashcroft and the Justice Department.

But I also think that we have seen some attempts here to undermine a truly good man. The fact of the matter is, is that I do not know of one Senator in the whole U.S. Senate who would disagree with the statement that this is an honorable man of integrity, that when he says he will do something, he will do it. I do not know anybody who, looking at his record and his life, who would conclude that John Ashcroft is anything but one of the finest people they have ever met.

Now, you can have differences on issues, and you can have differences on interpretations of a person's record. I think some of the arguments on the school desegregation do not take into consideration half of the problems that Attorneys General go through, including Nixon, who was the Attorney General who succeeded, as I recall it, John Ashcroft, who has been just as criticized by Mr. Taylor as John Ashcroft was. The fact of the matter is, is that that is what makes this country great, that we can differ and we can raise issues, and that we can be for or against somebody if we want to.

And I really believe it is very important to this body that we not reject a good man. I do not think we will, and I would be very upset if we do, because I think there have been some things done here throughout these hearings that were very detrimental to my concepts of what is decent and right. I think there has been some testimony here that was outrageous, some of which I would not even take the time to ask questions of, because I think on its face was outrageous, and some of which I did take some time to ask questions.

But here is a man who has almost 30 years of public service to this country, 8 years as Attorney General of his State of Missouri, during which time—again I will repeat it—he was elected by his peers, the 50 state Attorneys General, Democrats, Republicans, to become the President of the Attorneys General Association, National Attorneys General Association. Then he became Governor of Missouri and there were difficult problems in Missouri, like other states. There is no simple waving of a wand that can solve every racial problem that existed in Missouri and perhaps other states as well. And some come in here acting like he should have just done everything to change everything that they thought should be changed. The fact of the matter is, is that John Ashcroft served 8 years as Governor of Missouri, and was elected by his peers, all 50 Governors of this country, Democrats and Republicans, as chairman of the National Governors' Association. And every Senator I have talked to said that the 6 years that John Ashcroft served in the Senate, he is a man of his word, he is a man of integrity and decency.

And I agree, and I have really appreciated Senator Leahy making it clear that we do not have a religious test in this country, and yet there have been people trying to make a religious test out of

John Ashcroft's fervent religious beliefs, which he defined, in very interesting and accurate terms, as compelling him to do what is right, that if he ever had his religious beliefs contradict what he was doing as Attorney General, he would resign before he would do something wrong, or if he would violate a law that was passed. Now, that is a pretty strong commitment.

John Ashcroft is a good man. He has been in the Attorneys General mix for over 20 years by various Republican Presidents. And I have to say he deserves to be treated like a good man.

And last but not least, there are some who would play politics with this nomination in their zeal to try and convince certain segments of our society that only Democrats care for them. That is offensive. It is beyond belief. But that has shown up during these hearings. And I personally resented it, because the people on our side feel just as deeply about racial and minority matters as any Democrat, and John Ashcroft cares.

Again, these have been interesting hearings. This is what makes America great, that we can, in open forum, discuss these issues. And I ask people to be fair, in the media, in the Congress, and in general. And if you are fair, then we are going to be lucky to have a man who has a reputation of getting rid of crime as Attorney General of the United States, which after all has been kind of overlooked as we have gone through over 20 witnesses with no specific law enforcement officer called. That is what the Attorney General is all about in many respects, and that is what is making this land safe and free.

And I have no doubt that John Ashcroft will be fair to all people, and that he will enforce the law as he has promised to do under his religious commitment and otherwise, as he has promised to do, even if he disagrees with that law. That has been his reputation, and I suggest we ought to take this good man of integrity at his word.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

I have often said the Senate can be and should be the conscience of the Nation. All 100 Senators must now search their conscience for how they will vote on this.

This confirmation hearing into the nomination of John Ashcroft to be Attorney General of the United States is now recessed.

[Whereupon, at 12:16 p.m., the Committee was adjourned.]

[Questions and Answers and Submissions for the Record follow.]

[Additional materials including facsimile cover sheets and published court opinions are being retained in the Committee files.]

QUESTIONS AND ANSWERS

Responses of the Nominee to questions submitted by Senator Biden

1. You have sponsored legislation that would require drug testing of all prisoners before their release and would prosecute those who test positive for drug use. But you did not provide funding for drug treatment in your bill.

As Attorney General, you would oversee more than 500 drug courts nationally, and you would oversee treatment for prisoners in federal prisons and grants to states to treat prisoners in their systems.

Question: Do you support drug treatment for criminals as effective crime prevention? Would you vigorously support existing prison-based treatment and work with

me to ensure that treatment is provided for those in the criminal justice system who need it?

Answer: Yes. I fully support prison-based treatment for criminal offenders. I look forward to working with you to make it as effective as possible.

2. Two offices within the Department of Justice are very near to me: the COPS office and the Violence Against Women Office. We have had very strong and effective directors of these offices over the last six years.

Law enforcement officials and those concerned about domestic violence have not stopped calling, writing, and faxing me since your nomination was announced, wondering whether these offices will receive a strong commitment from the Bush Administration.

I strongly support the objectives of the COPS program to place more beat police on the streets of our nation's communities. In the last Congress I was a cosponsor of your reauthorization bill for the COPS program. President Bush has pledged to maintain the current level of funding for the COPS program, but has also pledged to increase the flexibility of the program so that state and local authorities can determine where the money can best be spent. I look forward to working with you to achieve our mutual goals for the COPS program consistent with the flexibility goals previously stated by the President. I also have been a strong supporter of the Violence Against Women Act and look forward to working with you to achieve the goals of that act.

Question: If confirmed as Attorney General, how important would it be for you to maintain a separate COPS office within the Department to recognize the federal commitment to state and local law enforcement agencies across this country?

Answer: As I stated in my previous answer, I am a strong supporter of the COPS program. The President has stated his support for maintaining the current funding levels of the program as well as giving it greater flexibility in order to demonstrate his strong commitment to state and local law enforcement agencies across the country. I look forward to working with you to achieve our mutual goals for the COPS program consistent with the flexibility goals previously stated by the President.

I appreciate the fact that you signed on as a co-sponsor of the Violence Against Women Act of 2000, as we were making the final push to enact the legislation. Senator Hatch and I had 74 co-sponsors, including 29 Republicans.

The Violence Against Women Office within the Justice Department was created in 1995 to implement the Act. The office works to ensure enforcement of criminal provisions in the Act, assists the Attorney General in formulating relevant policy, and coordinates and administers grants funded by the Act. Many advocates of policies designed to curtail domestic violence have suggested that this Office should be a permanent, independent entity within the Department, with a director who would be presidentially appointed and confirmed by the Senate and would answer directly to the Attorney General or the Deputy Attorney General.

Question: If confirmed, will you support a bill to create this office?

Answer: As I have previously stated, I am a strong supporter of the Violence Against Women Act and strongly support full funding in order to achieve its objectives. I am reluctant to express a view on the creation of new statutory entities within the Department until I have had the chance to study the performance of the entities which exist now. I look forward to working with you to make this program as fully effective as possible.

Question: Will you maintain a strong Violence Against Women Office and what qualities would you look for in a new Director?

Answer: I believe my previous answer expresses my strong commitment to the Violence Against Women Act. I obviously will look for the best possible director to carry out the duties of the Violence Against Women Office, one committed to the high priority of enforcing the law and helping ensure the safety of women throughout America.

3. Even the most conservative analysts agree that the 1994 Crime Law that I worked on for five years to pass has been a significant factor in the historically low crime levels throughout our country. Crime is down for the eighth straight year, according to F.B.I. reports, to the lowest levels in 30 years.

The key element of the Crime Law was the commitment to put 100,000 new police officers on the streets across America. We delivered under-budget and ahead of schedule.

To date, the COPS office in the Justice Department has funded more than 109,000 new officers.

More than 2,100 of these new officers are in your home state, Missouri, which has received \$129 million in Crime Law funds for new police officers over the last six years.

Question: As Attorney General, would you fight for continued funding for the COPS program and other Crime Law programs?

Answer: As I stated in a prior answer, I strongly support the objectives of the COPS program to place more beat police on the streets of our nation's communities. In the last Congress I was a cosponsor of your reauthorization bill for the COPS program. President Bush has pledged to maintain the current level of funding for the COPS program, but has also pledged to increase the flexibility of the program so that state and local authorities can determine where the money can best be spent. I look forward to working with you to achieve our mutual goals for the COPS program consistent with the flexibility goals previously stated by the President.

Question: As Attorney General, would you support in the inter-agency process the bill I introduced last year to put 50,000 more police officers on the street?

Answer: I assume your question refers to the COPS program reauthorization bill I cosponsored with you in the last Congress. As previously stated, I continue strongly to support the objectives of and funding for the COPS program. I look forward to working with you to achieve our mutual goals for the COPS program consistent with the flexibility goals previously stated by the President.

4. *Question:* Would you support five-year re-authorization of the Violent Crime Reduction Trust Fund to support law enforcement and domestic violence programs?

Answer: While I cannot take a position on this specific legislation, I am fully committed towards combating violence, and will vigorously enforce any federal legislation enacted toward that end.

5. As your predecessor will attest, I track implementation of the grants and programs in the Violence Against Women Act very closely.

Your state, Missouri, received \$16 million in Violence Against Women Act grants over the past six years, plus an additional \$5.7 million in funds for domestic violence shelters.

Question: If confirmed, what will your commitment be to implementing and tracking progress of the Violence Against Women Act of 2000?

Answer: If confirmed, I pledge to you that I will be strongly committed to implementing fully the requirements enacted in the Violence Against Women Act of 2000.

6. The Violence Against Women Act of 1994 and its re-authorization passed last year create programs that have bolstered prosecution of child abuse, sexual assault, and domestic violence cases; increased services for victims by funding shelters and sexual assault crisis centers; and increased resources for law enforcement and prosecutors.

Question: Under your leadership, how will the Justice Department work to end violence against women?

Answer: One of the most important things that the Justice Department can do to work to end violence against women is to enforce the laws in this area fully and fairly. If I am confirmed, this is precisely what the Justice Department will do.

Question: Will the Violence Against Women Office continue to collect data and report on intimate partner violence, sexual assault, and stalking?

Answer: If confirmed, I will ensure that the Violence Against Women Office takes all actions necessary to fulfill the Justice Department's duty to implement the Violence Against Women Act fully and fairly.

7. The Violence Against Women Act established several federal crimes: interstate domestic violence, interstate violation of protective orders, and interstate stalking. These laws have led to dozens of federal prosecutions.

Question: Will you continue to enforce these laws vigorously?

Answer: Yes.

Question: What would your administration do to train and support U.S. Attorneys in the continued prosecution of these federal crimes?

Answer: If confirmed, I will be fully committed to prosecuting the federal crimes under the Violence Against Women Act, and will take steps to ensure that all U.S. Attorneys are aware that this is a priority.

8. Many have called for a federal hate-crime law. In June 2000, Senator Kennedy proposed a Hate Crimes Bill that would extend criminal protections to targeted communities by adding gender to covered categories.

Question: Will you support passage of a federal hate-crime law to include crimes based on gender?

Answer: As Governor of Missouri, I was proud to have signed the first hate crimes legislation to be enacted in the State of Missouri. I agree with the President in supporting Senator Hatch's hate crimes legislation, which passed the Senate last year.

Question: Will you support expansion of the Hate Crimes Statistic Act to include collection of data on gender-based hate crimes?

Answer: I would need to study the details of the current coverage of the act and the issues raised by expanded coverage before reaching a final determination. However, as Governor of Missouri, I was proud to have signed the first hate crimes legislation to be enacted in the State of Missouri. I agree with the President in supporting Senator Hatch's hate crimes legislation, which passed the Senate last year.

9. As demonstrated in the legislative history of the Violence Against Women Act, which includes seventeen state gender-bias studies, our justice system has a significant problem: discrimination in treatment of gender-based cases. There is also evidence of widespread race discrimination in the criminal system, especially in the prosecution and conviction of rape cases.

Question: Will your office continue to support programs and training to eradicate race and gender bias within the courts and among prosecutors?

Answer: Yes.

Question: What will you do to ensure eradication of race discrimination in state prosecution of rape cases?

Answer: If confirmed as Attorney General, I will fully enforce all federal civil rights laws, including the Fourteenth Amendment. Together, these laws prohibit states from enforcing their criminal laws in a racially discriminatory manner.

10. The Children's Health Act enacted in October 2000 contains a number of important drug bills, including the methamphetamine bill that you and I worked to pass. This Act included an anti-addiction medication bill that Senator Hatch and I, along with Senators Levin and Moynihan, worked very hard to pass. The legislation allows qualified doctors to prescribe certain anti-addiction medications from their offices, rather than specialized drug-treatment clinics. This new concept will require time to take hold -- time for doctors to be trained and patients to start taking the medication and time for results to be collected and analyzed.

Question: I hope—and I would bet that Chairman Hatch also hopes -- that, as Attorney General, you would let this very important and innovative program go forward. Can Senators Hatch, Levin, and I have your commitment that you will help this program go forward?

Answer: I pledge that if confirmed, I will fully and faithfully enforce the Children's Health Act, just as I will fully and faithfully enforce all laws duly enacted by Congress.

11. One of the most important components of the Department of Justice is its Civil Rights Division, which enforces federal statutes prohibiting discrimination on the basis of race, sex, handicap, religion, and national origin.

Historically, the most important tool the Civil Rights Division has wielded in enforcing the law is the so-called pattern-or-practice suit. As the name implies, this tool allows the Division to go after patterns of discrimination, rather than the misdeeds of individuals. For instance, the Civil Rights Division has used pattern-or-practice litigation to reach consent decrees with several law-enforcement agencies. The problem there was rooted not so much in discriminatory conduct by individual officers, but in policies and patterns those agencies adopted years ago that no longer reflect our law.

Question: Can we have your full commitment to the use of pattern-or-practice litigation in enforcing our civil rights laws?

Answer: If confirmed as Attorney General, civil rights will be a top priority for the Department of Justice. Indeed, the Department has a special charge and solemn responsibility to enforce our nation's civil rights laws vigorously. In so doing, the Department will use all reasonable and appropriate enforcement tools at its disposal, to effectuate those goals.

12. Most crime occurs in after-school hours when many children are unattended.

Question: What role do you see for the federal government in crime prevention in general and in after-school programs in particular, such as those conducted by Boys and Girls Clubs?

Answer: The President has explained that he is firmly committed to promoting after-school programs. In particular, he has stated that he would introduce legislation to open 100 percent of the 21st Century program's funding to competitive bidding. This will allow youth development groups, local charities, churches, synagogues, mosques and other community and faith-based organizations to compete for these federal funds on an equal footing with schools. In addition, he has stated that he will empower lower-income parents by providing certificates to help defray the cost of after-school activities of their choosing—whether run by a community group, a neighborhood church, or a local school. He has indicated his desire to add an additional \$400 million a year to the Child Care Development Block Grant to the states to help 500,000 low-income parents pay for after-school programs. As Attorney General, I will fully support the President's initiatives in these areas.

Responses of the Nominee to questions submitted by Senator DeWine

YOUNGSTOWN PRISON

In Youngstown, Ohio, there is a privately run, medium security prison that houses inmates from the District of Columbia prison system. This is a modern, fully operational prison facility that employs 500 people and is a significant part of the economic development of that region of my state.

Currently, that facility is only half-filled. By September, the D.C. contract will expire, and the inmates will be transferred. If nothing is done, this prison will sit empty and those jobs will be in jeopardy.

At the same time, the federal system is overcrowded and the Bureau of Prisons is looking for new sites to build prisons. The Department is also facing a lack of prison space for undocumented criminal aliens.

Something needs to be done to fill Youngstown and the Department has plenty of need for beds. This really seems like a case where everyone will win if the Department either buys the facility or agrees to send prisoners to Youngstown. The Department needs more prisons, and you need to house prisoners until you get the additional space.

Question: Will you take a look at Youngstown and help me fix this problem?

Answer: Although I am not presently familiar with the situation, I will be happy to look into it, consult with the experienced professionals at the Department and the Bureau of Prisons, and work with you on a constructive solution.

Responses of the Nominee to questions submitted by Senator Feingold

CIVIL RIGHTS

Question 1: What are your priorities for the U.S. Department of Justice, particularly the Civil Rights Division?

Answer: My highest priority is to ensure that the Department of Justice lives up to its heritage of enforcing the rule of law, and in particular, guaranteeing legal rights for the advancement of all Americans. However, as I mentioned during the hearing, one of my highest priorities at the Department will be to target the unconstitutional practice of racial profiling.

Question 2: What is your view of the role of the Civil Rights Division?

Answer: I believe that the Civil Rights Division must be at the forefront of carrying out the special charge of the Department of Justice to combat injustice and to ensure that all Americans are treated fairly and free from invidious discrimination.

Question 3: In response to a question I posed about DOJ Pride (a voluntary organization of gay, lesbian and bisexual DOJ employees), you indicated that you would not discriminate against "any group that [is] appropriately constituted in the Department of Justice." Please explain how you define "appropriately constituted" and indicate whether you believe DOJ Pride fits that definition.

Answer: In my testimony I stated that I would not tolerate discrimination against any employee at the Department of Justice because of sexual preference. That answer stands. When I referred to any "appropriately constituted group," it was because I am unaware of what current Department policies are regarding organization of professional as well as other employees. Until I am fully briefed on these and other personnel policies I am not in a position to express an opinion on any particular organization or group of employees and whether or not they are "appropriately constituted." However, assuming this organization is appropriately constituted under existing Department policies, I have no intent to change those policies or treat this group differently than any other.

Question 4: In response to a question about the policy Attorney General Janet Reno instituted that sexual orientation not be a factor for FBI security clearances, you indicated that you were "not familiar" with this policy. Now that you have had a chance to become familiar with it, will you continue and enforce this formal policy?

Answer: A review of FBI clearance policies, and FBI policies generally, will be an ongoing process at the Department of Justice. Consistent with my prior answer regarding discrimination based upon sexual preference, I do not anticipate changing

security clearance policies which have previously received broad acceptance within the government, to the extent which I will have any authority in the matter.

Question 5: Given your strong opposition to Mr. James Hormel to be the U.S. Ambassador to Luxembourg and your opposition to the Employment Non-Discrimination Act, can you assure this Committee that you would not consider sexual orientation in making recommendations to the President on federal judicial nominees or high ranking Justice Department officials?

Answer: As I have previously stated, my opposition to Mr. Hormel was based on the totality of the specific facts and circumstances of that particular case. My opposition to him in no way reflects a past or future intent to discriminate against anyone based on sexual preference. I have repeatedly committed that I will not discriminate against anyone on that basis, and that I will not have any litmus test for judicial nominees.

Question 6: The Justice Department under Attorney General Reno actively investigated allegations of police misconduct by law enforcement agencies and did not shy away from taking legal action to protect the civil rights of Americans. Do you agree with the Justice Department's decision to investigate and then enter into a consent decree with the City of Los Angeles and Los Angeles Police Department?

Answer: As I have previously testified, I strongly support the Justice Department's special charge to protect the rights of those least able to protect themselves. I have expressed my opposition to unwarranted strip searches, racial profiling, and other abuses of civil rights by law enforcement authorities. While I have not been briefed on the specific situation in Los Angeles, I oppose police misconduct wherever it occurs.

Question 7: As you know, there is discretion in the Attorney General's decision of how to proceed in such cases. The Attorney General can take legal action, defer litigation and instead "send a letter of concern," or decline intervening at all. If confirmed as Attorney General, how would you handle allegations of misconduct by a police department?

Answer: It is the duty of the Civil Rights Division in the first instance to investigate such allegations and to assess whether federal intervention is appropriate. As Attorney General, I will trust state and local law enforcement, but will fully enforce federal civil rights laws. In light of their role in law enforcement, allegations that police departments are engaged in law breaking raises particular concerns to which the Department will be especially sensitive.

Question 8: What would your standard be for determining whether to take legal action against a police department?

Answer: The question is difficult to answer in the abstract. My answer would be guided by the facts and the law, in consultation with professionals at the Department.

RACIAL PROFILING

Question 1: The hearing held in the Constitution Subcommittee on March 30, 2000, focused on racial profiling of motorists. Does your opposition to racial profiling include racial profiling of airline passengers or people walking down the street?

Answer: I have stated my strong opposition to racial profiling across the spectrum. There should be no loopholes or safe harbors for racial profiling. Official discrimination of this sort is wrong and unconstitutional no matter what the context.

Question 2: On January 15, 2001, President Clinton called on Congress to pass a law that bans racial profiling. Would you support such a bill?

Answer: Former President Clinton proposed a host of things shortly before he left office. I am unaware of the specifics of this particular bill. I am certainly prepared to work with you on appropriate legislation to deal with racial profiling in a clear and decisive manner.

FEDERAL DEATH PENALTY: INNOCENCE & THE CLEMENCY PROCESS

Question 1: At the hearing, you acknowledged that our justice system has made mistakes and that innocent people have been convicted and even sentenced to death. Do you share the concern that a system that sends innocent people to death is seriously flawed?

Answer: While I support the death penalty, I believe that there is no greater injustice than to execute one who is innocent. No system of justice is perfect, but I will certainly work with the President and Congress to help insure that we have a system that protects the rights of capital defendants.

Question 2: What, in your experience, causes these mistakes?

Answer: I do not think it is possible to isolate any single factor or set of factors. For example the jury system of fact finding enshrined in the Bill of Rights has never been said to be perfect. It simply affords more protections against government abuses of individual rights than other systems utilized in other countries. That, of course, does not relieve government from the obligation to continue to work to make the system fairer and more just.

Question 3: During the campaign last year, President-Elect Bush stated that he applies the following test to clemency requests from death row inmates: whether the person is guilty of the crime and whether he or she had full access to the courts. Do you believe that other considerations might be taken into account beyond whether the inmate is guilty and has had full access to the courts?

Answer: President Bush was explaining in the context of a national political campaign his general practice as Governor in Texas, a death penalty state, regarding clemency applications in capital cases once judicial avenues had been exhausted. While it is possible to conceive of other considerations in a specific case, the ones to which then-Governor Bush referred seem the most important and relevant ones.

Question 4: How do you define “full access to the courts”?

Answer: I do not believe this term is a term of art. It has a commonly accepted interpretation—that a defendant has received representation by competent counsel, has received a fair trial, and has exhausted or has chosen not to exercise all of his avenues of judicial appeal.

Question 5: Given President-Elect Bush’s and your strong support for capital punishment, could you ever recommend a grant of clemency in a death penalty case? What are the circumstances under which you would recommend that the President grant clemency?

Answer: Yes. In determining any recommendation on this issue, I would follow the guidelines that the President has outlined: I would consider whether the person is guilty of the crime and whether he or she had full access to the courts.

Question 6: If there is no question that the person is guilty, but there are errors in the penalty phase of the trial—or, in other words, errors that mean the difference between the defendant receiving a death sentence or life without parole, might you support a grant of clemency in such a case?

Answer: Any advice that I would give to the President is confidential. However, the President has indicated that his decision would be made based on whether the individual is guilty of the crime and whether he or she has had full access to the courts. When questions are raised as to whether an individual is guilty of capital murder, as opposed to a crime for which the death penalty is not provided, I would include such factors in my analysis and would advise him accordingly.

Question 7: What do you see as the role of the clemency process when a person has a claim of innocence that has been rejected by the courts? In such a case, would you be willing to review evidence or circumstances that the appellate courts have never allowed a jury to hear (e.g., because the courts never granted a retrial)? Do you believe that clemency should only be granted in cases where the defendant presents a claim of innocence?

Answer: As discussed above, the President has clearly indicated the factors that he would consider in deciding whether to grant clemency. The role of the clemency process is to determine whether there is a basis for clemency based upon those factors. And this process should include all evidence that bears on the factors outlined above.

FEDERAL DEATH PENALTY: REPORT AND CONTINUING REVIEW

Question 1: On September 12, 2000, the U.S. Department of Justice released a report on the federal death penalty entitled *Survey of the Federal Death Penalty System (1988–2000)*. This report confirmed that there are significant and unexplained racial and geographic disparities in the federal government’s decisions to seek the death penalty.

Are you troubled by the fact that about 75% of those against whom the Department of Justice seeks the death penalty are people of color or ethnic minorities, even though far less than 75% of the people who commit federal capital crimes are people of color and ethnic minorities?

Answer: Yes, it troubles me deeply.

Question 2: Wouldn’t you agree that the fair, just and sure administration of the federal death penalty requires that it be applied completely free of racial bias?

Answer: Yes.

Question 3: Are you troubled by the fact that the same federal crime is not prosecuted as a federal capital crime in different parts of the country?

Answer: I fully agree that, as a general principle, federal law should be applied uniformly across the country, and, if confirmed, will work to help ensure that this is the case.

Question 4: Wouldn't you agree that the fair, just and sure administration of the federal death penalty requires that it be applied uniformly across the country, so that whether one lives or dies in the federal system is not dependent on the district in which the prosecution takes place?

Answer: As noted above, I fully agree that nationwide uniformity in the application of federal law is important.

Question 5: Are you troubled by the fact that more than half the federal capital prosecutions come from less than one-third of the states, even though the incidence of federal capital crimes is fairly evenly distributed across the entire country?

Answer: Yes, though I am unsure why this is the case. There are many differences in different jurisdictions, but, as noted, I agree that the uniform application of federal law is important.

Question 6: Attorney General Reno and Deputy Attorney General Eric Holder have expressed concern about these disparities. Do you agree with the following statement by Attorney General Reno:

Noting that the Department could not explain the disparities, she said, "[a]n even broader analysis must therefore be undertaken to determine if bias does in fact play any role in the federal death penalty system."

Answer: I fully agree that the Department of Justice should do everything necessary to eliminate any racial bias from the federal death penalty system, including undertaking all reasonable and appropriate research necessary to understand the nature of the problem.

Question 7: Do you agree with Attorney General Reno's statement that the death penalty should be imposed only after "sound study and thorough analysis"?

Answer: I fully agree that we should have a thorough study of the system and that the death penalty should be imposed only upon satisfaction of the full rigors of Due Process. Nor should race play any role in determining whether someone is subject to the capital punishment.

Question 8: On December 7, 2000, President Clinton granted a reprieve for the first person scheduled to be executed by the federal government—an Hispanic American man from Texas named Juan Raul Garza—because of his concerns with racial and regional disparities. Do you agree with President Clinton that there is a need for "continuing study" of "possible racial and regional bias" because "[i]n this area there is no room for error"?

Answer: Yes.

Question 9: Do you agree with President Clinton that we must thoroughly examine and address racial and geographic disparities in the federal death penalty system before the United States "goes forward with an execution in a case that may implicate the very questions raised by the Justice Department's continuing study"?

Answer: I fully agree that no individual should be subjected to capital punishment where it is apparent that he or she was either denied the full rigors of Due Process, or his or her conviction and/or sentence was imposed on account of the individual's race. I further agree that we should work together to ensure a uniform application of all federal law, including the federal death penalty, across the Nation.

Question 10: If you are confirmed as Attorney General, what will you do about the racial and geographic disparities in the application of the federal death penalty?

Answer: Like you, I strongly oppose allowing race to play any role in the imposition of the death penalty—it is an unconstitutional act that should never take place. If confirmed, I assure you that I will thoroughly study this issue before determining any reasonable and appropriate action that need be taken, and will then take all reasonable and appropriate action to address the issue.

Question 11: Will you recommend to President Bush to do as President Clinton did—not to allow federal executions until these disparities are fully studied, discussed, and the federal death penalty process subjected to necessary remedial action?

Answer: The President has asked that I keep my specific recommendations to him private, and I plan to honor that request. I can say that I personally do not believe that a moratorium on the imposition of the death penalty at the federal level is currently warranted. We have relatively few criminal defendants on death row in the federal system and, in my view, it would be unfair, for example, to interfere with the sentence that the judge and jury imposed upon Timothy McVeigh while a study

is ongoing. Of course, all federal defendants are entitled to the full protections of Due Process and applications for clemency.

FEDERAL DEATH PENALTY: RELIABILITY AND FAIRNESS OF FEDERAL CAPITAL PROSECUTIONS

Question 1: In their book, *Actual Innocence*, defense lawyers Barry Scheck and Peter Neufeld outline a number of problems in our criminal justice system that lead to unreliable results. Have you read the book *Actual Innocence*?

Answer: I have not had the opportunity to do so, but would welcome the chance if you recommend it.

Question 2: The following questions will address some of the problems outlined in the book with a particular focus on the federal criminal justice system. The first area is bargained-for testimony. Federal prosecutors rely heavily on testimony from accomplices of defendants charged with a crime that, if convicted, could result in a death sentence. This testimony is often obtained in exchange for not seeking the death penalty against the accomplices.

Do you agree that this practice of obtaining bargained-for testimony can create a serious risk of false testimony?

Answer: Depending on the circumstances, there is certainly a risk that testimony obtained in exchange for leniency can be unreliable.

Question 3: If there are no other safeguards to assure the reliability of such testimony, do you think that federal prosecutors should be discouraged, or even precluded, from using such testimony?

Answer: Although I recognize the serious nature of the problem that you are raising, I imagine that one important safeguard is the ability of defense counsel to cross-examine the witness. In any event, I would be hesitant to make any broad generalizations outside to context of a concrete case.

Question 4: Federal prosecutors are not required to provide meaningful discovery far enough ahead of trial to permit the defense to be prepared to use this information effectively. Would you support legislative action to provide greater discovery of the government's case further in advance of trial than is now required?

Answer: Not having had an opportunity to review the issue thoroughly, I cannot comment on the specific legislative proposal that you proffer. However, I fully believe that all individuals that appear before our Nation's courts should be accorded the full protection of Due Process, and that prosecutors should comport themselves in a way that respects the constitutional rights of criminal defendants.

Question 5: Would you support changes in the United States Attorneys' Manual to require an "open file" policy in relation to discovery?

Answer: Although I am not familiar with the details of this specific policy, I would be happy to work with you to help ensure that all criminal defendants receive the full protection of Due Process.

Question 6: The FBI, in increasing isolation from the rest of the nation's law enforcement agencies, refuses to make electronic recordings of interrogations that produce confessions. Do you agree that this practice makes subsequent scrutiny of the legality and reliability of such interrogations more difficult?

Answer: I have not reviewed the details of this specific FBI policy, and would need to consult with the professionals at the FBI before making an assessment. I assure you that I will take all reasonable steps to help ensure that all criminal defendants receive the full protection of Due Process.

Question 7: Do you have any objection to changing this practice?

Answer: I have an open mind on this issue. Not yet having had the opportunity to conduct a full and fair review of the policy, I cannot currently make a reasonable assessment.

Question 8: Federal prosecutors rely heavily on predictions of "future dangerousness" to secure death sentences. Do you know that such predictions are deemed unreliable and misleading by the American Psychiatric Association and the American Psychological Association?

Answer: I am not familiar with these determinations by the American Psychiatric Association and the American Psychological Association or the standards or bases they used in their analysis.

Question 9: Do you have any concern about federal prosecutors' reliance on such predictions?

Answer: I am concerned about all issues that affect the right of criminal defendants to a full and fair trial. I would be happy to work with you to help ensure that all criminal defendants receive the full protection of Due Process.

Question 10: Is reliance on evidence that the leading mental health professional associations in the country consider “junk science” a practice that you believe to be defensible in federal prosecutions?

Answer: I fully agree that it is improper to rely on “junk science” in criminal prosecutions.

Question 11: Scheck and Neufeld also highlight the appalling problem of incompetent attorneys who represent people facing death-eligible crimes. This is a particular problem at the state level but the federal system is not totally immune. There are, unfortunately, many cases across the country of people who were represented at trial by drunk lawyers, lawyers who slept through the trial, lawyers who were later suspended or disbarred, or lawyers who were paid far less than a living wage. Do you agree that this is a problem?

Answer: I am troubled by the sorts of cases that you have enumerated, and we need to work constructively to raise the bar on the quality of legal service offered to criminal defendants. In particular, I look forward to working constructively with you to formulate ideas to raise the quality of legal defense.

Question 12: I have joined Senator Leahy as a co-sponsor of legislation that would begin to address this serious problem, the Innocence Protection Act. As Attorney General, would you support incentive grants or conditioning federal funds to the States on the States’ ensuring certain minimum standards for competency of legal counsel in death penalty cases?

Answer: Although I am unable to comment on specific legislation, I agree that every defendant is entitled to his or her 6th Amendment right to counsel and that if DNA is available and can prove a person’s guilt or innocence, it should be used.

Question 13: What do you think the federal role should be with respect to the performance of the States in providing adequate legal representation for capital defendants?

Answer: The federal courts play a critical role in helping ensure that state criminal prosecutions, and especially death penalty prosecutions, comport with the strictures of the federal Constitution.

RELIGIOUS LIBERTY AND SCHOOL PRAYER

In June 2000, the United States Supreme Court ruled 6–3 in *Doe vs. Santa Fe Independent School District* that a public prayer led by an elected student chaplain at a football game between two public schools violated the Establishment Clause of the United States Constitution. The Court cited *Lee v. Weisman*, a 1992 opinion in which the Court concluded, “the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way that establishes a state religion or religious faith, or tends to do so.” It’s no secret that you believe these decisions were mistaken. You have spoken out against the Supreme Court’s decisions on the separation of church and state on many occasions. At a 1998 meeting of the Christian Coalition, you said: “A robed elite have taken the wall of separation built to protect the church and made it a wall of religious oppression. They may try to take prayer from our schools, but they can never steal God from our hearts. I believe that we must continue across this land to fight for our God-given right to acknowledge and affirm our Creator.”

Question 1: If you are confirmed, will the Department of Justice challenge the activities of school districts that violate the *Doe v. Santa Fe* and *Lee v. Weisman* decisions?

Answer: Both of these cases involved actions by private litigants, rather than Justice Department actions. Nevertheless, if confirmed, I will ensure that the Justice Department fully and fairly enforces the constitutional rights of all citizens as those rights have been interpreted by the Supreme Court.

Question 2: Will you instruct the Solicitor General to file amicus briefs that follow an interpretation of the Constitution that ensures religious liberty and the separation of church and state?

Answer: Yes.

CAMPAIGN FINANCE

APPOINTMENT OF SPECIAL COUNSEL IN CAMPAIGN FINANCE CASES

Question 1: You and others in Congress were highly critical of former Attorney General Janet Reno for failing to seek an Independent Counsel (or after the Independent Counsel statute expired, appoint a special counsel) to investigate fundraising abuses by the President Clinton’s campaign in 1996. As you know, I felt that a special counsel should have been appointed to investigate campaign finance

abuses by both sides in the 1996 campaign. Under what circumstances will you appoint a special counsel to investigate allegations of wrongdoing by the President or those involved in his campaign? Do you believe that the public can have confidence in an investigation of the campaign fundraising by the President or his associates run by the Justice Department?

Answer: In light of the varied circumstances in which the need for a special counsel could arise, it is difficult to state generally when a special counsel should or should not be appointed. Moreover, because each case must be reviewed on its particular facts, it would be impossible to state before-the-fact whether a particular case would warrant the appointment of a special counsel. Clearly, if a case arose in which it would be difficult for any official within the Justice Department to investigate the allegations of wrongdoing impartially and fully, the possibility of appointing a special counsel clearly should be considered. Furthermore, I believe that if the integrity of the Justice Department is secure, then the public can have full confidence in investigations conducted by the Justice Department.

SOFT MONEY CONTRIBUTIONS

Question 2: As you know, one of the reasons I have worked so hard for the McCain-Feingold campaign finance reform bill is that I am very concerned about the appearance created when large soft money contributions are given to the political parties. These very large donations can appear like bribes or even extortion, and I believe we must ban soft money in this Congress. Although you and I have disagreed on what change in laws is necessary, would you agree that there is an appearance problem that we should be concerned about here?

Answer: Yes.

Question 3: On July 27, 1999, you cosponsored S. 1172, a bill that would have made it possible for Schering-Plough, a major pharmaceutical company, to obtain a patent extension for its big selling allergy drug Claritin. Some estimate that the value of the patent extension to Schering-Plough would be over \$9 billion. Just two months later, on September 30, 1999, Schering-Plough contributed \$50,000 to the non-federal account of the Ashcroft Victory Fund. What was the Ashcroft Victory Fund? What is your understanding of the arrangement that allowed a fundraising committee associated with you to receive contributions of this size? What was your role in obtaining this contribution?

Answer: The Ashcroft Victory Fund was a joint fundraising committee between the Ashcroft 2000 Committee and the National Republican Senatorial Committee. The Committee operated under Federal Election Commission guidelines allowing contributions of this size. Corporate funds such as this were disbursed to the National Republican Senatorial Committee.

CAMPAIGN CONTRIBUTIONS AND THE MICROSOFT CASE

Question 4: Another case that the current Department of Justice brought was the antitrust suit against Microsoft. This case has proceeded to a verdict at the District Court level and is now on appeal. According to Common Cause, Microsoft and its executives gave over \$1.8 million in soft money to the parties last year, nearly a million to the Republican party committees. As the suit intensified, Microsoft's soft money contributions nearly doubled from the 1998 election cycle. Do you see an appearance problem here? How will you assure the American people that your decision on the Department's pursuit of this lawsuit is not influenced by Microsoft's campaign contributions to your party?

Answer: President Bush is committed to an Administration that adheres to the highest ethical standards. Towards that end, I will work vigorously to ensure that every decision made by the Justice Department is based on the law and on the facts. This fully applies to the Microsoft case. On this score there can be no doubt: The Department of Justice will operate free from any improper or untoward influence.

JUDICIAL NOMINATIONS

Question 1: Do you believe that the Judiciary Committee should vote on all nominees submitted by President Bush and that those nominees who receive a favorable vote, or a tie vote under the agreement between Senators Daschle and Lott, should be put on the Senate Executive Calendar for consideration by the full Senate?

Answer: I believe that the Senate should give timely and fair consideration to the President's judicial nominations.

Question 2: Assuming that there are no problems with completing FBI background checks or other logistical impediments to a vote being held, do you agree with the

proposal made by President-Elect Bush during the campaign that all nominees should receive a vote in the Senate within 60 days of their nominations?

Answer: During the campaign, in order to minimize delay and division over presidential appointments, and attract good people to public service, then-Governor Bush promised that if elected, he would make prompt submissions of presidential nominees a top priority, and challenge Congress to act within 60 days of the submission of nominees for the new Administration—regardless of who was elected president in 2000. I stand by the President's commitment in this area.

Question 3: In 1985, the Ninth Circuit, sitting en banc, found that the President has the constitutional power to make recess appointments to the federal bench. Do you have any doubts about the constitutionality of recess appointments to the federal bench?

Answer: Although the Constitution explicitly authorizes the President to make recess appointments, I have not explored the constitutional issues concerning such appointments in all circumstances.

Question 4: During his two terms in office, President Clinton nominated four different African Americans to seats on the Fourth Circuit—James A. Beaty, Jr. of North Carolina, James A. Wynn, Jr. of North Carolina, Andre M. Davis of Maryland, and Roger Gregory of Virginia. Mr. Beaty was first nominated in December 1995, and his nomination was resubmitted in 1997. Neither he nor any of the other Fourth Circuit nominees who are African-American received a hearing in the Senate Judiciary Committee. Do you have any comments on these facts?

Answer: As mentioned above, during the campaign, President Bush made clear his view that Congress should act within 60 days of the submission of nominees for the new Administration—regardless of who was elected president in 2000. I will fully support the President's view on this issue.

Question 5: Do you see a problem with the circumstance that in the year 2001, there is not a single African-American who has ever been confirmed for a lifetime appointment to the Court of Appeals for the Fourth Circuit?

Answer: Yes. I think it sends the wrong message, and believe we should endeavor to appoint qualified minorities throughout the federal bench. As Governor of Missouri, I was proud to appoint 8 of the 9 minority candidates submitted to me on the panels of candidates proposed by the nonpartisan judicial selection commissions. As a Senator, I was likewise proud to support 26 of 28 minority judicial nominations to the federal bench. If confirmed as Attorney General, I will continue to work to enhance diversity on the federal bench, including on the Fourth Circuit Court of Appeals.

Question 6: President Clinton has re-nominated nine Circuit Judges, including Judge Gregory, who were left hanging by the inaction of the Senate in the last Congress. Now these nine men and women do not constitute every nominee, nor even Circuit Court nominee on whom the Senate failed to exercise its constitutional advice and consent responsibility in the 106th Congress. I believe that President-elect Bush has an opportunity to set a different tone here—to unite the country and reach across party lines. He can put into practice the political golden rule by not withdrawing these nominations and urging this Committee and the Senate to act on them. If he wishes the Senate to change course on the subject of judicial nominations from the practice of the last three Congresses, he can set the proper example. Will you advise President Bush against withdrawing these nominations and to support them receiving a vote in the Senate in an effort to get the judicial nominations practice in this Congress off on the right foot?

Answer: As discussed above, the President, during the campaign, made clear his commitment to an expeditious process of confirming presidential nominees to the judiciary. With respect to the particular nominees addressed in your question, I will need to review fully the records of these nominees before advising the President on this matter. I assure you that I will fully and fairly review the records of these individuals before advising the President. Ultimately, however, the appointment of a judicial nominee is the President's to make, with the advice and consent of the Senate.

Responses of the Nominee to questions submitted by Senator Feinstein

Lead-in: During the past few years, the United States Senate has, in my opinion, become a far more partisan, far more antagonistic place. Despite all the talk of Senatorial courtesy during the nomination process this year, the concept of Senatorial courtesy has, in many respects, been lost during this Administration.

One result of this has been the numerous secret “holds” placed on judicial nominations, some lasting for several years. This process is very difficult on the lives of the nominee and his or her family. I have argued many times that if there is a problem with a nominee, someone should just come out and say it. That way, choices can be made out in the open, with the benefit of knowing what one is up against.

Question: Have you ever placed a “hold” on a judicial nomination?

If so, please name those you put a “hold” on, and why.

Answer: In an effort to fulfill my responsibilities as a United States Senator, I welcomed inquiries by the Majority Leader and Majority Whip regarding the scheduling and floor consideration of items on the legislative and executive calendars. Though I may have expressly requested prior notification during my six years so as to participate in debate or be present for a vote, I do not recall (except as noted in these answers) which, if any, nominations were involved, or the circumstances surrounding any such requests. In at least a couple of cases, however, I expressed a desire to be notified if a nominee were to come up for a vote so I could express my views on the floor.

Lead-in: At the hearings on Ronnie White’s nomination in May 1998, Judge White was introduced to the Senate Judiciary Committee by my Republican colleague Senator Christopher Bond of Missouri, and then by Missouri Congressman Bill Clay. After a very positive recommendation by Senator Bond, Congressman Clay told us that:

“He [Senator Ashcroft] told me that he had appointed six of the seven members to the Missouri Supreme Court. Ronnie White was the only one he had not appointed. He said he had canvassed the other six, the ones that he appointed, and they all spoke very highly of Ronnie White and suggested that he would make an outstanding Federal judge. So I think that is the kind of person we need on the Federal bench.”

Question: You were present during this Committee hearing and you heard Congressman Clay’s report of your conversation, isn’t that correct?

Answer: I believe I was present, though I do not recall Congressman Clay’s comments.

When Congressman Clay reported this conversation with you to the Senate Judiciary Committee, did you object to his description of your conversation? Did you comment at all on the White nomination at that time?

Answer: Courtesy is an important part of process in the Senate. I do not recall doing or saying anything to endorse Congressman Clay’s statement. My position with respect to Judge White’s nomination was longstanding and clear. I raised questions, and submitted follow-up questions, at his May 1998 hearing. I subsequently voted against his nomination in Committee, identifying his dissents in death penalty cases as the basis of my opposition. I again made my views clear in January 1999 when he was re-nominated. Indeed, in February 1999, the St. Louis Post-Dispatch reported my objections based on his death penalty dissents. I opposed his nomination in Committee in July 1999. And I spoke to this issue at the first opportunity after a vote was scheduled in October 1999.

Lead-in: Nominations hearings are crucial components of any Senator’s performance of his or duty to advise and consent. Hearings enable Senators to directly query nominees about their concerns—and equally important—give nominees an opportunity to explain their record.

In your October 4 and 5 floor statements, you strongly criticized Justice White’s record on the death penalty. However, you did not raise the issue of the death penalty once during oral and written questions of Justice White in his May, 14, 1998 hearing.

Question: Subsequent to the May 14, 1998 hearing and prior to your October 5th speech, did you ever submit a written or oral request to Mr. White for information about his decisions on the death penalty?

Answer: Yes. My written questions inquired about a dissent he had written in a death penalty case. In making my decision with respect to Judge White, I thoroughly reviewed his record, which is available to all members of the public. I believe that this review provided a fully adequate basis upon which I could render a decision.

Question: If not, why did you not ask Justice White for more information?

Answer: As discussed, Judge White’s reported decisions provided what I believed to be a fully adequate record upon which I could render a decision in the matter.

Question: Did you feel satisfied that you had a fair assessment of his record?

Answer: Yes.

Lead-in: In your floor statements before the Senate on October 4 and October 5, 1999, you accused Justice White of being especially liberal on the death penalty. You cited two cases to support your argument, *Missouri v. Johnson* and *Missouri v. Kinder*. In describing the Kinder case, you said [Justice White], “wrote a dissent saying that the case was contaminated by a racial bias of the trial judge because the trial judge had indicated that he opposed affirmative action and had switched parties based on that.” In fact, you claimed three separate times that I know of—twice in floor statements and once in a “Dear Colleague” letter, that the only reason White dissented in the Kinder case was the judge’s stance on affirmative action.

Question: My first question is, did you read Ronnie White’s dissent in the Kinder case before you made your statement? Since?

Answer: I have reviewed the decisions rendered in the Kinder case.

Follow-up: The fact is that contrary to your statements, in his Kinder dissent, Justice White specifically argued that the trial judge’s comments on affirmative action programs are “irrelevant to the issue of bias.” In fact what Justice White objected to—and here I quote directly from the dissent:

—“the pernicious racial stereotype which is also expressed in the press release. The slur is not ambiguous or complex (nor, unfortunately, original): “While minorities need to be represented . . . I believe the time has come for us to place much more emphasis and concern on the hard-working taxpayers in this country. . . .” No honest reading of this sentence can show that it says anything other than what it says: that minorities are not hard working taxpayers.”

Again, in describing the Kinder case, you said [Justice White], “wrote a dissent saying that the case was contaminated by a racial bias of the trial judge because the trial judge had indicated that he opposed affirmative action and had switched parties based on that.”

Question: Given Mr. White’s explicit statement that he considered the trial judge’s views on affirmative action irrelevant to the issue of bias, would describe your repeated representation of Ronnie White’s views as fair?

Answer: I would begin by noting that the majority of the court in Kinder stated that “[i]n context, the statements merely express the trial judge’s satisfaction with affirmative action and government entitlement programs.” (942 S.W.2d at 321) In the Kinder case, the defendant did not allege any actual unfairness or error in any of the trial judge’s actions based on alleged bias, and an independent reviewing court immediately after the trial, as well as the Missouri Supreme Court, found no such unfairness or error based on bias. In fact, Judge White did not identify any ruling or error influenced by any alleged bias. In his sole dissent, Judge White stated that “actual fairness” of a trial is “not sufficient” to satisfy the Constitution. Judges undoubtedly should be held to a higher standard to avoid the appearance of bias, and a good case can be made that the trial judge in Kinder should have been censured. But I fully believe that to craft a rule that voids a trial with no demonstrable error, and with clear evidence of guilt of a brutal crime, as Judge White would have in this case, is fundamentally wrong. This was the basis for my position on Judge White with respect to the Kinder case. I continue to believe that that criticism was fair.

Lead-in: You have consistently stated that the only possible exceptions you would accept to an otherwise complete ban on abortion would be the very life of the mother herself. Let me ask you now to expand upon those statements.

Question: Do you believe that abortion is appropriate in cases where the health of the mother is so endangered that she is likely to face serious, permanent damage to her health?

Answer: My personal views on abortion are well known. But as I have explained, I understand the difference between the role of a policy advocate and the role of a law enforcer. As Attorney General, I will fully and faithfully enforce all federal laws on this issue.

Question: Are there any circumstances, beyond the likelihood of the actual death of the mother, that health should be a consideration in allowing an abortion, in your opinion?

Answer: Please see the answer above.

Lead-in: If confirmed as Attorney General, you would likely have a great deal of influence over who President Bush would nominate to all levels of the federal judiciary, including the Supreme Court itself.

Question: If President Bush were to ask you for names of possible Supreme Court nominees, would you consider suggesting a pro-choice nominee, assuming that the nominee was otherwise qualified?

Answer: Yes. As President Bush has made clear, he will have no litmus test for judicial nominations. As Attorney General, I will fully support the President's standard, and will not employ any litmus tests with respect to any role I might have in those nominations. I would note that I supported 218 out of 230 Clinton judicial nominees, and I assume some, if not most of them, were pro-choice.

Question: If the President nominated a pro-choice individual for a vacancy on the Supreme Court, with or without consulting you, would you support that nominee if otherwise qualified?

Answer: Yes. As President Bush has made clear, he will have no litmus test for judicial nominations. As Attorney General, I will fully support the President's standard, and will not employ any litmus tests with respect to any role I might have in those nominations.

Lead-in: In 1998, you stated that "[t]hroughout my life, my personal conviction and public record is that the unborn child has a fundamental individual right to life which cannot be infringed and should be protected fully by the 14th Amendment."

In 1981 you testified similarly before the Senate Subcommittee on Separation of Powers in support of "A Bill to Provide that Human Life Shall Be Deemed to Exist from Conception," as follows: "[W]e are urging the courts in any number of cases that they are considering to decide that equal protection does in fact belong to unborn children." You further stated that "we would add fetuses that they currently characterize as nonpersons to the class of individuals that is protected by the Constitution."

And also on this point, you co-sponsored a resolution proposing a constitutional amendment codifying your belief that an unborn child is entitled to 14th Amendment protection?

Question: Is it your contention that a fetus is or should be considered a "person" under the 14th Amendment?

Answer: Your summary of my record as an advocate appears to be fair and accurate. Certainly a significant number of complicated issues are associated with these proposals. The resolution of such issues is reserved to the domain of policy-makers, not law enforcers. As I said at the hearing, I understand the difference between the role of a policy advocate and one who must enforce the law. I accept Roe and Casey as the settled law of the land.

Question: What are the jurisprudential ramifications of this position?

Answer: Please refer to the answer above.

Question: Are you aware of any Supreme Court ruling supporting your interpretation of the Fourteenth Amendment with respect to fetuses?

Answer: Please refer to the answer above.

Question: Will you advocate adoption of your understanding of the 14th Amendment before the US Supreme Court?

Answer: Please refer to the answer above.

Question: Under your theory, must a legal hearing be held with respect to the due process rights of the fetus before an abortion may be performed?

Answer: Please refer to the answer above.

Question: What other due process rights does a fetus have in your view?

Answer: Please refer to the answer above.

Question: Does the fetus have due process rights regarding familial property distribution? Inheritance?

Answer: Please refer to the answer above.

Question: Do due process rights attach at the point of fertilization of the egg?

Answer: Please refer to the answer above.

Question: Presumably then, any doctor who performs an abortion under your interpretation of the Fourteenth Amendment commits murder, is that correct?

Answer: Please refer to the answer above.

Question: Does that make the woman an accessory to murder?

Answer: Please refer to the answer above.

Lead-in: According to the Institute of Medicine, access to contraceptive services is central to improving women's overall health and reducing unintended pregnancy and, therefore, the need for abortion. Family planning experts also have highlighted the crucial role that contraceptives play in reducing the rate of abortion, particularly for teenagers. One recent report indicated that publicly funded contraceptive services annually prevent 1.3 million unintended pregnancies, which would result in 533,800 births and 632,300 abortions.

Yet in 1986, as Governor of Missouri, you signed a bill that stated, among other things, that life begins at "conception," defined to mean at fertilization. And in 1998,

you sponsored a Constitutional amendment to ban abortions that would also put the beginning of life at fertilization.

Question: Am I correct in concluding that such a broad definition of conception would have the effect of outlawing the most common forms of contraception, including the birth control pill and the IUD?

Answer: Proposals I supported as a Governor or legislator have no bearing on my role as Attorney General. As Attorney General, I would have no authority to vote upon legislation or constitutional amendments. As Attorney General, I will enforce the laws as passed by Congress and signed by the President.

Lead-in: In January of 1999, a federal jury ordered two anti-abortion groups and 12 individuals to pay over \$107 million to Planned Parenthood of Columbia/Willamette, the Portland Feminist Women's Health Center, and several physicians, after finding that the "Nuremberg Files" web site, a "Deadly Dozen" poster, and a "wanted" poster constituted true threats not protected under the First Amendment.

The Nuremberg Files web site was designed to collect information to use against abortion providers, clinic staff, law enforcement officers, judges, and politicians in future trials for their "crimes against humanity." The site sought and listed personal information such as: photos of the individuals, their families, their friends, their houses, and their cars; driving records; license plate numbers; and names and birth dates of the individuals and their family members.

The legend that accompanied this list of names contained simulated body parts and dripping blood. This legend indicated the health status of each name—Black font for "working"; Greyed-out Name for "wounded"; and Strikethrough for those on the lists who were dead. Within hours of the assassination of Buffalo abortion provider, Dr. Barnett Slepian, a line appeared through his name.

It is my understanding that this case is now on appeal to the U.S. Court of Appeals for the Ninth Circuit and may be destined for review by the U.S. Supreme Court.

Question: As Attorney General, would you concur that the activities by the defendants in this case violate FACE, or would you use your position to try to limit the scope of FACE?

Answer: If confirmed, I will fully enforce FACE. I believe that it would be imprudent for me to comment on a pending case or make any decision with respect to the case to which you refer, as well as any other case, until fully reviewing the facts and law. I look forward to the opportunity to conduct such a review of this and other cases.

Follow-up: The Department of Justice reviews all petitions for certiorari to the Supreme Court and often recommends that the Supreme Court either grants or denies certiorari in any particular case. When the Solicitor General says that a decision warrants or does not warrant attention, those views are given great consideration. So, indeed, DOJ could well become involved in this case at the certiorari stage or by filing an amicus brief.

Question: Should this case be appealed to the Supreme Court and you are confirmed as Attorney General, what recommendation would you give Solicitor General to make regarding the outcome of the case?

Any decision that I make with respect to the case to which you refer, as well as any other case, will be made only after fully reviewing the facts and law applicable to that case. I look forward to the opportunity to conduct such a review of this and other cases.

Question: In more general terms, would you continue to support the use of Attorney General powers to protect providers and patients in cases that come before the court?

Answer: If confirmed as Attorney General, I will use the powers of the Attorney General to enforce the federal law protections of all citizens fully and fairly, including those of providers and patients.

Lead-in: Let me now ask you a question about the FACE Act, and what that Act covers.

Question: In Section 3(e) of the Act, the term "interfere with" means "to restrict a person's freedom of movement." Would you support any alteration of that definition?

Answer: It is Congress's prerogative to draft and enact legislation, including the definition of terms appearing in legislation. Should the Congress choose to do so with respect to the FACE Act, I will fully and fairly enforce such alteration.

Question: Also in Section 3(e), "intimidate" means "to place a person in reasonable apprehension of bodily harm to him or herself or another." Would you support any alteration in that definition?

Answer: It is Congress's prerogative to draft and enact legislation, including the definition of terms appearing in legislation. Should the Congress choose to do so with respect to the FACE Act, I will fully and fairly enforce such alteration.

Question: In Section 3(c), FACE defines "physical obstruction" as "rendering impassible ingress to or egress from a facility that provides reproductive health services' or rendering passage to or from such a facility' unreasonably difficult or hazardous." Would you support any alteration in that definition?

Answer: It is Congress's prerogative to draft and enact legislation, including the definition of terms appearing in legislation. Should the Congress choose to do so with respect to the FACE Act, I will fully and fairly enforce such alteration.

Question: Courts have interpreted FACE as not providing a civil remedy to so-called "sidewalk counselors." Do you disagree with that interpretation? Do you think that the definition of reproductive health services should be expanded so as to include "sidewalk counselors?"

Answer: Just as it is Congress's prerogative to draft and enact legislation, it is the role of the courts to interpret such legislation. If confirmed as Attorney General, I will fully abide by federal court decisions interpreting the FACE Act. Likewise, should Congress choose to amend the act, I will fully and fairly enforce such amendment.

Lead-in: As a Senator on this Committee, you voted against Senator Schumer's amendment to the bankruptcy bill that would prevent persons who commit acts of violence or harassment at reproductive health care facilities from using bankruptcy proceedings to avoid paying the damages, court fines, penalties, and legal fees levied against them as a result of their illegal activities.

Question: I understand that the floor vote may have had something to do with the Presidential election process, and may not have reflected the true views of all who voted for it. So to make the record clear, will you commit to us today that you will continue to support, and indeed vote for, legislation or amendments to prevent perpetrators of clinic violence and obstruction from using bankruptcy proceedings to discharge their related debts?

Answer: My reasons for opposing the amendment in committee dealt with the procedural and timing implications of the amendment to final passage of the bankruptcy bill. I supported Senator Schumer's amendment on the floor based on substantive policy considerations and supported final passage of the bill that included the provision.

Lead-in: In the past, when a clinic has been under siege and local law enforcement have been unwilling or unable to respond, the Task Force Against Reproductive Health Care Providers has responded by using federal law enforcement (i.e. U.S. Marshals) to protect clinics, providers and patients.

Question: If local law enforcement does not respond in such a situation, would you support using federal law enforcement to protect the clinic, providers and patients?

Answer: If confirmed, I will use the powers of the Attorney General's office to protect the federal rights of all Americans, including the rights of clinics, providers, and patients.

Lead-in: It is my understanding that as of last count, there were 53 investigations open relating to FACE, including 6 arsons, 5 bombings, and 2 shootings, one of which was fatal.

Question: Would the Department of Justice under your authority pursue these cases, and if so, how?

Answer: If confirmed, I will fully enforce the FACE Act, including with respect to any pending investigations. I will be particularly vigilant in pursuing crimes of violence, such as the ones that you reference. I am not, however, familiar with the details of the cases that you cite, and so cannot comment on them in particular.

Question: If, during your tenure as Attorney General, the amount and severity of violence against health care providers and/or facilities increases over current levels, what additional steps would you take to enforce the laws that protect them?

Answer: I will fully enforce the FACE Act. If current enforcement levels prove insufficient to the need, then I will not hesitate to devote significant additional resources to enforcing FACE.

Lead-in: In several high-profile cases in recent memory, the Justice Department has pursued civil rights cases against perpetrators of hate crimes when the state laws in question have been inadequate to address those crimes.

In fact, throughout our nation's history, some of the most vulnerable victims have relied on the Department of Justice to intervene and ensure that justice is done.

Question: As Attorney General, would you take an equally active role in these types of cases?

Answer: If confirmed, I will fully and fairly enforce current federal law to ensure that conduct which violates the civil rights laws is fully prosecuted. I will also fully enforce any additional hate crimes legislation that Congress chooses to enact.

Lead-in: In 1988, you declined to sign the Commission on Minority Participation in Education and American Life, which concluded that the nation was slipping it its efforts to achieve equal opportunity for minorities. I am concerned about the impression left behind by your refusal to sign the report. A reasonable person might presume that it meant that you were satisfied with the progress that has been made on these issues.

Question: Could you explain your reason for not signing the Commission report? Specifically, what were your chief concerns about the report?

Answer: A press release at the time expressed my concerns as follows:

“Governor Ashcroft agreed to serve on the Commission on Minority Participation in Education and American Life because of his deep concern with achieving an environment of equal opportunity for all Americans including total access and a comprehensive open door to attaining educational excellence. He joins the other members of the Commission in these purposes and goals, as well as their view that education is key to the achievement of equal opportunity.

“He could not, however, fully subscribe to the Commission’s final report because of its inordinate emphasis on federal government programs as compared to the crucial initiatives of individuals, states, and localities. He further believes that the report’s generalizations about setbacks in progress are overly broad and counterproductive in failing to recognize and examine important areas of progress experienced during the last three to four years. Instead of documenting and describing reasons behind the successes of many minority groups, the report focuses almost exclusively on shortcomings and failures. Further, the report fails to draw on research that distinguishes between effective and ineffective programs in helping all Americans achieve success. He especially objected to the precipitous process for finalizing the report, which provided little or no opportunity for the Commission’s consideration of these and other concerns about its final draft.”

Question: To what extent do you believe racial and gender disparities persist in the workplace and in education?

Answer: I believe that discrimination is a real and persistent problem, that there is still much work to be done, and that the Department of Justice has a special charge and solemn responsibility to enforce our nation’s civil rights laws vigorously.

Question: What types of efforts or programs—whether at the federal, state or private sector levels—would you find constitutionally acceptable in ensuring equal opportunities for minorities and women in employment and education?

Answer: Many efforts and programs can be undertaken in this regard consistent with the Constitution. For example, I believe that the affirmative access programs that President Bush has described are fully consistent with the Constitution.

Lead-in: Senator Ashcroft, in a 1998 interview in Southern Partisan magazine, you were asked to give your views about the International Criminal Court, which has been established to punish war crimes like genocide. You responded, and I quote:

“It’s an outrage. It has the potential of subjecting American citizens (at least for their actions abroad at home) to vague criminal charges that would spring from so-called “crimes against humanity.” Some of the things they’re listing as crimes against humanity are “enforced pregnancies.” There are lots of people who wonder if the culture would decide not to make abortion available would that mean that they were “enforcing a pregnancy”? For heaven’s sake, that would make withholding of an abortion a crime against humanity when many Americans believe that providing an abortion is a crime against humanity.”

Let me now read the International Criminal Court treaty’s definition for a forced pregnancy:

“Forced pregnancy means the unlawful confinement, of a woman, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy.”

In other words, the ICC treaty provisions refers specifically to a systematic policy of imprisoning women, raping them, and forcing them to carry the fetus to term as part of a policy of ethnic cleansing and to change the ethnicity of a population. Moreover, the provision explicitly states that it does not apply to domestic pregnancy laws.

This does not seem all that vague to me, nor does it seem to suggest the conclusions or scenario that you raised.

Question: How did you come up with your interpretation of this provision?

Answer: I believe if my statement is reviewed carefully, it does not state a position but asks a question about that provision. I do not recall reviewing the specific provision you reference, but it appears to answer the question I posed in my statement.

Question: Do you believe that enforced pregnancy, as defined in the ICC Treaty, should not be a crime?

Answer: I believe that as defined in your question, such conduct would constitute a heinous and horrible crime.

Lead-in: When the Senate reconvenes next week, I will be re-introducing the "Military Sniper Weapon Regulation Act." This legislation would place 50 caliber sniper rifles under the "National Firearms Act," the same regulatory scheme already governing machine guns and other powerful weaponry.

These powerful guns weigh as much as 28 pounds, and enable a single shooter to destroy enemy jeeps, tanks, personnel carriers, bunkers, fuel stations and even communication centers. The weapons are deadly accurate up to 2,000 yards, and "effective" up to 7,500 yards—more than four miles. In fact, many ranges used for target practice do not even have enough safety features to accommodate these guns. They are just too powerful.

Current law classifies 50 caliber guns as "long guns," subject to the least government regulation for any firearm. My bill would reclassify 50 caliber guns under the National Firearms Act, which imposes stricter standards on powerful and destructive weapons. For instance, once this bill passes, 50 caliber guns must be purchased through a licensed dealer, with an accompanying background check. Prospective purchasers will need to provide fingerprints and fill out a transfer application, and will undergo a delay while the FBI makes sure that the applicant meets federal qualifications for obtaining the firearm.

Question: Do you believe that regulating firearms under the National Firearms Act is constitutional?

Answer: To my knowledge, there has never been a successful challenge to the constitutionality of the National Firearms Act. As with all federal legislation, I would approach it with a presumption of constitutionality, and would defend it so long as a good faith and conscientious basis existed for doing so.

Question: Would you support this bill?

Answer: I have not had an opportunity to review the bill, but look forward to doing so in the near future and to working with you on this subject.

Lead-in: You stated during these confirmation hearings that your opposition to Jim Hormel stemmed from your review of the "totality of the record." Yet, it is my understanding that when repeatedly contacted by Jim Hormel—both in writing and by phone calls—to discuss his nomination, you did nothing to schedule a time to discuss any concerns or reservations you may have had. You did not attend his hearing before the Senate Foreign Relations Committee. In fact, the only record that existed prior to your vote against Mr. Hormel was the testimony presented during Mr. Hormel's confirmation hearing and earlier testimony that was before the Senate prior to his unanimous confirmation by the Senate to his position at the United Nations.

Question: Please specifically describe the record on which you based your opposition.

Answer: Based on the totality of Mr. Hormel's record of advocacy, I did not believe that he would effectively represent the United States in Luxembourg, the most Roman Catholic country in all of Europe.

Follow-up: You stated that you "had known Mr. Hormel for a long time." Yet, according to Mr. Hormel, you and he have never had a personal or professional relationship and Ambassador Hormel believes with reasonable certainty that you and he have not seen each other or spoken since 1967.

Question: Why wouldn't you meet with Jim Hormel again to discuss his nomination as ambassador?

Answer: I opposed the confirmation of Ambassador Hormel in Committee. That was the extent of the action I took concerning his nomination. Given the pressing demands of fulfilling the responsibilities of a U.S. Senator, there were other interests in the Senate upon which I was primarily focused.

Question: During your time in the Senate, how many times did you refuse a request to meet with an executive nominee?

Answer: During my tenure in the Senate, many individuals were nominated to office by the President. I was able to meet with some, but not all, of these individuals.

I am unable to recall precisely how many nominees I did or did not interview, but Ambassador Hormel is not the only nominee for whom I could not accommodate a personal visit.

Follow-Up: Again, you said that your opposition to Jim Hormel was based in your review of the “totality” of his record. Yet, three months prior to your strong opposition to his appointment as Ambassador to Luxembourg, you did not object to the unanimous consent of his Senate approval as Alternate Representative of the U.S. delegation to the UN General Assembly.

Question: In the intervening months, what was it about Ambassador Hormel’s record that changed your opinion that he was fit to serve the United States?

Answer: Like many other Senators, the standard that I applied for presidential nominees varied depending upon the office for which the nominee was nominated. I thus believed that while Mr. Hormel might serve adequately as an Alternate Delegate to the United Nations General Assembly, he would not, based on the totality of his record, have been an appropriate person to serve as Ambassador to Luxembourg.

Lead-in: In 1999, the INS took into its custody 4,607 children who came to the U.S. unaccompanied by a parent or adult guardian. More than 2,000 of these children are held in jails and youth detention centers across the country, even though the overwhelming majority of these children (80 percent) have committed no crime. The INS continues to pursue this policy remain in effect seven years after the INS agreed to hold children in the “least restrictive setting appropriate for the minor’s age and special needs.” I have been, appalled, quite frankly, by the way many unaccompanied alien children have been treated by the Immigration and Naturalization Service. This treatment has included the shackling and handcuffing of children who are no threat to themselves or others, long periods of confinements in inappropriate penal facilities, pressuring children to voluntarily depart the country without their having access to counsel, and inadequate avenues for humanitarian relief when that relief might be appropriate.

Question: Would you agree that Congress and the Administration should take comprehensive steps to correct these problems?

Answer: The President has proposed comprehensive reform of the INS. I fully support his position on this matter. With regard to the matters enumerated in your question which would be under my authority as Attorney General, I certainly will review them. I look forward to working with you to correct any improper treatment which may take place.

Follow-Up: Late in the last Congress, I introduced S. 3117, the “Unaccompanied Alien Child Protection Act of 2000,” which sought to change the manner in which unaccompanied alien children are treated by immigration authorities by addressing these issues, and more. I plan to re-introduce this bill in this Congress. My legislation would create a special Office of Children’s Services within the Department of Justice, and the Office would be responsible for coordinating and implementing the law to ensure that unaccompanied alien children are treated appropriately by our government.

Question: What are your views on the wisdom and morality of confining children who have not committed any crimes in prison or prison-like facilities?

Answer: I believe that children taken into custody by the federal government, including unaccompanied alien children, should be treated with the utmost care and compassion.

Question: This issue is an important priority to me, and I really want to have your commitment to work closely with me in addressing the treatment of children in our immigration system. Can I get your support?

Answer: I pledge that if confirmed, I will work closely with you to ensure that all children in our immigration system are treated with the utmost care and compassion.

Lead-in: Millions of law-abiding citizens, residents, immigrants, and businesses pay fees to the INS each year to have their applications and petitions for immigration benefits adjudicated in a timely manner. Unfortunately, our constituents increasingly have been faced with extraordinary delays and incompetence. And this had had a dramatic effects on their lives and the lives of the people or companies that depend on them.

Last year, Congress enacted S. 2586, the “Immigration Services and Infrastructure Improvement Act of 2000,” legislation which I introduced in the Senate. This new law created an account within the Immigration and Naturalization Service (INS) specifically devoted to reducing the immigration backlogs, and improving the overall INS process and systems used to adjudicate these important services. Under

the new law, funds in the account are to be available across fiscal years, and they are to be used for such purposes as providing additional personnel, fingerprinting equipment, improved records management, and other necessary equipment and expenses. In addition to creating the account and authorizing such sums as necessary to fund it, my legislation requires an annual report to Congress on the top ten areas that have the worst immigration backlogs. It also requires the INS to explain why backlogs persist in these areas and what the agency is doing to fix them. The INS must also report on what additional resources are needed to meet Congress's mandate that backlogs be eliminated and that processing times are reduced to an acceptable time frame.

During his campaign, President-Elect Bush called for the expenditure of \$500 million over five years to reduce the immigration backlog. This proposal was similar to my bill, which has now become law. The President-Elect will have to submit his fiscal year 2002 budget to Congress in the coming weeks.

Question: If confirmed as Attorney General, will you work to include in the President's budget additional funding for reducing the backlog in immigration benefits adjudications?

Answer: If confirmed, I will work diligently to support the President's agenda in this area.

Question: Can we count on your support for the provision of directly appropriated funds for reducing the backlog in immigration benefits adjudications, along the lines of my proposal and the President-Elect's proposal, to supplement the funds that are derived from the fee accounts?

Answer: As mentioned above, if confirmed, I will work diligently to support the President's agenda in this area.

Question: Can we count on your support for insisting that appropriated funds for backlog reduction be placed into the Immigration Services Improvement and Infrastructure Account, as established by the Act, rather than in integrate those funds within the general INS accounts?

Answer: As mentioned above, if confirmed, I will work diligently to support the President's agenda in this area.

Question: Even when Congress appropriates funds to the INS, management problems within the agency have affected the efficient use of these funds. What steps will you take to ensure that these funds are used as intended and will result in the efficient and timely processing of immigrant petitions and naturalization applications?

Answer: It is important that funds intended for a specific use be devoted to that use. If confirmed as Attorney General, I will work to ensure that appropriated funds are used as intended, and deployed to promote efficient and timely processing of immigrant petitions and naturalization applications. I will coordinate closely with all responsible officials in the INS.

Follow-Up: The backlog reduction law requires that the INS make a number of reports to Congress on its efforts to reduce the backlog in immigration benefits adjudication. The first of these reports is due on January 17, 2001. As you know from your service in the Senate, the INS has not been especially timely over the years in submitting reports that Congress has requested. As the author of this particular piece of legislation, and as a senator representing a large constituency that depends on the INS to perform its Service functions in a timely and efficient manner, I am going to take a special interest in making sure that the reports and goals required by this bill are adhered to.

Question: Will you designate someone on your staff to work with my staff to ensure that these reports are done on a timely basis and that the reduction in these intolerable backlogs are among the highest priorities, not only of the INS, but of the Department of Justice, itself?

Answer: I pledge to you that if confirmed, I will work closely with you to help ensure that the INS fulfills its responsibilities under applicable law, and, in particular, its obligation to file timely reports pursuant to the backlog reduction law. I will make this a priority in both the INS and the Department of Justice.

Lead-in: Both the General Accounting Office and the U.S. Commission on Immigration Reform called for significant management reforms at the INS. In 1991, the GAO issued an extensive report identifying severe management problems across the agency. Among other things, the GAO found INS:

- Lacked clear priorities;
- Lacked management control over regional commissioners;
- Had poor internal communications and outdated policies;

- Did not take workload into account when allocating resources' which contributed to the high backlog of applications; and
- Had unreliable financial information and thus inadequate budget monitoring.

The U.S. Commission on Immigration Reform found that despite increases in funding and authority, the current federal immigration structure leads to "mission overload," resulting in ineffective management of the four core functions of our immigration system: border and interior enforcement; enforcement of immigration-related employment standards; adjudication of immigration and naturalization applications; and consolidation of administrative appeals. According to the Commission, "mission overload" results from the fact that the agency charged with implementing our immigration laws have so many responsibilities that they are unable to manage all of them effectively. And, with an immigration landscape that is growing in complexity and size, no one agency could have the capacity to effectively manage every aspect of immigration policy imaginable. I am a strong supporter of the reform bill proposed in the Senate in the 106th Congress, which would separate the Service into bureaus: one for Enforcement and one for Service. An Associate Attorney General for Immigration Affairs would oversee both bureaus. I would like to count on your support for making this a priority for the Justice Department.

Question: If you are confirmed, what immediate reforms would you make to the agency?

Answer: The President has proposed a comprehensive reform of the Immigration and Naturalization Service to help change its character and to make America more welcoming to new immigrants. Currently, for example, the INS takes 3-5 years or more simply to process an immigration application. There is no justification for processing to take 3-5 years; an INS properly focused on service would move much faster. The President believes every INS application should be fully processed within 180 days of submission. To meet this 6-month standard, and to introduce a fundamental shift in the approach of the INS, the President will: (1) Support legislation to divide the INS into two separate agencies: one to deal with the enforcement components of border protection and interior enforcement, and another to deal with the service components of naturalization. Both agencies will be headed by an Associate Attorney General for Immigration Affairs, who will supervise both functions, and make sure that the agencies are taking consistent legal and policy approaches. (2) Support a comprehensive set of civil-service reforms, ways to make government more responsive to its customers. He will follow the same principles with the INS. In particular, he will introduce performance incentives for employees to process cases quickly, and make customer satisfaction a priority. (3) Propose an additional \$500 million over 5 years to fund new personnel and increased employee incentives to provide quality service to all legal immigrants. (4) Support changes in the INS policy so that spouses and minor children of legal permanent residents are allowed to apply for visitor visas while their immigration applications are pending. He will reverse the presumption that such family members will violate their terms of admission, and will encourage family reunification for legal immigrants. If confirmed, I will fully support the President's agenda in this area.

Question: If your approach would differ from the Senate bill, please explain the reforms you would propose.

Answer: I believe that my answer to the preceding question outlines the President's approach in this area, which I would fully support.

ADDITIONAL IMMIGRATION QUESTIONS:

Question 1: Worksite Enforcement. We can all agree that we have a large number of unlawful migrants here, and they come because employers offer them work opportunities. If you are interested in controlling illegal immigration, what policies would you put in place to enforce the immigration laws at the work place?

Answer: If confirmed, I would fully and fairly enforce all of the laws relating to immigration—both legal and illegal. By enforcing such laws vigorously, we can, I believe, both control illegal immigration and promote the interests of those who are in this country lawfully.

Question 2: Alien Smuggling and Trafficking. I am very concerned about the significant increase in organized trafficking. [GAO] As you may know, Congress passed—What mechanisms will you put in place to both deter traffickers and assist the victims of trafficking?

Answer: No human being should be forced to suffer the indignity of being a victim of human trafficking. I will vigorously enforce all laws enacted by Congress in this area to combat this abhorrent practice.

Responses of the Nominee to questions submitted by Senator Grassley

Question 1: Senator Ashcroft, can I count on you to vigorously support and enforce the False Claims Act and its qui tam provisions?

Answer: If confirmed as Attorney General, I will fully enforce the False Claims Act and its qui tam provisions. As you know, some have questioned the constitutionality of the qui tam provisions. Questions concerning the validity of laws should be answered only in the context of a specific case or controversy raising the issue. While it would be imprudent to make a legal determination on the question now, absent a full and thorough review of the relevant law, my obligation as Attorney General will be to defend the constitutionality of duly-enacted federal law whenever a good faith and conscientious basis exists for doing so.

Question 2: Current Deputy Attorney General Eric Holder has issued guidelines for the enforcement of the False Claims Act by Justice Department attorneys. Will you continue these guidelines?

Answer: Though I have not yet had an opportunity to familiarize myself with these guidelines in detail, I assure you that any action that I take with respect to the guidelines will be done only after a full and fair review in consultation with the Justice Department experts in the area.

Question 3: There have been efforts by some trade groups whose members have been sued under the False Claims Act to seek amendments that would weaken the Act, such as removing minimum damages and increasing the burden of proof on the government or on whistleblowers. Can I count on you, while you are Attorney General, to vigorously oppose all such efforts to weaken the Act?

Answer: Though I have not had an opportunity to review the False Claims Act, or any proposed amendment thereto, in detail, I look forward to working with you in the future to ensure that the False Claims Act fulfills the purpose for which it exists.

Question 4: I believe that the Justice Department has an accomplished team in the Civil Division that conducts and oversees False Claim Act cases. There are also a good number of first-rate attorneys in the U.S. Attorney's Offices that handle False Claims Act cases. Will you maintain those resources?

Answer: Though I have not had an opportunity to review the U.S. Attorney's Offices in this area, I have no intention to change the priority currently given to enforcement of the False Claims Act. Any decision made in this regard will be done only after a full and fair review of the matter.

Question 5: It seems that the Justice Department declines to participate in 75% to 80% of the cases brought to its attention by whistleblowers. This suggests that the Department should increase the number of attorneys assigned to False Claims Act matters. Would you consider arranging for such an increase in the immediate future?

Answer: Though I have not had an opportunity to review this issue in detail, if confirmed, I pledge that I will commit resources where they are needed most. If, upon review, I determine that that area is False Claims Act enforcement, I will not hesitate to allocate additional resources in that direction.

Question 6: It appears to take the Justice Department a very long time to investigate and decide to intervene in a False Claims Act case initiated by a whistleblower. I understand the Civil Division has no in-house investigators, but must rely entirely on investigators working for other departments. Would you consider changing that situation by establishing a cadre of in-house DOJ False Claims Act fraud investigators?

Answer: Again, I have not reviewed this area in detail. I would certainly be open to establishing in-house DOJ False Claims Act fraud investigators if, upon a full and fair review, it were determined that such a need existed.

Question 7: I see a need for closer cooperation between the Department of Justice and the qui tam bar, the lawyers who represent the whistleblowers (technically called "relators"). There are some problems: 1) even when the Department of Justice joins a case, the Department too often seems to hold whistleblowers and their lawyers at arms length, failing to use them as a resource to help develop the case, or even failing to keep them informed; and 2) the Department of Justice sometimes views whistleblowers and their lawyers as adversaries, and puts inordinate resources into efforts to eliminate or minimize their bounty. Senator Ashcroft, I would like the Department of Justice under your leadership to embrace the qui tam whistleblowers and their attorneys. I would also like to see a more cooperative relation-

ship than now exists. Do you believe that the network of whistleblowers could be a valuable resource in combating fraud against the federal treasury? Would you agree to foster a closer relationship between the Justice Department and the qui tam plaintiffs and their attorneys?

Answer: I fully agree that qui tam whistleblowers are a valuable resource in combating fraud against the federal treasury, and that a good relationship between relators and the Justice Department is important. I further agree that if confirmed, I will work to foster that relationship as appropriate.

Question 8: In the past, there have been some in the Department of Justice who have sought to undermine the constitutional legitimacy of the False Claims Act. Do you believe that the qui tam provisions of the False Claims Act are constitutional in light of the Supreme Court decision in Vermont Agency of *Natural Resources v. U.S. ex rel. Stevens*? Will you use your leadership to assure that the Justice Department's resources are not wasted on efforts to undermine the constitutional legitimacy of the False Claims Act, especially after the recent Vermont Agency of Natural Resources case?

Answer: Questions concerning the validity of laws should be answered only in the context of a specific case or controversy raising the issue. While it would be imprudent to make a legal determination on the question now, absent a full and thorough review of the relevant law, my obligation as Attorney General will be to defend the constitutionality of duly-enacted federal law whenever a good faith and conscientious basis exists for doing so.

Question 9: Senator Ashcroft, will your staff conduct a review of the policies and procedures currently in place at the Antitrust Division to ensure that they are up to date and consistent with other agency policies in regard to antitrust matters? In addition, will you ensure that the Antitrust Division's policies and procedures are being followed? The General Accounting Office soon will be issuing a report that will find that the Antitrust Division has not strictly complied with its procedures for handling public complaints and inquiries. It is important that the Antitrust Division follow the policies and procedures it sets, not only for the proper functioning of the Division, but also to provide assurance to the public that the Division is accountable for its actions and decisions.

Answer: Yes. I look forward to working with you on these matters.

Responses of the Nominee to questions submitted by Senator Kennedy

SCHOOL DESEGREGATION

Question (1): Several times during your testimony, you made very clear and direct statements that the State of Missouri was not found guilty of any wrongdoing in the St. Louis school desegregation cases and therefore should not be held liable. You also stated that the state was not a party to the litigation. For example, in response to Senator Leahy's questions, you said:

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

How can you justify making this statement, while under oath, when there were two separate 8th Circuit decisions and numerous district court decisions directly finding that the state was responsible for the unconstitutional discrimination, had an affirmative duty under *Brown v. Board of Education* to end segregation and was liable for the costs of desegregation?

OVERVIEW

Answer: Since my selection by then-President-elect Bush to be his nominee for US Attorney General, questions have been raised concerning the role I played as Attorney General during desegregation cases in St. Louis and Kansas City, Missouri. It is my view that my role and position have been mischaracterized or misinterpreted throughout this process, including during the hearing before the Senate Committee on the Judiciary. I believe these mischaracterizations arose from a fundamental misunderstanding of the legal differences between an intradistrict and interdistrict remedy for school desegregation. Indeed, perhaps I was not as clear as I should have been in terms of detailing the matters that affected the conduct of these cases, as well as my role in the process of representing my client, the State of Missouri.

As I trust I can now make clear, the legal distinction between a remedy to remove the vestiges of segregation in a single school district (an intradistrict remedy) and a remedy that assumes that the State of Missouri was liable for segregation among a number of school districts (an interdistrict remedy) depends on separate findings of liability. Although the State of Missouri was found liable for a role in segregation within the City of St. Louis School District, and, in a separate case, in the City of Kansas City School District, I testified correctly that the State of Missouri had never been found liable for interdistrict liability in the City of St. Louis Metropolitan Area. Indeed, the only case in which the State of Missouri had a hearing and an opportunity to defend a claim that it was liable for participating in a system of interdistrict segregation occurred in the Kansas City case. There, the court found that the State of Missouri had not violated the Constitution on an interdistrict basis in the Kansas City Metropolitan Area.

My actions in these cases make one point very clear: I never opposed desegregation. In fact, I firmly believe that any system that discriminates against persons on the basis of race is abhorrent to the Constitution. As Attorney General of Missouri, I did oppose the requirements of the federal court in St. Louis that the State of Missouri fund an interdistrict remedy without first finding that the State of Missouri violated the law on an interdistrict basis. I did not appeal and did not object to a finding that the State of Missouri was guilty of an intradistrict violation in the City of St. Louis School District.

In Kansas City, I opposed the methods chosen by the trial court to remedy the intradistrict liability found in that case. I believed then, and I believe now, that the focus of any remedy following a finding of segregation must be primarily on educating children. The Kansas City remedy had an obvious, different focus, to which I objected on both sound legal and policy grounds. There is now universal agreement that the judge failed the children of Kansas City by ignoring my objections to his plan and placing his emphasis on everything but the children and their families.

DETAILS OF THE ST. LOUIS LITIGATION

The original plaintiffs sued the St. Louis School Board on February 28, 1972, claiming that the St. Louis School Board had adopted policies fostering segregation. The plaintiffs did not name the State of Missouri as a defendant in the case. On December 24, 1975, the plaintiffs and the St. Louis School Board announced an agreement to settle the case and asked the District Court to approve a consent decree. The NAACP and other parties moved to intervene in the action to oppose the settlement. The District Court did not allow the intervention. On appeal, the U.S. Court of Appeals for the Eighth Circuit reversed the District Court finding and ordered intervention by these new plaintiffs and a hearing to consider these new plaintiffs' claims before ruling on the consent decree. When the new plaintiffs' disagreements with the proposed consent decree made it plain that consensus could not be reached, the District Court ordered a liability hearing and added the State of Missouri as a defendant in the case for the first time.

After a lengthy liability hearing, the District Court found that the "State of Missouri effectively removed all barriers at the state level to the desegregation of schools. . . ." *Liddell v. Board of Education of the City of St. Louis*, 469 F.Supp. 1304, 1314 (E.D. Mo. 1979). On appeal, the Eighth Circuit reversed, and noted testimony that "an interdistrict remedy funded by the State of Missouri would have the best chance of permanently integrating the schools of the metropolitan St. Louis area." It should be noted that at this point, although the Eighth Circuit was suggesting an interdistrict remedy, the suburban school districts were not defendants in the case. The Eighth Circuit also established guidelines for the District Court on remand, including suggestions for a comprehensive program of exchanging students between the City and suburban districts. *Adams v. U.S.*, 620 F.2d 1277 (8th Cir. 1980). As Attorney General, I did not ask the Supreme Court to review this decision, believing on sound legal grounds that no interdistrict remedy could be imposed without a finding of interdistrict liability.

On remand, the District court ordered a comprehensive plan with both intradistrict and interdistrict relief. Paragraph 12(c) required mandatory interdistrict busing. The State was required to pay 50% of the costs of the interdistrict plan as a remedy for an intradistrict violation. It is important to note that although the District Court found that the State was a "primary constitutional wrongdoer" as it related to the intra district violations, it did not find any State liability for the interdistrict violations.

I appealed the case on behalf of the State of Missouri—eight years after the original case was filed—on three grounds: (1) The interdistrict remedy exceeded the scope of the State's liability; (2) No liability was found against the suburban school

districts because they were not parties to the case; and (3) No interdistrict violation was determined by the Court. The Eighth Circuit affirmed the District Court's decision, in part by characterizing Paragraph 12(c)—the mandatory interdistrict busing requirement— as a mere suggestion.

On remand, in January 1981, the suburban school districts were added as defendants. The District Court realigned the St. Louis School Board as a plaintiff, and scheduled a trial for March 1983. In August 1982—six months before the trial date—the District Court informed the parties that if the suburban districts were found liable, the court would order mandatory busing and consolidate City District with suburban school districts. The District Court's threat, made before a hearing and without the benefit of evidence, had its intended effect: The suburban districts approached the St. Louis School Board and, without consultation with my client, the State of Missouri, agreed to settle the case on the condition that the State of Missouri fund the bulk of interdistrict busing, magnet schools, and St. Louis School District improvements to which these parties agreed without the State's approval.

The State of Missouri objected on the basis that there had been no trial to determine interdistrict liability. The basis for the objection was that the State could not impose a settlement on a non-consenting defendant. In addition, sound legal principles announced by the United States Supreme Court in *Milliken I* dictated that a finding of interdistrict liability must exist before a court could impose an interdistrict remedy. Further, *Milliken II* required a narrowly tailored interdistrict remedy to fit the nature and extent of interdistrict liability. Such narrow tailoring would be difficult in the absence of a trial to determine the nature and extent of interdistrict liability.

The State of Missouri submitted its own plan to resolve the case, focusing on remedying the only liability that a court had found—the vestiges of segregation in the St. Louis School District. The District Court rejected Missouri's plan to remedy the only liability that had been found—namely, the intradistrict violation.

Despite the State of Missouri's legal argument that the consent decree conflicted with Supreme Court precedent, the District Court approved the consent decree imposing an interdistrict remedy, even in the absence of a finding of interdistrict liability. The State of Missouri appealed the order. On appeal, the Eighth Circuit affirmed. The U.S. Supreme Court did not accept *certiorari*.

In sum, I never advised my client to ignore valid federal orders. I was never found in contempt of any court. I always directed that the State of Missouri participate in good faith in annual budget negotiations to fund the plan, and subsequent appeals were designed only to reach a resolution of matters that our negotiations could not resolve.

DETAILS OF THE KANSAS CITY LITIGATION

In the case involving Kansas City, the suit was filed against both the City and suburban districts. After trial, the District Court ruled that there was no interdistrict violation of the law and dismissed the Kansas City suburban school districts.

The District Court did find that the State and the Kansas City School District were guilty of intradistrict violations.

Despite my disagreement with the methods chosen by the District Court to remedy the vestiges of segregation in the Kansas City School District, I cooperated with final orders of the courts without fail. I was publicly attacked by the then-treasurer of the State of Missouri, a Democrat, as being too willing to spend the state's funds on federal court orders. Indeed, when the treasurer, considered withholding payments ordered by the District Court, I worked with that official to arrange a system that would alleviate his concerns and assure that the State of Missouri would obey the court's desegregation orders.

Question (2): You also implied that you did not resist or subvert any court orders. In response to one of my questions, you testified:

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

In 1980, the district court ordered you to submit a plan for desegregation within 60 days. Did you comply with that order and submit a plan within 60 days? After the 60 days, did you eventually submit a desegregation plan for the court's consideration? If so, please attach a copy of that plan. Did the court accept that proposal as a good faith attempt to propose a solution to desegregation of the St. Louis schools?

Answer: Please see answer above.

Question (3): Do you believe that state and local governments that actively maintained a segregated school system in the past have an affirmative duty to actively desegregate the school system? In your view, is it sufficient for a government that has maintained segregated schools to simply repeal the laws which required segregation? If not, what additional steps must be taken?

Answer: Absolutely. I strongly oppose segregation. I believe it is wrong and it is unconstitutional. I support integration, and believe that we should take active steps to tear down barriers to integration and to extend full opportunity to all children.

Question (4): Do you view Section 5 of the Voting Rights Act as an important tool through which the Justice Department can continue protecting the voting rights of minority citizens in this country?

Answer: Yes.

Question (5): Do you see Section 2 of the Voting Rights Act as an important tool in the battle to protect equal voting rights in this country?

Answer: Yes.

Question (6): As Attorney General, will you continue to enforce the “discriminatory effects” standard under the Voting Rights Act?

Answer: I will follow the law on voting rights, as established by the Supreme Court. Voting is a fundamental civil right. If fortunate enough to be confirmed as Attorney General, I will work to aggressively and vigilantly enforce federal voting rights laws. It will be a top priority of a Bush Department of Justice, part of what I would hope would be its legacy.

Question (7): Are you willing to vigorously enforce Section 203 of the Voting Rights Act which requires the ballots and other election-related materials be translated in certain areas of the country where a number of citizens are limited English proficient?

Answer: I will follow the law on voting rights, and will vigorously enforce the Voting Rights Act in its entirety.

Question (8): As Attorney General, how will you decide when to ask the Supreme Court to overrule a precedent with which you disagree, and when to argue for the preservation of that precedent?

Answer: As Attorney General, I do not believe it would be appropriate to seek the reversal of any Supreme Court decisions in a vacuum. As cases arise, I will, if confirmed, thoroughly review the law and facts of each and every one, and determine what positions of advocacy are consistent with the law and in the best interests of the United States. My approach will take into account the important role that stare decisis plays in the rule of law and will be law-oriented, and not results-oriented.

Question (9): In 1990, as Governor of Missouri, you vetoed a bill that would have provided up to eight weeks of unpaid maternity leave for mothers of new babies or adopted children under the age of three who worked for employers of 50 or more employees. [SB 542, vetoed July 13, 1990.] In your veto message, you said the bill would “put Missouri employers at a competitive disadvantage with similar businesses” in states that did not have similar legal protections, and suggested you might support such a bill if it “originate[d] from the federal government.” Today, of course, there is such a bill, the federal Family and Medical Leave Act of 1993 (FMLA)—a law that was passed with large bipartisan majorities in both the Senate and the House of Representatives.

The Justice Department has participated in litigation involving enforcement of the FMLA by state employees, arguing that Congress was well within its authority under the 14th Amendment in authorizing state employees to sue to enforce their rights under the federal law. If you are confirmed as Attorney General, will you continue to argue in the courts that state employees can sue to enforce the federal Family and Medical Leave Act?

Answer: I do not believe it would be appropriate for me to comment on pending litigation, but my approach to the Family and Medical Leave Act, as to all other statutes passed by Congress, will be to defend the Act so long as a good-faith and conscientious basis exists for doing so.

Question (10): During your testimony before the Senate Judiciary Committee, you said you do not believe the Supreme Court is prepared to overturn *Roe v. Wade*. If the composition of the Supreme Court changes during the next four years, would you support efforts to ask the Supreme Court to reconsider *Roe v. Wade*?

Answer: As I said at the hearing, I accept *Roe* and *Casey* as the settled law of the land. I don’t think it’s the President’s agenda, nor would it be my agenda, to seek an opportunity to overturn *Roe* or *Casey*.

Question (11): During your testimony, you said, “*Roe v. Wade* defined a setting, which said that abortions were not to be regulated—or not to be forbidden, but it

left a very, very serious gap in the health care system regarding reproductive health services.” You went on to say, “Now, you’ve criticized me because I said that I would uphold the law and the Constitution of the United States, and then I did things to define the law by virtue of lawsuits. I did things to refine the law when I had an enactment role, which is the job of a governor when he signs things into the law.” (emphasis added)

- In your opinion, beyond the issue of partial-birth abortion, what specific issues remain undefined or unrefined under *Roe v. Wade* and *Planned Parenthood v. Casey*?

Answer: The President has said that he will provide leadership to take positive, practical steps to reduce the number of abortions, including ending partial-birth abortions, helping women in crisis through maternity group homes, encouraging adoption, promoting abstinence education, and passing laws requiring parental notification and waiting periods. If the Congress passes legislation along these lines, it will be my obligation as Attorney General to defend that legislation, so long as a good-faith and conscientious basis exists for doing so. The case law in this area, as in every, develops on a case-by-case basis, and I cannot anticipate every question that could arise concerning the scope and reach of the governing decisions. However, I can assure you that to the extent the questions arise in the context of legislation passed by this Congress I will defend the constitutionality of the legislation, so long as a good-faith and conscientious basis exists for doing so

- Most legislation regulating abortion includes an exception for cases in which a woman’s health may be jeopardized. In your opinion, under existing precedent, what limitations may be placed on health exceptions?

Answer: The appropriate exceptions for partial-birth abortion legislation are a matter for the legislature to decide, consistent with Supreme Court precedent. If the Congress passes legislation banning partial-birth abortion, it will be my obligation as Attorney General to defend that legislation, so long as a good-faith and conscientious basis exists for doing so.

- While serving as Governor of Missouri, you signed an abortion statute into law, and it became effective in 1986. The statute was challenged, and the Supreme Court accepted the case for review (*Webster v. Reproductive Health Services*, 492 U.S. 490 (1989)). When briefing the Court, the state of Missouri argued that *Roe v. Wade* should be overturned. The State asserted “that the values implicit in the Constitution do not compel recognition of abortion liberty as fundamental.” Would you explain how that argument “defined” or “refined” the *Roe v. Wade* decision?

Answer: As Governor, I was not the primary draftsman of the state’s appellate brief in that case. I am, however, proud of my leadership in enacting that legislation, much of which the Supreme Court explicitly found to be fully consistent with *Roe*. As Attorney General, my role will not be to enact legislation or sign it into law, but rather to defend legislation that the Congress chooses to enact.

Question (12): In recent years, numerous lawsuits have been filed in federal courts challenging whether colleges and universities can use race as one among many factors in their admissions policies or scholarship decisions. If confirmed as Attorney General, you will have significant influence over the Bush Administration’s legal position in cases like these.

In a case that has received significant publicity, The University of Michigan is currently defending both its undergraduate and law school admissions policies against challenges that they violate the constitution because race is one among many factors considered in admitting students.

At issue in the Michigan cases is whether diversity is a compelling governmental interest in the higher education context. The Department of Justice under the Clinton Administration filed an amicus brief in the case urging the district court: “in considering the motions for summary judgment, to find that the enrollment of a diverse student body is a compelling interest that may justify consideration of race as one of many factors in admissions.”

In December of 2000, in the undergraduate suit, federal district Judge Patrick Duggan, appointed by President Reagan, ruled for the University on summary judgment, concluding that:

“a racially and ethnically diverse student body produces significant educational benefits such that diversity, in the context of higher education, constitutes a compelling governmental interest under strict scrutiny.” Do you agree with legal position taken by the Department of Justice in an amicus brief in the Michigan case? Please explain your answer.

Answer: If confirmed as Attorney General, I will firmly oppose racial discrimination in all its forms. It would, however, be imprudent of me to comment on the particulars of the Michigan case without first conducting a full and fair review of the facts and law surrounding that case. If confirmed, I pledge that no decision will be made absent such a thorough review.

Question: Do you agree with the decision reached on summary judgment by the district court? Please explain your answer.

Answer: If confirmed as Attorney General, I will firmly oppose racial discrimination in all its forms. It would, however, be imprudent of me to comment on the particulars of the Michigan case without first conducting a full and fair review of the facts and law surrounding that case. If confirmed, I pledge that no decision will be made absent such a thorough review.

Question: If confirmed, would you direct the Department of Justice on appeal to maintain its position or switch sides in the case and argue that, as a matter of law, diversity is not a compelling interest that may justify the consideration of race as one of many factors in admissions? Please explain your answer.

Answer: If confirmed as Attorney General, I will firmly oppose racial discrimination in all its forms. It would, however, be imprudent of me to comment on the particulars of the Michigan case without first conducting a full and fair review of the facts and law surrounding that case. If confirmed, I pledge that no decision will be made absent such a thorough review.

Question (13): As you know, the Department of Transportation has a number of very successful programs that give qualified minority-owned and women-owned small businesses a fair chance to compete for contracts on federally-funded highway projects.

In September 1997, as Chairman of the Subcommittee on the Constitution, Federalism, and Property Rights, you held a hearing entitled: "Unconstitutional Set-Asides: ISTEA's Race-Based Set-Asides After Adarand." The title of the hearing clearly demonstrated your hostility to these programs. In your opening remarks, you stated: (1) ". . . it is obvious that ISTEA uses racial classifications in an impermissible way"; (2) ". . . the ISTEA set-asides strike me as an easy case. Their unconstitutionality appears plain . . ."; and (3) "The oath we take to uphold the Constitution gives us an obligation to vote against unconstitutional enactments."

Despite your strong opposition to these equal opportunity programs in Committee and in the full Senate, a majority of the Senate voted in March 1998 to reauthorize them. And several months ago, a unanimous panel of the 10th Circuit Court of Appeals ruled that the exact same programs you had called an "easy case" and criticized as "unconstitutional" were, in fact, constitutional. The Court found specifically that: (1) "Congress has a compelling interest in eradicating the economic roots of racial discrimination in highway transportation programs funded by federal monies"; and (2) "[W]e conclude that the . . . relevant programs . . . meet the requirements of narrow tailoring." (228 F.3d 1147)

Do you believe that the 10th Circuit's decision was wrong? Please explain your answer.

Answer: It would be inappropriate for me to comment on pending litigation, although I would note that it is my understanding is that the 10th Circuit reversed the District Court's grant of summary judgment and remanded for further proceedings, rather than finally deciding that the challenged program was, in fact, constitutional. As a general matter, it is likely that some federal race-conscious programs are not constitutional under Adarand. Indeed, my recollection is that even Mr. Lee identified one such program. That being said, it is the longstanding policy of the Department of Justice to defend any federal law for which a reasonable and conscientious defense can be raised. If confirmed, I will enforce this policy in the area of racial set-asides, as in all other areas.

Question: A petition for certiorari has been filed. If you already have concluded that the ISTEA programs are unconstitutional, will you refuse to defend their constitutionality if you are confirmed as Attorney General? Please explain your answer.

Answer: It would be inappropriate for me to comment on pending litigation. As a general matter, it is likely that some federal race-conscious programs are not constitutional under Adarand. Indeed, my recollection is that even Mr. Lee identified one such program. That being said, it is the longstanding policy of the Department of Justice to defend any federal law for which a reasonable and conscientious defense can be raised. If confirmed, I will enforce this policy in the area of racial set-asides, as in all other areas.

Question (14): When James Hormel was nominated to be Ambassador to Luxembourg you had not had a conversation with him in over 30 years. Moreover, you did not attend his confirmation hearing, nor did you ask him any written questions. You

also refused his request to meet in person. Yet, when Senator Leahy asked you to explain the reason(s) for your opposition to the nomination, you repeatedly stated that you based your decision on the “totality of the record.” Can you explain in detail what specific facts and circumstances comprised the “totality of the record”? If Mr. Hormel’s sexual orientation was not one of these facts and circumstances, then why did you fail to afford him an opportunity to respond to your concerns regarding his nomination?

Answer: Based on the totality of Mr. Hormel’s record of advocacy, I did not believe he would effectively represent the United States in Luxembourg, the most Roman Catholic country in all of Europe. I opposed the confirmation of Ambassador Hormel in committee. That was the extent of the action I took concerning his nomination. Given the pressing demands of fulfilling the responsibilities of a U.S. Senator, there were other interests in the Senate upon which I was primarily focused.

Question (15): What was the total number of interim judicial appointment you made as Governor of Missouri? What number of these interim appointments were minorities? What number of these interim appointments were women?

There were 70 panels of 3 individuals submitted by the appropriate commission for appellate and trial court vacancies presented to me as Governor under Missouri’s nonpartisan court plan. There was only one African American candidate who was not then or later appointed by me to a current or subsequent judgeship. In effect, 8 out of 9 available minority candidates were appointed from these panels, including the first African American on the Missouri Court of Appeals and the first African American woman on the St. Louis County Circuit Court.

For counties outside of the nonpartisan court plan, 21 judges were appointed to vacancies until the next election, none of whom was African-American. However, our research has found no minority members of the Missouri Bar who expressed an interest in or were available (by virtue of residency) for any of these vacancies for these out-state judgeships which must stand for election every 4 years for an Associate Circuit Judge, and 6 years for a Circuit Judge.

Thirteen female judges were appointed to judicial vacancies in both the non-partisan court plan and out-state areas, including the first female on the Missouri Supreme Court.

INS RESTRUCTURING

Question (16): As Attorney General, you will have jurisdiction over the Immigration and Naturalization Service, an agency plagued with many problems and in need of reform. President Bush has stated that he supports a comprehensive reform of the INS, similar to legislation Senator Spencer Abraham and I introduced last Congress. This plan would separate the enforcement and service functions of the INS, but keep them under one agency headed by an Associate Attorney General. Maintaining a strong central authority ensures a uniform and coherent immigration policy, resulting in both strong and fair enforcement of our immigration laws, and efficient delivery of immigration services.

As Attorney General, how do you envision balancing the INS’s often conflicting missions of enforcement and services? What measures would you propose to ensure adequate funding for the service functions?

Answer: If I am fortunate enough to be confirmed as Attorney General, I will strongly support the President’s proposal to reform the INS comprehensively and divide it into separate service and enforcement agencies. As the President has said, legal immigrants should be welcomed with respect and open arms, and service to legal immigrants should not be delivered with suspicion or hostility. I recognize the important leadership you and Senator Abraham have taken in this regard, and look forward to working with you to implement these reforms.

EXPEDITED REMOVAL

Question (17): As you know, our nation was largely founded by persons fleeing religious persecution in Europe. Christians and other religious minorities are still suffering serious persecution in many countries around the world. Some of the more fortunate individuals succeed in escaping and are accepted into the U.S. refugee program. Others, seeking asylum in the U.S., are not as fortunate.

Too often, under the present law of expedited removal, immigration officers, with no special training in asylum law or human rights conditions in particular countries have the authority to summarily place asylum seekers on the next plane back to the country of their oppressor. These decisions are made with no independent monitoring or judicial review. In many cases, these INS enforcement officers have turned back asylum seekers even though they have expressed clear fear of return.

Is this a fair way to treat people fleeing persecution? As Attorney General, would you support legislation, such as that introduced by Senator Brownback and Senator Leahy, to limit the use of expedited removal?

Answer: Although I cannot comment on specific legislation, I believe we should treat those fleeing persecution with compassion and fairness. America was founded as a beacon of hope to the world, and that is a heritage we should continue. I will be happy to work with you and with Senators Brownback and Leahy to ensure that our immigration laws are administered fairly and humanely.

DUE PROCESS

Question (18): In 1996, Congress tightened the immigration laws. For example, Congress redefined and expanded the types of offenses for which immigrants, including lawful permanent residents, can be deported and applied those definitions retroactively. The new laws also eliminated the ability of immigration judges to consider mitigating factors such as length of time in the U.S., community ties, family hardship, rehabilitation, and even U.S. military service, when deciding whether to deport a person. The laws also removed the ability of the federal courts to review deportation decisions. The result is that long-time, law-abiding immigrants with U.S. citizen spouses and children have been deported for minor offenses committed long ago. These changes seem to violate fundamental principles of family integrity, individual liberty, and due process.

As Attorney General would you support changes in the immigration law that would eliminate the retroactive application of these provisions, restore discretion to immigration judges to make case-by-case determinations, and restore judicial review?

Answer: I am certainly troubled by some of the stories that have emerged as a result of the 1996 law. I know that there have been both legislative and administrative attempts to address these kinds of concerns, and I look forward to working with you to see if we can find a way to do so while at the same time allowing for the swift removal of serious or violent criminals.

SECRET EVIDENCE

Question (19): The INS is currently using secret evidence—undisclosed classified information—to deny bond, asylum, and other immigration benefits to non-citizens, who it claims are risks to national security. President Bush has called this an unfair practice and spoke favorably during the Presidential debates of a bill I co-sponsored last year with Senator Abraham—the Secret Evidence Repeal Act. In 1995, you voted for a Specter amendment (No. 1250) to the Comprehensive Terrorism Prevention Act of 1995 that would require the Attorney General to provide an unclassified summary of the reasons for the initiation of deportation proceedings against a person, where classified information justifying the deportation is not disclosed. Although this amendment was adopted, the provision was ultimately dropped from the final legislation.

Do you agree with President Bush that such secret evidence is unfair? Would you support the Secret Evidence Repeal Act—which President Bush spoke favorably of during the Presidential debates?

Answer: I am troubled by some of the stories I have heard about the use of secret evidence and believe that such uses must be reconciled with Due Process. While I cannot comment on specific legislation, I look forward to working with you to find a way, consistent with national security, to protect the rights of citizens and aspiring citizens coming to our nation.

DOMESTIC VIOLENCE-BASED PERSECUTION

Question (20): Human rights organizations and women's rights advocates have been working for many years to obtain recognition for gender-related asylum claims under U.S. refugee and asylum law. This recognition is consistent with the growing body of international human rights law and the sentiment of the international community. Canada, Britain, Australia and New Zealand recognize gender-based asylum claims, including asylum protection for victims of domestic violence.

Last month, Attorney General Reno and the INS Commissioner proposed regulations establishing a broad analytical framework for the consideration of asylum claims based on membership in a particular social group, including the recognition that victims of domestic violence may qualify for asylum. These regulations provide generally applicable principles that will govern the case-by-case adjudication of gender-based claims, including those based on domestic violence or other serious harm inflicted by non-state actors.

The Department of Justice is receiving comments from human rights groups and women's rights groups, praising the broad approach in the proposed regulations and suggesting improvements to ensure the fair adjudication of gender-based asylum claims, including domestic violence claims.

What direction will you provide as Attorney General to ensure that the broad analytical framework set forth by these proposed regulations is followed in the final regulations issued by a Department of Justice under your leadership?

Answer: Although I have not reviewed these specific proposed regulations, I believe we should treat those fleeing persecution with compassion and fairness. My commitment to fighting domestic violence and violence against women is longstanding, and I will maintain that commitment wholeheartedly at the Department of Justice. I will be happy to work with you to ensure that our immigration laws are administered fairly and humanely, in this and other respects.

Question (21): You have testified that as Attorney General it will be your obligation to defend the laws as enacted by Congress. In 1998 the House and the Senate, by bipartisan majorities, reauthorized the Department of Transportation's Disadvantaged Business Enterprise Program. In 2000, the United States Court of Appeals for the Tenth Circuit reversed the district court in the *Adarand v. Slater* case and upheld the constitutionality of the program. (228 F.3d 1147). A petition for certiorari has been filed. As Attorney General, will defend this case in the Supreme Court and defend the program against other legal challenges by those who oppose to race-conscious affirmative action?

Answer: It would be inappropriate for me to comment on pending litigation. As a general matter, it is the longstanding policy of the Department of Justice to defend any federal law for which a reasonable and conscientious defense can be raised. If confirmed, I will enforce this policy in the area of racial set-asides, as in all other areas.

Question (22): When you answered questions from Senator Leahy about the Bill Lann Lee hearings and the Adarand decision on the first day of the hearings, you referred to a Federal District Court opinion in the Adarand case. Were you aware that the decision you cited had been reversed by the United States Court of Appeals for the Tenth Circuit?

- If you were aware of the 10th Circuit decision in Adarand, please explain why you cited the District Court case in your testimony.
- If you were unaware of the 10th Circuit opinion, how does the decision change your view on the constitutionality of race-conscious affirmative action programs in general and the Department of Transportation's Disadvantaged Business Enterprise Program in particular?

Answer: My understanding is that the 10th Circuit reversed the District Court's ruling on summary judgment and has remanded for further proceedings, but has not definitively ruled that the statute is constitutional. In any event, the 10th Circuit decision post-dated both the Constitution Subcommittee's hearing on set-asides and the Bill Lann Lee vote and so my explanation for my positions at those times was informed by the District Court's summary judgment ruling. Although the District Court decision informed my thinking at the time of the ISTEAs hearing, the 10th Circuit's more recent decision will inform my thinking as Attorney General, if I am confirmed by the Senate.

Question (23): In your testimony, you quoted a portion of the Adarand district court opinion in which the judge stated that he found it "difficult to envisage" a race-conscious program that would be narrowly tailored. Did you agree with the district court that the "compelling interest" portion of the test was met by Congress' examination of discrimination in the transportation industry?

Answer: It would be inappropriate for me to comment on pending litigation. I can say that there is much the government can do to ensure affirmative access in the transportation industry. As a general matter, it is likely that some federal race-conscious programs are not constitutional under Adarand. Indeed, my recollection is that even Mr. Lee identified one such program. That being said, it is the longstanding policy of the Department of Justice to defend any federal law for which a reasonable and conscientious defense can be raised. If confirmed, I will enforce this policy in the area of racial set-asides, as in all other areas.

Question (24): Please identify each and every amicus brief which you or persons working under your direction authored or joined at any time during your tenure as Senator, Governor or Attorney General.

Answer: I have not maintained specific records of amicus briefs prepared or joined by me or my staff during my 26-year career in public service. During that time, numerous briefs were filed. Indeed, in some cases, the varying positions of entities to which the Attorney General's office provided legal service required the office to file

multiple briefs. Because these briefs were filed in courts of law, they are matters of public record.

Question (25): In employment discrimination, the Supreme Court has held that race-conscious relief and gender-conscious relief are sometimes the only effective form of relief for past discrimination, or to prevent ongoing discrimination. See *U.S. v. Paradise*, 480 U.S. 149 (1987)(race); *Johnson v. Transportation Agency of Santa Clara Co.*, 480 U.S. 616 (1987)(sex).

- Do you agree that race-conscious and gender-conscious relief are sometimes necessary and appropriate means of combating employment discrimination?

Yes.

- As Attorney General, would you continue the current policy of the Justice Department to seek race-conscious or gender-conscious relief in appropriate cases?

Answer: I would support race-conscious or gender-conscious relief in cases it was consistent with the requirements of law.

- As Attorney General, would you attempt to re-open any cases with existing court orders that include race-conscious or gender-conscious relief?

Answer: If I am fortunate enough to be confirmed as Attorney General, I will assess case strategy in particular matters on a case-by-case basis, conferring with the experienced professionals at the Department of Justice, and make judgments based on the law and the facts of each specific case.

Responses of the Nominee to questions submitted by Senator Kohl

1. ANTITRUST—MCI WORLDCOM/SPRINT

A little more than a year ago, the Judiciary Committee held a hearing on the competitive implications of the then-pending merger between MCI WorldCom and Sprint, a merger which was ultimately abandoned when the Justice Department opposed it. The merger would have combined the second and third largest long distance phone companies and would have resulted in two companies capturing nearly 80 percent of the long distance market. Despite these large market shares, you said that “I am strongly inclined to support the proposed merger.”

While you acknowledged that the competitive implications of the merger needed to be examined, they were secondary to “my largest concern”—“the jobs of the hard working and talented people of the State of Missouri.” Finally, you argued that in examining this merger, “the current landscape is not the landscape to be considered—instant it should be analyzed based on the possible future of the marketplace.”

Question: Are your statements at the MCI WorldCom/Sprint merger hearings indicative of the approach you believe the Justice Department’s Antitrust Division should take when reviewing mergers? Under the Department’s Merger Guidelines, the competitive implications of the proposed merger are paramount and the merger is analyzed with regard to the current state of the marketplace. Would you make any changes to the Antitrust Division’s standards for reviewing mergers such as paying more attention to factors other than the merger’s likely effects on competition?

Do you think the Justice Department was mistaken to oppose the now abandoned MCI WorldCom/Sprint merger? [If yes,] why? Should we be worried when a merger leads to such high concentration as this one—which would have resulted in two companies controlling nearly 80% of the market—could lead to higher prices for consumers?

Answer: In the area of antitrust enforcement, the competitive implications of any proposed merger are of paramount importance. Thus, I would approach any proposed merger with an eye towards ensuring open competition in the marketplace. I would be open to considering modifications to the Antitrust Division’s standards for reviewing mergers, but would do so in consultation with the antitrust experts in the Department of Justice. With respect to the MCI WorldCom/Sprint merger in particular, I believe it would be imprudent to comment on the specifics of this transaction, or any transaction, without the benefit of the full knowledge of the Antitrust Division.

2. ANTITRUST—SHERMAN ACT

The fundamental antitrust law—the Sherman Act—was enacted more than a hundred years ago. For more than a century, it has protected the principles we hold most important—competition, consumer choice, fairness, and equality.

The antitrust laws are significant because they ensure that competition among businesses of any size will be fair and that consumers will pay low prices for all sorts of goods and services. And these laws have a proud tradition of being supported in a non-partisan manner—they've been vigorously enforced over the years by both Republicans and Democrats.

Question: What role do you think antitrust laws have had in shaping our economy and preserving competition?

How should we use antitrust laws to protect against consolidation of economic power—to make sure that consumers aren't charged high prices by large companies that have swallowed up their competition?

Answer: The antitrust laws have been a vital part of ensuring a free and open marketplace in this country and, in my view, should continue to serve this role. By ensuring that any proposed merger promotes competition, and that an undue consolidation of monopolistic power does not accrue in the hands of a single business entity, I would help ensure the existence of free and open markets. This, in turn, would help ensure that consumers are not charged prices above free market levels.

3. ANTITRUST—ENFORCEMENT

In the last few years, the Antitrust Division has been very active in antitrust enforcement, bringing prominent cases, such as the Microsoft case, and challenging many large mergers, such as MCI WorldCom/Sprint and Lockheed Martin/Northrup Grumman, to name a few.

Question: How would you evaluate the performance of the Justice Department in dealing with the MCI WorldCom/Sprint merger and the Lockheed Martin/Northrup Grumman merger. Do you believe that the Antitrust Division has been appropriately enforcing our nation's antitrust laws? Is there any change in approach or philosophy of antitrust enforcement we can expect should you be confirmed as Attorney General?

Answer: I believe that it would be imprudent to comment on how the Justice Department has dealt with the MCI WorldCom/Sprint and the Lockheed Martin/Northrup mergers in particular, as I have not had the benefit of the Antitrust Division's full learning on these matters. For the same reason, it would be imprudent for me to comment upon the Antitrust Division's enforcement of the antitrust laws in any particular cases. With respect to the philosophy of antitrust enforcement that I would follow should I be confirmed as Attorney General, I can assure you that I will fully enforce the antitrust laws to help ensure free and open competition in the marketplace.

4. ANTITRUST—FUTURE OF THE ANTITRUST LAWS

Some have argued that our nation's antitrust laws, many written over a hundred years ago, are outmoded and need to be updated before they can be applied to today's high-tech industries. Others believe that the antitrust laws apply equally well to modern economic problems and high-tech industries as they did to problems of economic concentration in the railroad, oil and other industries when they were first written.

Question: What is your view? Do you think our antitrust laws are outmoded and in need of revision?

Answer: The antitrust laws have proven to be flexible enough to adopt to many new situations. That being said, one should always be open to the possibility that improvements could be made, particularly where fundamental economic shifts have occurred. If confirmed as Attorney General, I will seek the advice of experts in this field, including those in the Antitrust Division, before making any determination as to whether are antitrust laws are in need of any revision.

5. ANTITRUST—EUROPEAN REVIEW

Another issue that has arisen in the last few years relates to European review of mergers involving American companies, especially given the increasing globalization of the world's economy and the increasing numbers of mergers of American companies that affect the European market. In many cases, because of their different time limits, European merger authorities reach decisions on these mergers before the U.S. antitrust authorities. This can result in the European Union deciding to block a merger before the Justice Department has concluded its review. In addition, there have been concerns raised that, in some instances, the EU may have been motivated by protectionist sentiments, and may have scrutinized mergers involving American companies more strictly than those of European companies.

Question: What's your view of these issues? Do you believe that European antitrust authorities are properly scrutinizing mergers and other antitrust issues involving American companies? And do you think that the Antitrust Division can take steps to better harmonize its antitrust review with the European antitrust authorities?

Answer: I believe that in an increasingly global economy, it is important, to the extent practicable, for different nations to enforce their antitrust laws consistently to promote a free and open marketplace. I believe that it would be imprudent for me to comment on how European antitrust authorities are addressing antitrust issues as they relate to American companies without the full learning of the experts in the Antitrust Division. I assure you that here, as in all other areas, if confirmed as Attorney General, I will take all appropriate action in full consultation with the experts in the field, and act so as to promote free and open markets. I can further assure you that I will fully consult the antitrust experts, including those in the Antitrust Division, before determining what steps may be appropriate to enhance consistency between European and American antitrust review. Finally, in evaluating candidates for the position of Assistant Attorney General for Antitrust, in conjunction with the President, I would ensure the candidate had the proper diplomatic skills to work effectively and cooperatively with his or her counterpart in Brussels.

6. ANTITRUST—CONSISTENT ENFORCEMENT

We should avoid sharp swings in antitrust enforcement. In the past, it has appeared that antitrust enforcement has significantly changed when a new administration takes office, particularly a transition involving a change of political parties. For example, it appears that the Antitrust Division during the Reagan/Bush years took a much more hands-off approach to merger enforcement than the Antitrust Division during the Clinton administration.

Changes in the enforcement of the antitrust laws dramatically affect the business community and the financial markets. Businesses need to be able to expect a consistent basic level of antitrust enforcement from the government regardless which party is in power.

Question: What will you do to ensure continuity, stability and predictability of law in antitrust enforcement as the government transfers to a new Administration? And, what is the basic level of antitrust enforcement that everyone should be able to expect from the Justice Department regardless of party?

Answer: If confirmed as Attorney General, I will vigorously enforce the antitrust laws to ensure a free and open marketplace. This is both a floor and a ceiling: Wherever appropriate, the law will be enforced. This should provide the consumers and the business community with the assurance of continuity that they need as to future antitrust enforcement.

7. ANTITRUST—AGRICULTURE

Turning to agriculture, many family farmers believe that consolidation among large agribusiness firms have made it increasingly difficult to survive, as they have little bargaining power with respect to the large agribusiness conglomerates.

Question: What is your view—have the antitrust laws been adequately enforced with respect to agriculture? And will you assure us that enforcement of antitrust laws in the agricultural sector of the economy will be a priority of your Justice Department?

Answer: The family farm is an American institution, and one which is fully protected by America's antitrust laws. Indeed, as you know, the antitrust laws include special protections for farmers. Coming from Missouri, I am well aware of the difficulties that farmers face as a result of consolidations and mergers. My legislative record on this matter is clear. As a Senator, I sponsored legislation that would have enhanced the understanding of the Antitrust Division on agricultural issues. This Question, however, goes more to the Question of enforcement. And on this Question, I assure you that I will fully enforce the antitrust laws in the area of agriculture to help ensure that we have a competitive market for agriculture.

8. CRIME PREVENTION—USE OF FEDERAL MONEY

Recently, my office surveyed all of the sheriffs and police chiefs in Wisconsin on a variety of law enforcement issues. The survey yielded some very helpful insights into what the officers on the front lines need from the federal government. Local authorities were almost unanimous in their belief that the federal government needs to increase its support for crime prevention programs. On average, the police in my state support spending at least one-third of federal money specifically on prevention.

Question: Can you detail your plan for crime prevention programs generally and pledge to increase the resources required to be used for crime prevention programs for local police chiefs?

Answer: As a former governor, President Bush has explained his understanding that state and local authorities are largely responsible for combating violent crime. He believes the Federal government's role in criminal justice is primarily international and multi-jurisdictional, including tough policies against organized crime, drug cartels, and international terrorism. In addition to this role, the President believes the Federal government can do more to improve our criminal justice system:

1. Enforce federal gun laws. The President wishes to give prosecutors the resources they need to aggressively enforce our gun laws and will provide more funding for aggressive gun law enforcement programs such as Texas Exile and Project Exile in Richmond, Virginia.

2. Develop and promote successful criminal justice initiatives, such as the abolition of parole and truth in sentencing in the federal system.

3. Support state and local law enforcement with federal funding, technical assistance where needed, and a national database to help state and local police identify, track, and arrest fugitives who move across jurisdictional lines and to prosecute serious hate crimes where local jurisdictions lack the resources to do so.

4. Promote federal and state partnerships to develop advanced technology to help police work both smarter and more efficiently.

5. Combating terrorism. The President believes that, as a nation, we must have zero tolerance for terrorism.

In addition, the President is committed to giving local law enforcement greater authority over federal funds.

Should I be confirmed as Attorney General, I will work with both the President and the Congress to fully implement this agenda.

If this can be accomplished, local jurisdictions that want to direct resources to prevention will be free to do so, while police departments with different objectives can prioritize their funding accordingly.

9. HOMESTEAD EXEMPTION

Shortly before declaring bankruptcy, the former Commissioner of baseball, Bowie Kuhn, moved to Florida and bought a \$1 million mansion, effectively shielding the value of that home from his many creditors. While Kuhn was taking advantage of the loophole in Florida's bankruptcy law, creditors were preparing to seize his two homes in the New York area—a state that did not permit him to hide his money from his creditors.

To remedy this outrage in the bankruptcy laws, Senator Sessions and I offered an amendment to establish a federal homestead cap of \$100,000. The amendment passed with your support by the overwhelming vote of 76–22. As you know, the U.S. government is a major creditor in these types of bankruptcies and the Justice Department is in charge of collecting. So, this loophole costs taxpayers money and frustrates the Justice Department's enforcement efforts.

Question: Is there any greater fraud in bankruptcy law than the homestead exemption? Can you think of any reason that we should not make this change in the bankruptcy laws this year?

Answer: As you mentioned, I supported the amendment that you offered on this subject. Moreover, because, again as you mentioned, the United States government is a creditor in many bankruptcy actions, it is important to ensure that—while the bankruptcy laws allow debtors on hard times to make a fresh start—debtors do not abuse the bankruptcy laws to avoid paying money due the government and other creditors. Thus, if confirmed as Attorney General, I commit to you that I will fully enforce the bankruptcy laws to ensure that all creditors, including the United States government, receive their just due. Moreover, should Congress decide to alter the law in this area to, for example, eliminating the homestead exemption—as is its lawful prerogative—I fully commit to enforcing the law as amended.

10. CRIME PREVENTION—FEDERAL BUDGET FOR PREVENTION PROGRAMS

For fiscal year 2001, the Office of Juvenile Justice and Delinquency Prevention will be funded at \$141.7 million for prevention programs (defined to include mentoring, after-school programs, conflict resolution, drug and alcohol prevention, etc.). This is a dramatic increase from the last year of the Bush Administration when the budget was only \$15.5 million.

Question: These programs have been very successful at preventing crime and helping at risk kids get on the right track. Will you pledge to continue this trend toward increased funding for these programs?

Answer: The President is fully committed to combating juvenile crime and providing sufficient funding to accomplish the task. Indeed, as Governor, he made this a top priority. Thus, in 1995, he called for and signed legislation overhauling Texas' outdated juvenile justice laws. The new laws restored responsibility and tough consequences for crimes committed by juveniles. As a result, juvenile crime is down 17 percent in Texas—the first decline in over a decade—and violent juvenile crime is down 44 percent. I commit to you that I will that I will fully work with the President and Congress to further the President's agenda in this very important area.

11. ENFORCING THE GUN LAWS

You've been a vocal critic not only of new gun laws, but also of the Clinton administration's record on prosecuting gun crimes. For Fiscal Year 2001, the President included funding for 100 additional prosecutors and \$75 million for state and local authorities to hire more prosecutors. Through a strategy that has increased local awareness of gun crime penalties with increased federal resources to prosecute those crimes, Operation Ceasefire in Milwaukee has led to a 17% decrease in gun homicides. Yet, our federal prosecutors warn me that an even greater focus on increased federal prosecutions of gun crimes will divert needed resources from other tasks unless more federal agents and prosecutors are funded.

Question: How much more federal money and how many more federal and state prosecutors do you think are necessary to bring the number of prosecutions to an acceptable level? Will this be an emphasis of your tenure as Attorney General?

Answer: President Bush is fully committed to enforcing America's gun laws, which will be a priority in the Justice Department should I be confirmed as Attorney General. Towards that end, the President wishes to give prosecutors all the resources they need to enforce our gun laws aggressively, and will provide more funding for aggressive gun law enforcement programs such as Texas Exile and Project Exile in Richmond, Virginia. I am fully committed to assisting the President in promoting his agenda in this and all other areas.

12. PRIVACY

Last year on the Judiciary Committee, we explored the FBI's "Carnivore" system—an e-mail surveillance program designed to track and monitor a suspect's on-line communications. This is a powerful law enforcement tool—perhaps too powerful—and we must be sure that it is not misused. If, as we are now learning, "Carnivore" is able to capture all e-mail traffic channeled through an Internet Service Provider (ISP), then the fear of innocent civilians being subject to search without cause is justified. Such a "fishing expedition" wouldn't be right.

Question: How important do you think it is that we protect the privacy rights of civilians, and how serious a threat to privacy would "Carnivore" be if it's misused or inadvertently "captures" information other than the suspect's?

Answer: The Internet has obviously grown to be a vibrant part of our modern economy. It is the Justice Department's responsibility to ensure that those who conduct research or business on line can do so in a safe, secure environment. At the same time, however, we must take care that the government does not become too heavy handed in its on-line law enforcement activities in order to protect the privacy rights of law-abiding citizens. As you know, when I was in the Senate, I convened hearings on the importance of respecting privacy rights in the digital age. If confirmed, I will conduct a thorough review of Carnivore and its technical capabilities, and work closely with law enforcement to ensure that adequate measures are taken to secure personal privacy before the program is deployed. I would look forward to working with you to ensure that a proper balance is struck in this respect.

13. CRIME PREVENTION/ENFORCEMENT—PROACTIVE APPROACH

Starting at the end of the Bush Administration and increasing dramatically during the Clinton years, our United States Attorneys evolved from offices focused purely on prosecuting crime to offices at the center of proactive community coalitions designed to prevent crime. In Milwaukee, for example, the U.S. Attorney has had dramatic success in using federal money for prevention through the Weed and Seed program, after school programs like Safe and Sound, and more Boys and Girls Clubs among other successful programs. These programs combined with federal assistance for enforcement with a HIDTA (HI-ta) and Operation Ceasefire have resulted in an impressive decline in youth crime and crime generally.

Question: Can I get your assurance today that federal assistance to U.S. Attorneys will continue as they increase their efforts to lead proactive community coalitions

to prevent and fight crime? And what will you do to encourage and support this trend?

Answer: As your Question makes clear, it is very important to fight crime at all levels—both at the prosecution stage as well as the prevention stage. I have also witnessed the success of a HIDTA in my home state of Missouri. Thus, I can assure you that, if confirmed as Attorney General, I will strongly encourage U.S. Attorneys to continue their efforts to lead proactive community coalitions to prevent and fight crime. I further assure you that I will work to ensure that the U.S. Attorneys have the resources necessary to perform their jobs effectively.

14. MAIL ORDER BRIDES AND HUMAN TRAFFICKING

In 1996, as part of the Immigration Bill, the Senate passed my measure that called for the INS to issue a study about the growing “mail-order bride” business in the United States. The INS was also to draft a regulation aimed at requiring these so-called “international matchmaking organizations” to provide their foreign women recruits with background information regarding U.S. immigration law. At the very least, that is what INS was supposed to do according to the law we passed almost five years ago.

The INS issued a report which suggested that recent developments, in particular the presence of mail-order businesses on the Internet, will require continued monitoring of this business. More recent events, such as the discovery of a slain mail-order bride near Seattle—her American husband is the suspected murderer—suggest that violence in these types of marriages is a growing problem.

The INS has yet to issue the proposed regulation as required by the 1996 law. That is unfortunate, because we need to get after these matchmaking agencies to both better inform the potential brides-to-be, and screen the American bride seekers.

Question: First, do you agree there’s a problem with this mail-order bride industry? If so, will you instruct the INS to take a more active role in policing these practices? At the very least, will you see to it that the INS issue the proposed regulation that is almost four years overdue?

Answer: I believe that marriage is an institution that should be cherished, and as Attorney General, I will fully enforce all federal laws concerning human trafficking. I have not examined the issue of mail order brides in depth, but if confirmed, I will give it appropriate attention, and ensure that the INS takes all appropriate action required by law, including the laws to which you refer.

15. TRAFFICKING OF WOMEN AND CHILDREN

Trafficking of women and children is a growing global problem, teetering on crisis. It is hard to believe that an international prostitution and slave trade is thriving—and growing—in the year 2001. Almost 50,000 persons are trafficked each year to the United States. These people are victims, not criminals. The real offenders are the crime lords who manage this despicable trade.

Significant legislation became law late last year—specifically, the Victims of Trafficking and Violence Protection Act of 2000. Part of the goal of this new law is to target the traffickers, not the victims. So, the act lets the Attorney General extend special visas to 5000 sex trafficking victims a year. Hopefully, by allowing the victims to remain protected in this country, we will be able to encourage their cooperation in bringing down the traffickers.

Question: The success of this law will be depend upon its implementation. As Attorney General, will you be dedicated to issuing these 5000 newly created visas in an effort to crackdown on international human trafficking? What is your feeling generally about how best to fight this terrible practice that terrorizes hundreds of thousands of women and children each year?

Answer: Like you, I believe that human trafficking is a serious problem. No individual, anywhere, should suffer the indignity of the slave trade. Thus, if confirmed as Attorney General, I will fully and vigorously enforce the Victims of Trafficking and Violence Protection Act of 2000, and any other law that Congress chooses to enact in this area.

16. DEADBEAT PARENTS PUNISHMENT ACT ENFORCEMENT

In 1998, Senator DeWine and I authored the Deadbeat Parents Punishment Act which became law with widespread bipartisan support. Estimates then indicated that if delinquent parents fully paid their child support, approximately 800,000 women and children could be taken off the welfare rolls. While I do not have updated figures, I remain convinced that enforcement of the Deadbeat Parents Punish-

ment Act will yield increased collection of late payments which in turn will make life easier for tens of thousands of mothers and their children.

Question: Will you pledge to enforce the Deadbeat Parents Punishment Act and will you detail how you intend to ensure strict enforcement of this law?

Answer: I pledge to you that if confirmed as Attorney General, I will enforce the Deadbeat Parents Punishment Act. Although I have not studied the details of this law, I will do so, and do my best to ensure that those meant to be protected by it are fully protected.

17. PRESUMPTION

You've testified repeatedly today that as Attorney General you will enforce the law—it is your responsibility simply to administer the law as it currently exists.

There are thousands of ongoing cases in the Justice Department—civil suits, criminal matters, antitrust cases and investigations of all sorts. Some of them are notable like the Microsoft case, the tobacco lawsuit, airline merger reviews, among the many cases.

Question: If your job as Attorney General is simply to enforce the law, then are the Department's currently pending cases deserving of a presumption that these cases are worthwhile and deserve continued prosecution?

If these cases are not deserving of such a presumption, what standard will you use in deciding whether to continue the case?

Answer: Obviously, if confirmed as Attorney General, I have the obligation to become fully informed about the important cases currently being conducted by the Department's legal divisions. I will utilize the expertise of the Department's staff, which has been and will be responsible for the day-to-day management of these cases, in meeting this responsibility and before concluding that the course of any of these major litigation matters should be altered.

Responses of the Nominee to questions submitted by Senator Leahy

Question: List each presidential nominee on which you placed a "hold" while a United States Senator. In responding, please specify how you are defining "hold."

Answer: In an effort to fulfill my responsibilities as a United States Senator, I welcomed inquiries by the Majority Leader and Majority Whip regarding the scheduling and floor consideration of items on the legislative and executive calendars. Though I may have expressly requested prior notification during my six years so as to participate in debate or be present for a vote, I do not recall (other than as detailed herein) which, if any, nominations were involved, or the circumstances surrounding any such requests.

Question: Did you or your staff ever indicate to Senator Lott, Senator Nickles or any other members of the Republican leadership or their staffs a concern in connection with scheduling Senate consideration of a presidential nomination? For each such occasion please provide a complete discussion of what you did and why you did it.

Answer: I asked the Senate leadership to consult with me as each presidential nomination came up. Out of the approximately 1,686 Clinton presidential nominees, I voted to confirm all but 15. Though I may have expressly requested prior notification during my six years so as to participate in debate or be present for a vote, I do not recall (other than as detailed herein) which, if any, nominations were involved, or the circumstances surrounding any such requests.

Question: Did you ever indicate that you wished to be consulted by the Majority Leader in connection with scheduling Senate consideration of a presidential nomination? For each such nomination please provide a complete discussion of what you did and why you did it.

Answer: I asked the Senate leadership to consult with me as each presidential nomination came up. Out of the approximately 1,686 Clinton presidential nominees, I voted to confirm all but 15. Though I may have expressly requested prior notification during my six years so as to participate in debate or be present for a vote, I do not recall (other than as detailed herein) which, if any, nominations were involved, or the circumstances surrounding any such requests.

Question: Did you ever indicate to anyone that you would prefer the vote on a presidential nomination not take place or not take place at a certain time? For each such nomination please provide a complete discussion of what you did and why you did it.

Answer: I regularly requested that votes on nominations and legislation take place to accommodate my schedule during my six years in the Senate, so as to participate in debate or be present for a vote. I do not recall which, if any, nominations were involved, or the circumstances surrounding any such requests.

Question: Please describe any other steps that you took to delay or block consideration of a presidential nomination, and the standard you used when you decided to take such steps.

Answer: I asked the Senate leadership to consult with me as each presidential nomination came up. Out of the approximately 1,686 Clinton presidential nominees, I voted to confirm all but 15. Though I may have expressly requested prior notification during my six years so as to participate in debate or be present for a vote, I do not recall (other than as detailed herein) which, if any, nominations were involved, or the circumstances surrounding any such requests.

Question: You testified on Wednesday that you opposed the nomination of James Hormel to be Ambassador to Luxembourg because “based on the totality of his record,” you “didn’t think he would effectively represent the United States.” Please specify the factors that led you to oppose that nomination and vote against it in Committee.

Answer: Based on the totality of Mr. Hormel’s record of public positions and advocacy, I did not believe he would effectively represent the United States in Luxembourg, the most Roman Catholic country in all of Europe.

Question: Is it true that you refused repeated requests to meet with Ambassador Hormel to discuss your concerns about his nomination, and if so, why?

Answer: I opposed the confirmation of Ambassador Hormel in committee. That was the extent of the action I took concerning his nomination. Given the pressing demands of fulfilling the responsibilities of a U.S. Senator, there were other interests in the Senate upon which I was primarily focused.

Question: According to news reports, you placed a hold on Ambassador Hormel’s nomination, and threatened to filibuster it if it ever came to the floor for a vote. What standard did you use for deciding whether to attempt to delay or block a vote on that nomination.

Answer: I cannot assess the accuracy of published news reports I have not read. However, it is not correct that I placed a hold on Ambassador Hormel’s nomination. Although I voted against his nomination in Committee, I do not recall threatening to filibuster the nomination. Since I do not recall attempting to delay or block a vote on Hormel’s nomination, the question of the use of a standard is inapplicable.

Question: You initially opposed the nomination of David Ogden to head the Civil Division at Justice and voted against him in Committee. What if any steps did you or your staff take in 1999 and 2000 to delay or block Committee consideration of the Ogden nomination? Why did you oppose the nomination of David Ogden?

Answer: I am not aware of any action taken on my behalf to delay consideration of the Ogden nomination. I voted against Mr. Ogden in Committee because of concerns about his candor when asked about his knowledge of the Department’s tobacco litigation.

Question: You voted against the nomination of Alice Rivlin to be a Member of the Board of Governors of the Federal Reserve System. Why did you oppose the Rivlin nomination?

Answer: I joined 40 of my Republican colleagues in opposing this nomination. Although I do not recall the details of my opposition, I was concerned about her role in formulating the President’s controversial budget proposals.

Question: In a 1999 interview for *Southern Partisan* magazine, you are quoted as saying: “I have been as critical of the courts as any other individual, probably more than any other individual in the Senate. I have stopped judges and I have argued against liberal expansionism and I will continue to do so.” When you said to *Southern Partisan* magazine that you “stopped judges,” what nominations and judges were you referring to, and what did you do in each instance to “stop” them?

Answer: During my tenure as a U.S. Senator, I took the constitutional obligation to advise and consent on lifetime judicial nominations very seriously. My consistent standard was whether I believed, based on the totality of the record, that a given nominee would enforce the law as written, rather than follow his or her own policy preferences. With Ronnie White and Fredericka Messiah-Jackson, based on their records and on the concerns expressed by law enforcement, I did not believe they would do so. In both instances, I voted against the nomination in question and explained to my colleagues my reasons for doing so.

Question: What did you do to delay Senate consideration of the nomination of Margaret Morrow?

Answer: I was concerned about the nomination of Ms. Morrow for a District Court judgeship within the Ninth Circuit Court of Appeals, a court that has had a consistently higher reversal rate before the U.S. Supreme Court than any of her sister circuits. Ms. Morrow's record, I believed, indicated a hostility to voter referenda in California and a willingness to supplant the law with her own personal policy preferences. Accordingly, I voted against her in Committee, and requested an opportunity to speak against the nomination when it came before the full Senate. When the nomination was scheduled for a floor debate, I spoke against the nominee and voted not to give her an appointment for lifetime tenure on the federal bench.

Question: Why did you oppose the nomination of Judge Sonia Sotomayor to the Second Circuit in the Judiciary Committee and in the Senate?

Answer: I was concerned about the nomination of Ms. Sotomayor to the Second Circuit Court of Appeals, because her record as a District Court judge, I believed, indicated a willingness to stretch the law and to supplant the law with her own personal policy preferences. Accordingly, I voted against the nominee in Committee and on the final Senate vote.

Question: If confirmed as Attorney General will you employ a standard for recommendations to the President that turns on whether you think the caseload of the court justifies an appointment? What will your standard for workload calculations be?

Answer: I believe that a court's caseload is an appropriate factor for assessing the need for new judicial appointments, and that the assessment of the sitting judges on the court in question is a useful measure of that caseload. Obviously, Congress has an important role to play in assessing the need for federal judgeships and Senator Grassley has played an important role in that process. Ultimately, however, the appointment of a judicial nominee is the President's responsibility, with the advice and consent of the Senate.

Question: Why did you oppose the nomination of Judge Aiken?

Answer: I opposed Judge Aiken based on an evaluation of the entirety of her record. I was particularly concerned about a sentencing decision she made as a state trial judge, and her subsequent explanation of that decision. Judge Aiken found a 26-year-old defendant guilty of raping a 5-year-old girl, and sentenced him to 90 days in jail, rather than substantial prison time (which was an available option under Oregon law), so that he would be eligible for psychological counseling. I considered this focus on the perceived best needs of a convicted rapist over adequate punishment for a grave threat to the public to constitute a significant lapse in judgment, at best.

Question: Why did you oppose the nomination of Judge McKeown and what did you do to delay Senate consideration of this nominee?

Answer: I opposed Ms. McKeown's appointment to the Ninth Circuit because she had evidenced a hostility to voter initiatives, including efforts to prevent initiatives from even being placed on the ballot. I was particularly concerned in light of the fact that voter initiatives were a substantial issue in the Ninth Circuit at the time and because the Ninth Circuit has had a consistently higher reversal rate before the U.S. Supreme Court than any of her sister circuits.

Question: Why did you vote against Judge Mollway?

Answer: Ms. Mollway had become identified with a number of legal positions on various issues, including the validity of prison reform legislation and mandatory minimum sentences. After her confirmation hearing, I was not convinced that she had sufficiently distanced herself from some of these previously-expressed positions or that she fully appreciated the role of a federal judge to allow me to support her confirmation for a lifetime tenure as a federal judge.

Question: As Attorney General would you not recommend candidates for the federal bench who disagreed with you about the legitimacy of the substantive due process doctrine?

Answer: The Supreme court's precedents recognize some role for the doctrine of substantive due process. To the extent I play a role in the process for selecting judicial nominees, I would want to recommend judges who follow the law and the precedents of the Supreme Court. However, to the extent that federal courts are to recognize new substantive due process rights, I believe the Supreme Court has indicated a preference that it take the lead in any judicial expansions of this doctrine. I would be reluctant to recommend candidates for lower federal courts who expressed an eagerness to expand the doctrine in the absence of clear guidance from the Supreme Court.

Question: Why did you oppose against Judge Paez?

Answer: I was concerned by the comment from the ACLU, calling Judge Paez's nomination, "a welcome change after all the pro-law enforcement people we've seen appointed to the state and federal courts." I was also concerned about public comments he made regarding California ballot initiatives while he was sitting as a federal district judge because the constitutionality of the initiative might have come before him. I was particularly concerned in light of the fact that voter initiatives were a substantial issue in the Ninth Circuit at the time and because the Ninth Circuit has had a consistently higher reversal rate before the U.S. Supreme Court than any of her sister circuits.

Question: Why did you oppose Judge Dyk?

Answer: Mr. Dyk's nomination was a very difficult one for me, because he had extremely strong credentials. However, he had publicly expressed a view of statutory construction that advocated disregarding clear statutory text in favor of looking for the "basic purpose" of the statute. He was appointed to a court that has a special and exclusive responsibility to interpret certain statutory schemes subject only to Supreme Court review, which is infrequent because the Federal Circuit's exclusive jurisdiction precludes the possibility of circuit splits, one of the major factors applied by the Supreme Court in granting certiorari.

Question: You voted against Judge Lynch? Why?

Answer: Mr. Lynch had authored articles regarding constitutional interpretation that rejected the doctrine of original intent and cast the role of the federal judge as one who was free to effect political change without voter accountability. Based on these statements and my review of the totality of his record, I did not favor appointing to him to a lifetime tenure on the federal bench.

Question: The *Boston Globe* reported on January 15, 2001 that in 1995, "Ashcroft killed the looming nomination of Alex Bartlett, an African-American, surprising Abner Mikva, a former judge and then President Clinton's counsel." According to the article, Judge Mikva called you up and asked you why, and you said, "I just don't like him. He did something I don't like." Judge Mikva then asked if there was an ethical problem, and you said, "No. I just don't like him." Please comment on the accuracy of this conversation as reported by the *Boston Globe*. Did you oppose the "looming nomination" of Alex Bartlett, and if so, why?

Answer: Alex Bartlett is not an African-American. Bartlett was never nominated by President Clinton. I made it a practice while a member of the U.S. Senate not to comment on individuals who were never nominated.

Question: Please provide the details of all contacts by you or your staff with law enforcement regarding the nomination of Judge Ronnie White. Describe when it occurred, who initiated the contact, and all that was communicated.

Answer: During my tenure in the Senate, my staff kept in regular contact with various constituents in Missouri, including especially law enforcement professionals. Such contact was ongoing, and part of the regular process of trying to represent well the people of Missouri. In the case of Judge White, a great many individuals in law enforcement expressed grave concerns to my office over his nomination, and those concerns were a significant factor in my decision to oppose his confirmation.

Question: In light of the *Edmond* decision of the United States Supreme court, do you think it was fair for you to have been and remain critical of Judge White's dissent in *Damask*?

Answer: My understanding is that the *Edmond* case deals with "suspicionless" or blanket drug checkpoints. It is inapplicable to the facts of *Damask*, where the police had created a checkpoint designed to stop only those who behaved in a way to justify individualized suspicion.

Question: In your questioning of Judge White at his confirmation hearing you made reference to his actions as a State legislator. Did you accept Judge White's explanation of what happened at the markup you inquired about? Did that matter figure in your decision to oppose Judge White? Did you discuss that matter with any other Senators, and if so, what did you say about it?

Answer: I opposed Judge White on the basis of his record of dissents in criminal, and in particular death penalty cases, and because of the level of law enforcement opposition to his nomination. I discussed these factors with other Senators.

Question: Other than the law enforcement letters that you circulated with your Dear Colleague letter to Republican Senators the day of the Senate vote, did any other individual, group or organization contact you or your office and urge you to oppose or support the nomination of Judge Ronnie White? If so, who, when and based on what consideration? Did any such contacts affect your decision to oppose Judge White?

Answer: I was contacted by numerous individuals who expressed views on Judge White's nomination. Much of the correspondence from law enforcement organizations and individuals has been submitted for the record. It is my understanding that my office also received calls, emails and other correspondence from a variety of my constituents dealing with Judge White's record in criminal cases and his qualifications for the federal bench.

Question: Did any issue having to do with reproductive rights or restrictions on a woman's right to choose figure in your decision to oppose Judge White?

Answer: During the time Judge White's nomination was pending, a number of my constituents in Missouri brought his record on this issue to my attention, but it was not a significant factor in my decision to oppose his confirmation. Indeed, I supported 218 out of 230 Clinton judicial nominees, most of whom, I assume, did not share my views on this issue.

Question: Did any political considerations figure into your decision to oppose Judge White?

Answer: It occurred to me that it might be politically unpopular to oppose Judge White. Nevertheless, I concluded that in light of the level of law enforcement opposition to his nomination and his record of dissents, I could not support his nomination.

Question: Senator Kyl stated at the hearings what he recalled you said in the Republican caucus meeting on October 5, 1999, before the Senate voted on Judge Ronnie White's nomination. What do you recall communicating at that time to other Senators?

Answer: I recall explaining the reasons why I opposed his nomination at that meeting, and handing out some written material supporting my reasoning.

Question: While a Senator what were your positions on the nominations of Bonnie Campbell, James Duffy, Barry Goode, Roger Gregory, Kathleen McCree Lewis, Enrique Moreno, Judge Helene White, Judge James Wynn, Jr. and H. Alston Johnson?

Answer: During my six years in the Senate, I voted for more than 1600 Clinton nominees. I do not recall what position, if any, I took on these specific nominees.

ROLE AS ATTORNEY GENERAL

Question: As Attorney General, how would you choose your law enforcement priorities?

Answer: As Attorney General I would set my law enforcement priorities in consultation with the expert staff of the Department. I would also consult with law enforcement and Members of this Committee. Although it is impossible to assess all my priorities at this juncture, I can stress, as I did at the Committee's hearings, that among my very top priorities would be targeting racial profiling and prosecuting gun crimes.

Question: If confirmed, would you recommend and approve of the nomination of federal judiciary candidates who have taken pro-choice positions or indicated their support for *Roe v. Wade*? Would you recommend or approve the nomination of candidates who were personally opposed to the death penalty, provided that they assured you that they would enforce the law? Would you recommend or approve the nomination of gay men and lesbians who had demonstrated competence and integrity?

Answer: As President Bush has made clear, he will have no litmus test for judicial nominations. As Attorney General, I will fully support the President's standard, and will not employ any litmus tests in carrying out any role I might have in those nominations.

Question: As Attorney General, would you make such positions equally open to people of all races, religions, genders, sexual orientations, and marital statuses?

Yes.

Question: Would the applicant's position on the death penalty be considered in connection with decisions on appointments to senior positions within the Department of Justice?

Answer: An applicant's position on this issue could be relevant if his record reflected an unwillingness to enforce laws which the applicant personally opposes.

Would whether the applicant had exercised her constitutional right to an abortion or had a strong personal feeling on the issue of abortion be considered during hiring, promotion and appointments at the Department?

A woman's personal health choices are not relevant to employment in the U.S. government, and, as Attorney General, I will not employ a litmus test for hiring, promotion, or appointments at the Department of Justice.

Question: Would you advise the President to review each U.S. Attorney on a case-by-case basis and to implement an orderly transition to new appointees? Do you anticipate that some U.S. Attorneys who are performing effectively would be asked to serve out the balance of their terms in office?

Answer: When he nominated me as Attorney General, the President asked me to give all advice to him and to him alone, and that is a commitment I believe I should honor. I am not aware of any final decision by the President regarding the retention of U.S. Attorneys. I do believe that U.S. Attorneys are critical to maintaining firm and uniform law enforcement across the U.S. and that the U.S. Attorneys offices should remain consistent and non-political.

Question: You testified on Wednesday that "to participate in the development of the law is not to violate your oath, as long as you participate in the development of the law in accordance with the opportunities expressed." Would it be fair to say that, if confirmed, you will continue to "participate in the development of the law" in a manner that further restricts the constitutional rights of women recognized in *Roe* and its progeny?

Answer: As Attorney General, my job will be to enforce the law, and, as I explained at the hearing, I accept *Roe* and *Casey* as settled law of the land. The Supreme Court has made perfectly clear that there is a constitutional right to abortion.

Question: What did you mean in your 1997 speech "On Judicial Despotism" when you said: "We should enlist the American people in an effort to rein in an out-of-control Court."

Answer: Our Constitution begins with the words "We the People" because it is only through the consent of the people that our government derives its authority. Judges are sworn to uphold the Constitution, and, when they implement their own personal policy preferences instead of applying the law, they are subverting their Constitutional role. It is for this reason that the appointment of judges is given to the President, with the advice and consent of the Senate—so that the appointing and confirming bodies remain democratically accountable to the people.

REPRODUCTIVE RIGHTS:

Question: You testified that you accepted *Roe* and *Casey* as "the settled law of the land." When in your mind did these cases become "settled"? Please be specific.

Answer: The cases have become settled through the passage of time and reaffirmation by the Supreme Court. As I observed at the hearing, the Supreme court's decisions on this have been multiple, recent, and emphatic.

Question: Please specify the legal principles that you believe were "settled" by *Roe* and *Casey*.

Answer: *Roe* and *Casey* make plain that women have a constitutional right to abortion.

Question: Did you consider *Roe* and *Casey* to be settled law when, as a Senator, you introduced S. 2135, the Human Life Act of 1998?

Answer: Yes, that is why I simultaneously supported a proposed constitutional amendment to the same effect. The proposed constitutional amendment would have been unnecessary if *Roe* and *Casey* were not settled law.

Question: Is S.2135 unconstitutional under *Roe* and *Casey*?

Answer: As introduced, S.2135 is not constitutional under *Roe* and *Casey*. Nonetheless, I thought that S.2135 had the potential to promote a discussion that could have led to the passage of legislation that would have been constitutional under *Roe* and *Casey*. In my view, it is not uncommon for a legislator to introduce legislation that could not pass as initially proposed in order to begin a process that could lead to the passage of legislation.

Question: In 1991, when you were Governor of Missouri, the Missouri Legislature considered a bill known as Senate Bill 339, which would have made it a felony offense to perform a so-called "non-therapeutic" abortions at any time after conception. Did you support Senate Bill 339? Had it passed, would you have signed it into law? Would you now agree that Senate Bill 339 was unconstitutional under existing Supreme Court precedent?

Answer: While I have no specific recollection of SB339, press reports at the time indicated that a prominent Democratic state senator, Senator John Scott, introduced SB339 in 1991. These press reports also suggest that the bill died in the Senate committee, and never was considered by the full legislature.

The purpose of this bill was to list under the definition of “non-therapeutic abortions” 18 different reasons prohibiting certain abortions under state law. Such prohibited purposes included: race or sex selection of the unborn child, cosmetic reasons, avoidance of perceived damage to reputation, failure or non-use of birth control, prevention of a child from being adopted. This bill did not prevent abortions attributable to rape, incest or a “bona fide, diagnosed health problem”, i.e., reasons considered “therapeutic” and not otherwise prohibited under the bill. This bill was one of several bills presented during the 1991 legislative session.

Although I have no specific recollection of SB 339, it appears from press reports that representatives from my office may have expressed interest in seeing the bill passed out of committee.

While I was Governor, it was my policy to refrain from opining on whether I would sign a bill until after a bill actually passed the legislature because bills changed dramatically throughout the legislative process. Therefore, I have no opinion on whether I would have signed the bill.

Interestingly, in a newspaper end-of-session review of the 1991 legislature session entitled “Anti-Abortion Proposals Faded Quietly in Session”, the following appeared “But the governor never threw his weight behind any particular bill. Asked Friday night why he thought the legislature resisted attempts to further restrict abortion, Ashcroft responded simply, I don’t know.”

Regarding the bill’s constitutionality, I have not taken the time to apply constitutional principles or case law of the time to the bill then under consideration. Under the recent *Casey* and *Carhart* decisions, its constitutionality might clearly be questioned.

Question: Do you believe that there is such a thing as constitutional right to privacy—not specifying if, for example, such a right includes the right to terminate a pregnancy—but, more broadly, is there a constitutionally-protected right to privacy? If so, which provision of the Constitution is the source of that right to privacy?

Answer: I believe in the right to privacy. The Supreme Court has held that there is a constitutional right to privacy, that finds its genesis in the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. I also believe that the Third Amendment embodies a constitutional right to privacy.

Question: In November 1998, in response to the murder of Dr. Barnett Slepian and other attacks on reproductive health care providers, Attorney General Reno established the National Task Force on Violence Against Health Care Providers. Will you commit to the continuation of this Task Force?

Answer: Yes.

ANTITRUST

Question: I have written the Justice Department and the Attorneys General of each of the six New England states regarding my concerns about the rapidly increasing concentration in the dairy processing industry. I am most concerned about Suiza Foods, which is headquartered in Texas, which controls almost 70% of the fluid milk processing and distribution in New England. Just last week, a report prepared by Dr. Mary Hendrickson and Dr. William Heffernan of the University of Missouri confirmed my fears. They concluded that dramatic changes have occurred in the past three or four years in the dairy sector as a result of consolidation and globalization and specifically mentioned Suiza Foods. If you are confirmed as Attorney General will you vigorously look into this matter?

Answer: I am concerned about excessive concentration in any industry when that concentration is the result of anticompetitive actions. As you know, the antitrust laws contain specific provisions designed to ensure that farmers can compete effectively. If confirmed, I would look forward to looking into this matter and ensuring that both the antitrust laws and the interests of dairy farmers are vindicated.

Question: Are you satisfied with thrust of the current antitrust laws or do you intend to recommend that the new Administration review these laws with the intent of proposing some significant changes?

Answer: The basic structure of the antitrust laws has been in place for decades. Although there may be a need for targeted reform, I do not personally perceive a need for a comprehensive overall of the antitrust laws. Before providing any recommendations concerning any concrete proposal, I would certainly consult with the President, the Assistant Attorney General for Antitrust and Members of this Committee, as appropriate.

CAPITAL PUNISHMENT

Question: As Attorney General, what measures would you take to reduce the risk of executing innocent people?

Answer: The American justice system is predicated upon the principle that the law should protect the innocent, providing equal justice for all. There is no greater injustice than to execute an innocent person. I will work with the President and the Congress to help ensure that no innocent person is executed in America and that capital defendants have access to DNA technology to confirm guilt or innocence.

Question: Given the high rate of error in capital cases, would you as Attorney General advocate any changes in the restrictions on availability of federal habeas corpus relief for death row inmates?

Answer: I believe that there is no greater injustice than to execute an innocent person, and I will work with the President and the Congress to help insure a justice system that protects the rights of all capital defendants.

Question: Last year, Congress passed a Sense of Congress resolution regarding post-conviction DNA testing and competent counsel. Specifically, Congress declared that it should condition forensic science-related grants to States on the States' agreement to ensure post-conviction DNA testing in appropriate cases. Congress also declared that it should work with the States to improve the quality of legal representation in capital cases through the establishment of standards. Do you agree with this bipartisan Sense of Congress resolution, and as Attorney General, would you work with me to ensure that post-conviction DNA testing and competent legal representation are available in all States?

Answer: I believe that there is no greater injustice than to execute an innocent person. The Sixth Amendment provides constitutional protections for the right to counsel for criminal defendants, a right that is particularly precious in capital cases. I will work with the President and the Congress to help ensure that no innocent person is executed in America and that capital defendants have access to DNA technology to confirm guilt or innocence.

Question: As Attorney General, would you be willing to work with me to pass the Innocence Protection Act or similar legislation? Our bill would establish standards for ensuring that lawyers in state capital cases are experienced and adequately paid. Do you support the establishment of such standards? Would you agree that a person accused of any crime who cannot afford a lawyer should be provided competent counsel, and that the federal government should ensure that States take the necessary steps to do this?

Answer: I believe that there is no greater injustice than to execute an innocent person. The Sixth Amendment provides constitutional protections for the right to counsel for criminal defendants, a right that is particularly precious in capital cases. I will work with the President and the Congress to help ensure that no innocent person is executed in America and that capital defendants have access to DNA technology to confirm guilt or innocence.

Question: Would you agree with me that the execution of an innocent person is unconstitutional?

Answer: I think it would be wrong and unconscionable, and, in all likelihood, unconstitutional as well, as the Supreme Court has itself suggested in *Herrera v. Collins*.

Question: As Governor of Missouri, when you reviewed requests for clemency by a death row inmate, what procedures did you have in place to assess the inmate's guilt or innocence?

Answer: Each request for clemency was referred to the Missouri Board of Probation and Parole, a full time five member board of experts for a full review. Upon receiving the recommendation of the Board, the Governor's legal counsel reviewed the request and the recommendation with the Governor for decision.

Question: You have written that you support capital punishment because it "saves lives" by deterring murders. Do you have any *empirical* basis for your belief?

Answer: It is my understanding that there are numerous empirical studies outlining the correlation between capital punishment and deterrence. However, my beliefs regarding capital punishment would be irrelevant to how I would perform my job as Attorney General; federal law provides for capital punishment, and as Attorney General it would be my responsibility to enforce that law fairly and conscientiously.

Question: During the campaign, President-elect Bush said: "Any time DNA evidence, in the context of all the evidence, is deemed to be *relevant* in the guilt or innocence of a person on Death Row, I believe we need to use it." Do you agree that DNA evidence should be available to death row inmates any time that it is deemed

to be relevant to the issue of guilt or innocence? Would you agree that DNA evidence should also be available to other inmates, such as inmates serving life sentences?

Answer: I believe DNA evidence has great promise for making our criminal justice system fairer and more accurate, and would be happy to work with the President and the Congress to expand its availability to prosecutors and criminal defendants, especially in capital cases.

CONSTITUTION

Question: Given the number of constitutional amendments you have supported, what assurances can you give us that all your energies will be concentrated on upholding the Constitution rather than implementing your views of how it might be improved?

Answer: I joined my colleagues in a number of proposed constitutional amendments. However, those efforts reflect a fundamental respect for the Constitution and for the mechanism that that document establishes for altering the text. Indeed, it is precisely because I do not believe that courts should alter the Constitution that, in the role of legislator, I joined those efforts to formally amend it. As Attorney General, my job would be to enforce the law, not to amend it.

Question: In reaffirming *Miranda*, the Supreme Court found that a statute that Congress had passed in 1968 to overrule *Miranda*—18 U.S.C. 3501—was unconstitutional. Will you abide by the court's decision and decline any reliance on 18 U.S.C. 3501? Would you support repeal of 18 U.S.C.?

Answer: I will fully enforce the law and abide by the court's decision in *Dickerson v. United States*. Though I suspect the question contained a typographical error, as Attorney General I would firmly oppose the repeal of the entirety of Title 18, which comprises the federal criminal code. Whether or not the Congress chooses to formally repeal Title 18, section 3501, as Attorney General, I will enforce the law as it stands post-*Dickerson*.

SENTENCING

Question: Under what circumstances do you support using drug treatment as an alternative to prison sentences?

Answer: I support the President's proposals for a comprehensive approach to illegal drugs, including expanded treatment, increased use of drug courts, and maintenance of drug-free prisons.

Question: Do you believe there is any inconsistency between Congress' creation of the Sentencing Commission and Congress' continued willingness to impose mandatory minimums which take away the Sentencing Commission's discretion? How much discretion do you believe the Sentencing Commission should be given to set criminal penalties for offenses?

Answer: The Sentencing Commission is a creature of Congress's creation, and its authority is subject to subsequent congressional enactments. It is not inconsistent for the Congress to enact mandatory minimum sentences while relying on the Commission to set sentencing ranges above such minimums.

ELECTION 2000/VOTING RIGHTS

Question: You are familiar with the Supreme court's December 9 stay and its December 12 per curiam decision in the recent case of *Bush v. Gore*—you made reference to this case in defending your actions as Governor when you vetoed the voter registration and education legislation in Missouri. The Supreme Court acknowledged that “the problem of equal protection in election processes generally presents many complexities.” Where does the “logic” of the Court's equal protection holding go in your view— that is, if it was a violation of equal protection to evaluate ballots within Florida as ordered by the Florida Supreme Court in accordance with the standards set by the Florida legislature and under the supervision of a Florida Circuit Court Judge, does that suggest that the constitutional right to equal protection might require national standards for voting and the counting of votes?

Answer: If confirmed as Attorney General, I will fully and vigorously enforce the federal voting rights laws, because voting is fundamental to other rights in America. In so doing, I will examine the Supreme court's caselaw concerning voting rights, to ensure faithfulness to binding law. And, I will enforce whatever new voting rights laws the Congress sees fit to pass in light of *Bush v. Gore*.

Question: Do you consider that decision of the United States Supreme Court to be an example of thoughtful and prudent judicial decisionmaking, judicial activism, or what you have called judicial despotism?

Answer: As Attorney General, it would not be my role to adjudicate the thoughtfulness or prudence of Supreme Court decisions. As Attorney General, I will follow the law.

Question: There is a great deal of bad feeling and division in the wake of the presidential election contest. Many feel that African-Americans in large numbers were disenfranchised in Florida, for example. What do you say to this Committee and to the American people about actions you would take as Attorney General to overcome that division and remedy the problems that led to African-American voters' names being improperly purged from eligible voter lists, their registrations not being processed, the precincts in which they voted being inadequately staffed and having outmoded machinery and the other sources of outrage and concern in the aftermath of the election?

Answer: Voting is a fundamental civil right. If fortunate enough to be confirmed as Attorney General, I will work to aggressively and vigilantly enforce federal voting rights laws. It will be a top priority of a Bush Department of Justice, part of what I would hope would be its legacy.

Question: The Justice Department is charged with administering Sections 2 and 5 of the Voting Rights Act. One of the most important questions facing the Justice Department is whether it should use adjusted or unadjusted census data in administering the preclearance provisions of Section 5 and urge courts to do the same under Section 2 of the Voting Rights Act. The U.S. Supreme Court has never questioned the constitutionality of statistical sampling for purposes of administering the Voting Rights Act. Do you believe that the Justice Department should endorse the use of sampled data?

Answer: I have not had the opportunity to examine this legal question in depth, but any answer I might give would depend solely on a fair reading of the relevant law and Supreme Court cases. Of course, Congress has the ultimate authority in determining the proper way for federal statutes to be administered.

ENVIRONMENT

Question: The Clean Air Act, Clean Water Act and other environmental laws contain citizen suit provisions which allow citizens to bring enforcement actions, claims for injunctive relief and civil penalties, against violators when the federal and state government have failed to do so. The Justice Department has been supportive of citizen suits in the past. Do you support the citizen suit provisions in these laws as a mechanism for ensuring compliance with our environmental laws and do you intend to support them as Attorney General?

Answer: Questions concerning the validity of laws should be answered only in the context of a specific case or controversy raising the issue. While it would be imprudent to make a legal determination on the question now, absent a full and thorough review of the relevant law, my obligation as Attorney General will be to defend the constitutionality of duly-enacted federal law, whenever a good faith and conscientious basis exists for doing so.

Question: Would you agree that the federal government has the right and the obligation to pursue enforcement of environmental laws to recover the economic benefit that a company has achieved by violating environmental laws, punish a violator for delayed compliance with federal environmental statutes and in order to deter future violations?

Answer: Yes.

Question: Would you agree that enforcement of our federal environmental laws, and recovery of the economic benefit obtained by polluters for their violations, is critical to ensuring a level playing field between the many industries that comply with the law and those that seek to cut corners and gain economic advantage by failing to comply?

Answer: Yes, to the extent the law so requires.

Question: Do you agree that the economic benefit a company reaps via non-compliance with environmental statutes should be the minimum penalty imposed in enforcement actions in order to level the playing field between violators and those businesses that comply with clean air, water and other environmental laws?

Answer: Yes, to the extent the law so requires.

Question: In situations where a violator with facilities scattered across the country is causing problems in more than one state, for example, when the steel manufacturer Nucor failed to control the amount of pollution released from its factories in seven states, do you believe the Justice Department should pursue a national enforcement action?

Answer: I believe the federal environmental laws should be fully and vigorously enforced. With respect to any particular potential enforcement actions, such as against the steel manufacturer referenced above, it would be inappropriate for me to comment at this time.

Question: EPA's national enforcement policy is designed to give states the first opportunity to enforce under their authorized or approved programs, but in some circumstances, EPA, with the assistance of the Department of Justice, will file a federal enforcement action after the conclusion of a formal state enforcement action for the same violations that arose out of the same nucleus of operative facts when necessary to protect human health and the environment, to appropriately address a major repeat violator, and/or to recover a significant economic benefit. Do you support the practice of "overfiling" under these circumstances, and if not, why not?

Answer: I am not familiar with the details of how such enforcement actions are conducted, and will have to wait until I can consult at length with the professional staff in the Department before I can have an informed opinion.

Question: In 1999, EPA and the Justice Department entered into a series of ground-breaking consent decrees with the seven largest manufacturers of diesel engines, requiring the companies to take several steps to reduce pollution, pay substantial air pollution fines, and produce engines which met certain emission standards. Despite your record of aggressively questioning the fundamental regulatory structure set forth in major environmental laws, such as your co-sponsorship of the controversial S. 981, the "Regulatory Improvement Act of 1998," if confirmed, would you enforce the 1999 consent decrees?

Answer: I believe the federal environmental laws should be fully and vigorously enforced. With respect to any particular pending matters, such as against the consent decrees referenced above, it would be inappropriate for me to comment at this time.

FEDERALISM & STATES' RIGHTS

Question: In June 1999, the Supreme Court issued two decisions in *Florida Pre-paid* and *College Savings Bank* that effectively immunized the States from damages liability for violations of intellectual property rights. Would you support my legislative effort to restore effective federal protection for intellectual property as against the States, in a manner, that avoids any conflict with the Constitution as interpreted by the US Supreme Court?

Answer: Although I have not studied this issue closely, any resolution of it must involve a delicate balancing of the needs to protect intellectual property with the constitutional mandate of federalism. I look forward to working with the Committee to assist in ensuring that intellectual property is fully protected in the modern age, in a manner consistent with the U.S. Constitution.

Question: During your tenure as Governor and in the Senate, you advocated that reproductive rights and civil rights issues should be governed at the state level. In fact, you are quoted in a 1999 interview in the *Southern Partisan* magazine as saying: "I believe the Tenth Amendment, which was the capstone of our Bill of Rights, does appropriately reserve powers to the states, and it is time for Washington, DC to rediscover this founding principle. . . ." In the Senate, you have consistently sponsored, cosponsored and voted for "tort reform" legislation that would override state tort law and limit the jurisdiction of state courts to decide questions of state law. How do you reconcile your support for federal preemption of state law and restrictions on state courts when it comes to liability protection for businesses but not when it comes to protecting civil rights or reproductive rights for ordinary Americans?

Answer: Federalism is an important constitutional principle which should be fully honored. The Constitution also explicitly provides, however, that Congress can "regulate Commerce . . . among the several States," and many modern tort judgments unquestionably have national economic impact. As Attorney General, I will support the President's proposals for comprehensive civil justice reform, fully respectful of the constitutional dictates of federalism.

Question: You are a strong advocate of the Tenth Amendment as protecting liberty by preserving States' rights against the Federal Government. The Ninth Amendment also protects liberty, by preserving individual rights against the Government. What is your understanding of the Ninth Amendment?

Answer: There have been few opinions of the Supreme Court interpreting the Ninth Amendment, but its plain text adverts to the "rights . . . retained by the people." I believe it is incumbent upon the Department of Justice to enforce the law and protect the constitutional rights of all Americans.

FORFEITURE

Question: The Justice Department's "Equitable Sharing" program allows the Attorney General to share federally forfeited property with participating state and local law enforcement agencies, and has proven controversial with State legislatures, which are concerned that state law enforcement uses the program to bypass state laws that require seizures to be used for other purposes, such as education. Would you agree that by allowing state authorities to evade their own state laws, the Equitable Sharing program creates an intolerable intrusion on state sovereignty? Would you work with me to correct this problem, by ensuring that property transferred to a state or local law enforcement agency under the Equitable Sharing program is subject to any requirement of state law that limits the use or disposition of forfeited property?

Answer: Although I have not studied this problem closely, I would be happy to work with you to address any problems in the program in a way that respects both the needs of law enforcement and the constitutional demands of state sovereignty.

Question: Under Article IX of the Missouri Constitution, the proceeds of forfeitures are supposed to be distributed to local school boards. Yet even after a 1990 Missouri Supreme Court decision found their actions to be in violation of the state Constitution, Missouri law enforcement agencies would end-run the constitutional requirement by bringing seizures to a federal agency for "adoption." Money returned through the "Equitable Sharing" program would go directly to the Missouri law enforcement agency. As Governor, did you ever indicate that you would "look the other way" should the Missouri police ignore the state Constitution and Supreme Court decision requiring asset forfeiture moneys to go to education? Did you ever take steps to stop this practice, and if so, what steps did you take?

Answer: I am unfamiliar with a number of the facts or assertions embedded in the question, but I would not suggest to any law enforcement officer or agency that I would "look the other way" should they act contrary to the Missouri Constitution. I would expect the Missouri State Highway Patrol to act in accordance with any advice provided by the Missouri Attorney General's office pursuant to a state Supreme Court decision on this subject. Missouri local law enforcement agencies are not administratively responsible to state officials or agencies, but they should act in accordance with legal advice provided by a county prosecutor or municipal counsel.

FREEDOM OF INFORMATION ACT

Question: The Justice Department provides agency-wide guidance on implementing the Freedom of Information Act (FOIA). Janet Reno made significant reforms in implementing this Act by calling upon agencies to exercise discretion where possible and to grant requests unless disclosure would cause actual harm and by making FOIA implementation part of every employee's job performance evaluation. Would you (a) consider FOIA enforcement an important part of an Attorney General's responsibilities; (b) ensure that FOIA activities get adequate budget allocation at Justice and encourage adequate funds for enforcement of FOIA at other agencies; (c) support and personally endorse government-wide training in FOIA responsibilities; and (d) advocate sanctions against government employees who deliberately withhold records from FOIA processing?

Answer: Appropriate public access to governmental records is an important check on arbitrary government action. If I am fortunate enough to be confirmed as Attorney General, I will fully and faithfully enforce the Freedom of Information Act and ensure that the Department of Justice does the same.

CIVIL RIGHTS

Question: As Attorney General, would sexual orientation be a factor in your employment decisions?

Answer: No.

Question: As a Senator, you voted against the Employment Non-Discrimination Act, a bill that would have prohibited employment discrimination against gays or lesbians and that failed to pass by a single vote. Do you believe that the federal government should regulate relations between employers and employees to prevent discrimination on any grounds, and if so, can you explain why you believe that discrimination based on sexual orientation should not be one of those grounds?

Answer: The federal government plainly has an important role in preventing discrimination, and it is the Congress's prerogative to determine the scope of those protections. As Attorney General, I will fully and faithfully enforce all civil rights laws passed by Congress and signed by the President.

GUN SAFETY

Question: You have referred to Jim Brady, the press secretary for Ronald Reagan who was nearly killed in John Hinckley's assassination attempt, as "the leading enemy" and "the number one enemy" of gun owners. Do you regret using such intemperate language to describe a person with whom you have policy differences?

Answer: I have deep respect for Jim Brady both as a public servant and for the incredible trauma that he has endured as a result of his faithful service to the Nation. I have, however, disagreed with some of the policy prescriptions that Mr. Brady has advocated. However relevant my policy views may have been to my role as a legislator, as Attorney General, I will fully and faithfully enforce the federal gun laws.

Question: Do you believe that existing gun laws are not strictly enforced and, if confirmed, how would strengthen enforcement of existing gun laws and prioritize this issue?

Answer: I believe that there is room for substantial improvement with respect to enforcement of the current gun laws. The President has explained that he wishes to give prosecutors the resources they need to aggressively enforce our gun laws and provide more funding for aggressive gun law enforcement programs such as Texas Exile and Project Exile in Richmond, Virginia. I will fully support the President's agenda in this area.

Question: In September 1998, when you chaired a subcommittee hearing on the intent of the Second Amendment, you stated: "I believe it is time that we once again recognize the Second Amendment for what it is. It is a protection of individual liberty." Given your view of the Second Amendment, do you believe that all gun control laws are unconstitutional? As Attorney General, would you urge the Supreme Court to accept your interpretation of the Second Amendment?

Answer: I do not believe that the Second Amendment prohibits common-sense gun control measures, and if confirmed, as Attorney General I will vigorously defend federal gun control statutes passed by Congress whenever there is a good-faith and conscientious basis for doing so.

Question: In the case of *United States v. Emerson*, a criminal defendant is challenging his indictment for possessing a gun while under a domestic violence restraining order. He argues that the federal law violates the Constitution. The Justice Department is currently defending the constitutionality of that federal law on appeal before the Fifth Circuit. Will you commit to continuing the defense of that law?

Answer: I am not familiar with the details of this case. As a general matter, however, I will defend the constitutionality of any Act of Congress that does not implicate executive authority and for which a reasonable defense can be mounted. Although I have not reviewed the details of this case and my final determination would require that review and a consultation with the Department of Justice officials handling the case, I have no reason to believe that the Department would not continue to defend the constitutionality of the Act of Congress at issue in this litigation.

Question: What current gun control restrictions would you like to see relaxed or eliminated? As Attorney General, would you use your influence to encourage such changes?

Answer: The President has explained that he would support legislation to allow active and retired law enforcement officers to carry concealed weapons. If confirmed, I will fully support the President's position on this issue.

IMMIGRATION

Question: Are there any aspects of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act that you would support changing? Please explain.

Answer: I have not examined the provisions of the 1996 legislation closely, but am aware that many people have raised a number of potential issues resulting from that legislation. If confirmed, I will study these issues carefully and work with the President and Congress to develop any reforms that might be needed to make the immigration laws fairer, more effective, and more humane.

Question: Would you support giving veterans of our armed forces an individualized hearing before being deported for relatively minor criminal offenses? Would you support giving other long-term residents of the United States individualized hearings before they are deported for similar offenses?

Answer: I believe that every individual appearing before our courts of law should be accorded the full protections of Due Process.

Question: Under the current expedited removal system, also adopted in 1996, there is strong evidence that aliens fleeing religious, political, or other forms of persecution may be summarily returned to their native countries without ever even appearing before an immigration judge. As Attorney General, would you be willing to conduct a review of this program?

Answer: Yes.

IMPEACHMENT

Question: In September 1998, you issued a statement calling upon Democratic candidates for office not to accept fundraising assistance from President Clinton, saying that “[t]o entangle campaign fund-raising with impeachment is bad for public confidence.” You also said: “In an impeachment proceeding, the constitutional role of Senators is to sit as jurors on impeachment articles voted by the House of Representatives. The public must have high confidence in the fairness of the proceedings.” You issued the statement despite the fact that only a month before, your Spirit of America PAC had rented its donor list to the Paula Jones Legal Defense Fund, thus profiting from the very woman whose lawsuit gave rise to impeachment proceedings. Then, your PAC proceeded to rent your donor list to the Linda Tripp Legal Defense Fund on February 9, 1999, three days before your vote to convict President Clinton on both impeachment counts. Your PAC received additional payments from the Tripp fund in April and May of 1999.

(a) Do you believe that renting the lists to figures with such a vested interest in the conviction of President Clinton was appropriate given your status as a juror?

(b) Do you believe that renting your PAC’s donor lists to these two legal defense funds while impeachment proceedings were in progress was “bad for public confidence?”

Answer: These donor lists were rented without my knowledge or approval. Once I became aware that the list had been rented to these organizations, I directed that the lists no longer be rented to these organizations.

INTERNATIONAL CRIMINAL COURT:

Question: Putting aside the merits of the International Criminal Court, or whether the United States should ratify the treaty, on what did you base your conclusion in your 1998 *Southern Partisan* magazine interview that the treaty establishing the International Criminal Court “would make withholding of an abortion a crime against humanity,” when the treaty defines “forced pregnancy” to mean “the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law” and excludes “national laws relating to pregnancy”?

Answer: I do not recall the specific basis for that statement. As part of my duties on the Senate Foreign Relations Committee, I had heard concerns that despite efforts to define the term, the concept of a “forced pregnancy” had sufficient elasticity to prompt legitimate concerns about whether such a prohibition should be included in a treaty, which would become the law of the land. Whatever my views as a legislator, however, I will enforce the law of land.

LEGAL SERVICES CORPORATION

Question: In 1995, you voted in favor of a motion offered by Senator Phil Gramm to eliminate the Legal Services Corporation, which provides legal assistance for the poor.

(a) Do you still believe that the Legal Services Corporation should be eliminated?

(b) As Attorney General, would you encourage or assist in any way efforts to eliminate or reduce funding for the Legal Services Corporation?

Answer: President Bush has indicated that the Legal Services Corporation should be maintained, but reformed to re-focus on its original mission of providing legal aid to those in need. I will support and promote the President’s position on this issue.

DESEGREGATION

Question: The Bush transition team has tried to bolster your record on appointments of minorities while you were Governor and stated that out of 70 judges you appointed, 11.4 percent were African Americans. But this figure does not include the 51 interim judicial appointments you made as governor. Is that correct?

Answer: There were 70 panels of 3 individuals submitted by the appropriate commission for appellate and trial court vacancies presented to me as Governor under Missouri’s nonpartisan court plan. There was only one African-American candidate who was not then or later appointed by me to a current or subsequent judgeship.

In effect, 8 out of 9 available minority candidates were appointed from these panels, including the first African American on the Missouri Court of Appeals and the first African American woman on the St. Louis County Circuit Court. These appointments are for life, with retention votes every 12 years.

For counties outside of the nonpartisan court plan, 21 judges were appointed to vacancies until the next election, none of whom were African-American. However, our research has found no minority members of the Missouri Bar who expressed an interest in or were available (by virtue of residency) for any of these vacancies for these out-state judgeships (which must stand for election every 4 years for an Associate Circuit Judge, and 6 years for a Circuit Judge). These appointments are for as short as 30 days and as long as several years until the next election.

Question: When you ran for governor in 1984, you made political use of the fact that you were nearly subject to contempt of court from a federal judge, stating "Ask Judge Hungate who threatened me with contempt." As U.S. Attorney General, would you use threats of contempt against the Justice Department for political purposes? Do you believe that as a political leader and sitting Attorney General of Missouri, it was in any way divisive or inappropriate to politicize the desegregation issue in this fashion? Does it not disturb you then that a federal court said you had "voluntarily rode the [desegregation litigation] to political prominence"?

Answer: If confirmed as Attorney General, I would obviously hope to avoid any threats of contempt, and would not use any legal proceedings for political purposes. It is not accurate that I "politicized" desegregation in Missouri; to the contrary, I urged continued fealty to the rule of law in the face of strong political pressure by other elected officials to do otherwise. Finally, it is not unusual for a court to criticize litigants who appear before it; like other litigants, I take no pleasure from such criticism.

AFFIRMATIVE ACTION

Question: The United States District Court for the Eastern District of Michigan ruled in a case challenging the use of affirmative action by the University of Michigan that "diversity constitutes a compelling governmental interest in the context of higher education justifying the use of race as one factor in the admissions process." (2000 WL 1827468).

The United States filed a brief on behalf of the University of Michigan in this litigation. Do you agree that diversity constitutes a compelling governmental interest justifying the use of race as a factor in admissions, or would you recommend that the Bush Administration switch sides and support the plaintiffs in appeal of the court's judgment?

Answer: If confirmed as Attorney General, I will firmly oppose racial discrimination in all its forms. It would, however, be imprudent of me to comment on the particulars of the Michigan case without first conducting a full and fair review of the facts and law surrounding that case. If confirmed, I pledge that no decision will be made absent such a thorough review.

Question: As Attorney General, would you support the use of Title VI of the Civil Rights Act to prevent universities and colleges that receive Federal funds from considering race in admissions?

Answer: If confirmed, I commit to you that any decision that I make will be law-oriented, not results-oriented. This is true with respect to Title VI, as it is with all other laws. Thus, I pledge that any decision made with respect to Title VI will be made only after a full and fair review of that law. Not having had an opportunity to conduct such review with the benefit of the full learning of the Department of Justice on this question, I believe that it would be imprudent for me to comment further on that statute.

Question: In the *Bakke* case, the Supreme Court allowed universities to consider race in their admissions processes. Do you consider *Bakke* to be the law of the land, which you would be sworn to uphold? Do you consider it settled law?

Answer: The *Bakke* decision must be viewed in light of the many decisions on related matters that the Supreme Court has handed down in the past two decades. Of course, the Supreme Court is the ultimate arbiter of constitutionality, and, unless the Court decides otherwise, *Bakke* remains the law of the land.

Question: Would an Ashcroft Justice Department consider any use of race permissible in the educational context?

Answer: Yes.

Question: At the confirmation hearing for Bill Lann Lee in October 1997, you asked Mr. Lee about the Supreme court's decision in *Adarand*, which held that federal racial classifications must serve a compelling governmental interest, and must

be narrowly tailored to further that interest. In particular, you asked Mr. Lee whether, in his opinion, any of the current federal race-conscious programs could survive the strict scrutiny test of *Adarand*. Let me ask you a similar question. Are there any current federal race-conscious programs that you think are not constitutional under *Adarand*, and if so, would you defend the constitutionality of these programs if you are confirmed as Attorney General?

Answer: It is likely that some federal race-conscious programs are not constitutional under *Adarand*. Indeed, my recollection is that even Mr. Lee identified one such program. That being said, it is the longstanding policy of the Department of Justice to defend any federal law for which a reasonable and conscientious defense can be raised. If confirmed, I will enforce this policy in the area of racial set-asides, as in all other areas.

Question: What qualities would you advise President-elect Bush to seek in an Assistant Attorney General for Civil Rights? Should that person have direct experience in the civil rights field? Is it your view that the Assistant Attorney General for Civil Rights should take the position that all forms of federal preferences based on race fail *Adarand's* strict scrutiny test?

Answer: When he nominated me as Attorney General, the President asked me to give all advice to him and to him alone, and that is a commitment I believe I should honor. As a general matter, however, I believe an Assistant Attorney General for Civil Rights should be a person committed to fully and fairly enforcing the Nation's civil rights laws. That person should also, in my view, have some experience in the field of civil rights, a commitment to the rule of law, and a genuine passion for protecting the rights of the disadvantaged.

Question: As Attorney General, you would be responsible for offering opinions to all federal departments and agencies concerning the scope of federal law. If confirmed, what advice would you give the Department of Transportation and other federal offices regarding the use of affirmative action in their employment, contracting, and other activities?

Answer: When he nominated me as Attorney General, the President asked me to give all advice to him and to him alone, and that is a commitment I believe I should honor. That same principle should apply to legal opinions delivered to Executive agencies. As a general matter, however, I believe that any federal affirmative action program can be assessed only in the context of the facts and circumstances of its application. If confirmed as Attorney General, I would defend any federal affirmative action program for which a reasonable and conscientious defense can be raised.

Question: Congress has reauthorized the Disadvantaged Business Enterprise Program since the *Adarand* decision, adopting the view that it was sufficiently narrowly tailored to survive "strict scrutiny." You took the view that "[g]overnment programs which are officially sanctioned and administered, to discriminate against any American on the basis of that citizen's race should be ended, starting with [the DBEP]." As Attorney General, would you vigorously defend all federal affirmative action programs before the Supreme Court and the lower courts? Would you consider instituting lawsuits to attack the constitutionality of state and municipal government affirmative action programs?

Answer: If confirmed as Attorney General, I would adhere to the Department of Justice's longstanding policy of defending every federal law for which a reasonable and conscientious argument can be made. I would apply this policy to affirmative action programs, as all other programs. With respect to issues related to state and municipal affirmative action programs, I will review those programs, as all others, on a case-by-case basis consistent with the law.

Question: In the late 1980s, when you were governor of Missouri, you served on the Commission on Minority Participation in Education and American Life, yet declined to sign the report, which found that "in education, employment, income, health, longevity, and other basic measures of individual and social well-being, gaps persist—and in some cases are widening—between members of minority groups and the majority population." At the time, you said that the report's "generalizations about setbacks in progress are overly broad and counterproductive." Did you believe then that there were gaps in education, employment, income, health, longevity, and other basic measures of individual and social well-being between minority and non-minority Americans? If so, do you believe there are still such gaps, and as Attorney General, what steps would you take to address those gaps?

Answer: Yes, such gaps do exist. Indeed, the President has spoken movingly about the "soft bigotry of low expectations," and the dual societies it creates. As Attorney General, I will fully and fairly enforce all federal laws addressing civil rights and other related issues.

Question: A spokeswoman for President-elect Bush's transition has stated that you believed that the report produced by the Commission on Minority Participation in Education and American Life "addressed the plight of some minorities, but it didn't address all minorities." Is that why you withheld your support for it, and if so, what minorities do you believe the report failed to address?

Answer: As I recall, the reason cited is one among several reasons why I did not sign the report. While I do not have a full recollection of the concerns that I had in the late 1980's, I believe it is incumbent upon leaders to expand educational opportunities for every American, no matter his or her circumstance.

Question: When asked by *Southern Partisan* magazine about the disciplining of a student who had a Confederate flag on her knapsack, you said: "The right of individuals to respect our history is a right that the politically correct crowd wants to eliminate, and that is just not acceptable." Do you support or oppose the efforts to disestablish Confederate symbols in Mississippi, Georgia, and South Carolina?

Answer: The State of Missouri does not fly the Confederate flag, and I do not believe that it should. I believe we should all be vigilant in working to promote a more racially tolerant society for everyone.

RELIGION/CHARITABLE CHOICE

Question: In 1998, you told the Christian Coalition: "A robed elite have taken the wall of separation built to protect the church and made it a wall of religious oppression." Please state which Supreme Court decisions, if any, that you believe have enacted "religious oppression."

Answer: The First Amendment's balance between protected free exercise of religion, and forbidden establishments of religion, is a difficult one. Many have expressed both agreement and disagreement with the Supreme court's decisions in this area. As Attorney General, I will enforce the law, as interpreted by the Supreme Court of the United States.

Question: As Governor of Missouri, you did not support laws to ensure that federally-funded church-run day-care centers would be required to meet basic health and safety requirements, such as smoke detectors, fire exits and minimum staffing requirements, that applied to all other day-care centers, public and private to protect the safety of the children, and, instead, publicly opposed and threatened to veto them. Can you explain why, and can you tell us what standards you would apply as Attorney General when it comes to balancing issues like children's safety with the autonomy of federally-funded religious organizations in the context of Charitable Choice programs?

Answer: As Governor of Missouri, I often faced the difficult question of how to balance the need for important health and safety regulations against the need to protect religious institutions from excessive entanglement with government. This need for balance guided the decisions that I made as Governor. If I am fortunate enough to be confirmed as Attorney General, I will enforce this balance consistently with the Supreme Court caselaw on the matter.

Question: As Attorney General, one of your most important duties is to provide legal counsel to the other branches of the Federal Government on how to abide by their constitutional duties. Would you advise other Government departments to comply fully with all aspects of the Establishment Clause as interpreted by existing Supreme Court precedent?

Answer: I can assure you that I will fully advise all federal government officials of the state of Supreme Court case law and the implications of any decision that they make with respect to such case law. I do not think it appropriate, however, to disclose publicly in advance the substance of any specific advice that I may or may not give.

Question: As Attorney General, which of the Supreme court's religion decisions would you request the Court to overturn?

Answer: As Attorney General, I do not believe it would be appropriate to seek the reversal of any Supreme Court decisions in a vacuum. As cases arise, I will, if confirmed, thoroughly review the law and facts of each and every one, and determine what positions of advocacy are consistent with the law and in the best interests of the United States. I will apply this approach to religion cases, as well as to all other cases.

Question: As Attorney General, would you intervene on behalf of local school districts seeking to revisit the Supreme court's decision last year in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), which held that a school district's policy of permitting student-led and student-initiated prayers prior to football games violated the Establishment Clause?

Answer: If confirmed, I can assure you that I will approach all prospective cases in the same manner: I will evaluate the law and facts of each case, and make a judgment on which position of advocacy is consistent with the law and in the best interest of the United States. That being said, it would be imprudent for me to comment on a particular case not having had the benefit of the Department of Justice's full learning on that case.

Question: As Attorney General, would you ask the Supreme Court to revisit *Edwards v. Aguillard*, 482 U.S. 578 (1987), which held that it was unconstitutional for a State to forbid the teaching of evolution unless it was accompanied by teaching of "creation science?" Do you agree with the court's decision in that case? Were you in part referring to that case when you told the Conservative Political Action Conference Annual Meeting in 1997 that "Over the last half century, the federal courts have usurped from school boards the power to determine what a child can learn?" What other cases were you referring to in that statement?

Answer: As Attorney General, I do not believe that I would have the authority to ask the Court to simply revisit a prior decision outside the context of a specific case. Moreover, a decision as to which arguments to advance in such a case cannot and should not be made independent of the factual circumstances and legal question raised in the case. Thus, it would be imprudent for me to commit to advancing or not advancing a particular argument outside the context of a specific case. As to the federal courts' voluminous decisions in this area—rendered at all levels of the federal judiciary—many individuals have commented both favorably and unfavorably on these decisions. I cannot specifically recall which of the numerous federal court decisions in this area were encompassed by the quote that you referenced.

BUSALACCHI CASE

Question: When you were Governor, Mr. Busalacchi's daughter was severely injured in a car crash when she was in high school, and according to written testimony submitted by Mr. Busalacchi, her doctors told him that she would remain in a persistent vegetative state for the remainder of her life. When Mr. Busalacchi sought to move his daughter from Missouri to Minnesota, the Ashcroft Administration obtained a restraining order preventing Mr. Busalacchi from removing her from the state and launching a two-year battle seeking to prevent Mr. Busalacchi from making determinations about his daughter's medical treatment. According to an editorial in the *St. Louis Post-Dispatch* in December 1990, Mr. Busalacchi "came to the Missouri Center to move his daughter to Minnesota. He was met by an administrator, two state troopers and a sheriff's deputy." Mr. Busalacchi has testified that you, through your administration, injected your "political and religious views into [his] family's tragedy." Do you believe that your administration's actions in the Busalacchi matter showed a proper respect for Mr. Busalacchi's moral and constitutional rights as a parent?

Answer: Yes.

Question: As U.S. Attorney General, would you advocate preventing the families of patients in federally-run medical facilities from making their own determinations whether to continue feeding their loved ones who had no hope of regaining consciousness?

Answer: As Attorney General, I would enforce any and all federal statutes on this issue.

SPECIAL PROTECTION FOR INDUSTRIES AND TOBACCO

Question: Why did you change your position from advocating increases in cigarette taxes to reduce smoking and improve the health of Missourians as a Governor to opposition of higher cigarette taxes as a Senator and potential presidential candidate?

Answer: As a non-smoker, I believe that smoking is a bad and dangerous habit, and that all appropriate measures should be taken to discourage its use. At the same time, in my role as a legislator and governor, it has always been my view that the tax code should be as simple and fair as reasonably possible. The positions that I have taken over the years, all of which are not relevant to what my role would be as Attorney General, are, I believe, fully consistent with these principles.

Question: In 1998, you voted in support of the Gregg-Leahy amendment to strike all special legal protection for the tobacco industry during the debate on national tobacco control legislation. In the last Congress, however, you sponsored legislation to provide asbestos manufacturers with special legal protection, cosponsored another bill to provide small businesses with special legal protection and voted for a third bill to provide special legal protection to the high-tech industry for year 2000 liabil-

ity. What has been your standard as a Senator for determining when an specific industry deserves special legal protection from Congress, and, as Attorney General, will you advocate that any specific industry deserves special legal protection?

Answer: As Attorney General, I will enforce all laws enacted by Congress. This duty is separate and independent from any actions that I took as a Senator. As a Senator, I evaluated each piece of legislation in its totality, and attempted to make a determination on whether a piece of legislation was, on the whole, good or bad public policy.

Question: Career prosecutors at the Department of Justice filed a lawsuit against the tobacco industry to recover smoking-related health care expenditures, alleging that by concealing and deceiving consumers of health risks of their tobacco products for the past forty years the tobacco industry engaged in a pattern of racketeering activity under the Racketeer Influenced and Corrupt Organizations Act (RICO). As Attorney General, would you support or oppose the Department of Justice's lawsuit against the tobacco industry?

Answer: I assure you that any decision that I make on this lawsuit will come only after a full and fair consultation with the appropriate officials in the Department of Justice. Absent such consultation, however, it would be imprudent for me to comment on the merits of this case.

Question: In constituent letters to Missourians, you have written that you are "concerned that the DOJ lawsuit could set an unwise precedent leading to the federal government filing lawsuits against countless other legal industries." Do you believe the federal government has a role in seek redress for the alleged misconduct by the tobacco industry?

Answer: Yes, if the facts and the law so warrant.

Question: Do you believe that the tobacco companies deceived the American public about the risks of death and disease from using their tobacco products? Do you believe that the tobacco companies marketed their products to children? Do you believe that the tobacco companies exploited the addictive nature of nicotine in their products? Would these personal views influence any decision that you may make on continuing the Department of Justice lawsuit against the tobacco industry if you are confirmed as Attorney General?

Answer: Any decision that I make regarding any litigation, including the tobacco litigation, will be based on a thorough view of the facts and law pertaining to that case. As I said during the hearing, I will be law-oriented, not results-oriented. In light of this, it would be imprudent for me to comment on the specific facts of the tobacco suit without having the benefit of the Department of Justice's full learning on this question.

"TAKINGS" LEGISLATION

Question: In 1998, you supported "taking" legislation reported by this Committee on a 10-to-8 party-line vote which would take away power from mayors, local planners, city councils and local zoning boards over local land use. As Attorney General, would you stand with most of the Nations' governors, mayors, city officials and towns in opposing it?

Answer: As Attorney General, I would enforce such legislation if enacted.

Question: In *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985), the Supreme Court declared that in a takings challenge to state or local action, no violation of the Takings Clause occurs until the landowner seeks and is denied compensation in state court. Do you agree with this analysis of the Takings Clause?

Answer: The Supreme court's decision in *Williamson* was a significant one, and one which, I believe, is now the law of the land. As Attorney General, I will abide by this decision as well as all others.

VICTIMS OF CRIME

Question: Do you think that while Congress considers the merits of a constitutional amendment on victims rights that it should, at the same time, be considering legislative measures to benefit victims, such as the Crime Victims Assistance Act, which I introduced with Senator Kennedy in the last Congress?

Answer: I believe that it is important to consider various ways to protect the rights of crime victims. I am, however, no longer a member of Congress, and so would not presume to instruct the Congress on what legislative measures it is appropriate for it to consider or not consider.

Question: The Clinton Administration supported the idea of a victims' rights amendment to the Constitution, but only if it preserved the fundamental constitu-

tional rights of those accused of crimes. Senator Feingold has offered amendments to the proposed constitutional amendment that would expressly preserve the rights of the accused, which as a Senator, you voted against. What position would you take as Attorney General, and why?

Answer: As Attorney General, I would fully and fairly enforce whichever constitutional amendment was duly enacted in accordance with the Constitution.

BANKRUPTCY

Question: During the debate on the Bankruptcy Reform Act in the last Congress, you voted to support the Schumer-Leahy Amendment to end abusive bankruptcy filings used to avoid the legal consequences of violence, vandalism, and harassment to deny access to legal health services. Do you agree that any fair and balanced bankruptcy reform bill must include provisions to prevent the discharge of penalties for violence against family planning clinics, as the Schumer-Leahy Amendment did in the last Congress?

Answer: As a Senator, I supported and voted for the Schumer-Leahy Amendment. Ultimately, however, it is up to the Congress, of which I am no longer a member, to make these policy judgments.

FOLLOW-UP FROM HEARINGS

Question: You testified on Wednesday that you “probably should do more due diligence” to answer the question whether *Southern Partisan* magazine is a racist organization. Have you since done further due diligence? If so, do you now believe that *Southern Partisan* magazine is racist and if so, would you like to take this opportunity to apologize for your association with it?

Answer: I reject racism in all its forms. I find racial discrimination abhorrent, and against everything that I believe in. If the allegations about *Southern Partisan* magazine are true, then I emphatically reject it as a racist publication.

Question: When asked about your actions in connection with the nomination of James Hormel to be Ambassador to Luxembourg, you testified that you “had known Mr. Hormel for a long time. He had recruited me, when I was a student in college, to go to the University of Chicago Law School.” Please list for the Committee any conversation, meeting, or other contact you recollect having with Mr. Hormel, while you were a law student or afterwards, as well as any other evidence you would like to provide to support your testimony that you “had known Mr. Hormel for a long time.” In addition, please list for the Committee any conversations, correspondence, or other contact you had with Mr. Hormel when you were a student in college that you believe can fairly be defined as “recruiting.”

Answer: As I explained during the hearing, I have known Mr. Hormel for many years, dating back to my days in law school. I have, however, not kept a detailed record of every contact that I have had with Mr. Hormel.

Question: Please provide the Committee with a detailed list of the facts on which you based your claims regarding Judge White’s record.

Answer: I based my claims concerning Judge White’s record on his record as a Missouri Supreme Court judge. That record consists of Judge White’s published opinions, which are all available in the published case reporters and on-line. Those published opinions provide a detailed recitation of the relevant law and facts in those cases. My claims were based on those cases.

Responses of the Nominee to questions submitted by Senator Mikulski

Question: (A) Do you intend to be a watchdog on civil rights? How will you be a watchdog?

Answer: Yes. As I said during the hearing, no American should be turned away from a polling place because of the color of her skin or the sound of his name, or denied access to public accommodations or a job because of disability, or prevented from owning a home in the neighborhood of his choice because of skin color, or denied an educational opportunity because of race or sex, or fear being stopped by police because of race. I will vigorously enforce the civil rights laws in order to ensure that no American suffers the indignity of unlawful discrimination.

Question: (B) I have looked into your record as an executive, both as Attorney General and Governor in the State of Missouri. Can you explain why, as governor of Missouri in 1988, you vetoed the *Voter Registration Reform Bill* that would have

increased minority voter registration in the city St. Louis, when it was precisely the same type of voter registration that was already taking place in St. Louis county?

Answer: My votes on this matter were fully explained in my veto messages, which I read into the record during the hearing.

Question: (C) As a senator, you have voted against expanding the Hate Crimes Prevention Act. As Attorney General, how do you intend to enforce the Hate Crimes Statute?

Answer: If confirmed, I will fully enforce any law that Congress passes, and defend the constitutionality of any law for which a reasonable and conscientious defense can be made. These standards apply to the Hate Crimes Prevention Act, as well as any other legislation that Congress chooses to enact.

Question: (D) You have said, “[i]f I had the opportunity to pass but one single law, I would . . . ban every abortion except for those medically necessary to save the life of the mother.” (*Human Events*, newsletter). Can you provide assurance that you will enforce existing laws protecting a women’s right to choose, and that you will investigate and prosecute those individuals or groups who have targeted for assassination providers of legal abortion services?

Answer: Yes. I will fully and vigorously enforce the law.

Responses of the Nominee to questions submitted by Senator Lincoln

Question (A): Arkansas experiences difficulty in recruiting physicians and other qualified medical professionals to work in rural communities, and she is interested in learning more about your decision as Attorney General of Missouri to intervene in *Sermchief v. Gonzales and State of Missouri* (660 S.W.2d 683). This case was an attempt to prohibit qualified nurses with advanced training from providing necessary and routine gynecological services to thousands of underprivileged female patients in your state. These services included conducting breast and pelvic examinations, performing PAP smears and providing information about effective contraceptive practices. Since we firmly believe that residents in rural areas should have access to the same specialized medical services that are available to residents who live in urban communities, as Attorney General, how can we be assured that you will not take similar steps to prevent appropriately trained medical professionals from doing their job, even if you personally disapprove of the service or services being provided?

Answer: I agree with you that making medical services uniformly available throughout a state, including rural areas, is an important goal. In the *Sermchief* litigation, the Attorney General’s office participated on both sides of the case. The office filed one amicus brief under my name on behalf of the State Nursing Board that urged a broad and uniform construction of the relevant statutory provisions. This position, which is similar to the position ultimately adopted by the Missouri Supreme Court, would facilitate the availability of uniform nursing services throughout the State. The office also filed a brief as amicus/intervenor addressing a single issue on the other side of the case. The appellants argued for a construction of the statute that would permit nurses to provide a broad array of nursing services and that if the statute did not bear such a construction then the statute would be unconstitutionally vague. The brief as amicus/intervenor took no position on the first issue, but did defend the Missouri statute against the attack that it was unconstitutionally vague. The Missouri Supreme Court accepted the appellants’ statutory construction argument and so never reached the vagueness question.

Question (B): We have a profound respect for our system of government and the careful balance of power our founding fathers established in the Constitution. Furthermore, we believe that public officials have a responsibility to discharge their duties in a way that recognizes the vital role each branch plays to ensure those we represent have confidence in the framework we, as public officials, are sworn to uphold and defend. We raise this issue because of comments you have reportedly made about Supreme Court Justices as well as decisions rendered by that court. In one case you asserted that a decision by the Supreme Court was “illegitimate.” In addition, other statements attributed to you suggest that you view the role of constitutional interpretation by the Supreme Court as merely a matter of individual justices “chang[ing] their mind” or imposing their personal policy judgements on the nation. In light of the responsibilities that will be entrusted to you if confirmed as Attorney General, please clarify what you mean when you say a decision by the Supreme Court is “illegitimate.” Is an “illegitimate” ruling by the Supreme Court, in your

view, the law of the land? In addition, do you think public criticism of the Supreme Court and justices who sit on that court would be appropriate in your role as Attorney General?

Answer: Any decision rendered by the United State Supreme Court is the law of the land. Nevertheless, public commentary on the actions of the Supreme Court is healthy in a democracy. As Attorney General, any comments that I make with respect to Supreme Court will be made with the utmost respect. And it will be my solemn duty to follow and enforce the law as interpreted by the Supreme Court of the United States.

Question: Senator Lincoln witnessed racial integration as a young elementary school student in Helena, Arkansas, and has a strong commitment to ending racial injustice, especially in our system of public education. While respecting whatever personal views you may have on school desegregation programs in general, why did you take extraordinary steps as Attorney General of Missouri to fight the implementation of a voluntary desegregation plan in St. Louis? According to the record in this matter, you unsuccessfully appealed the issue of "remedial scope" in *Liddell v. State of Missouri* multiple times to the same court, presumably because you hoped to receive a different response. While bringing multiple appeals in a particular case in itself isn't necessarily a cause for concern, under what circumstances do you think it is a legitimate use of public resources to bring multiple appeals before the same court on a particular issue when your initial appeal is rejected? Once a court has ruled on an issue and you have exhausted your appeals before higher courts, you accept the decisions rendered in the case and move on. Is that your view as well, or was there something different about the St. Louis case that justified your vigorous actions over several years to prevent implementation of the desegregation plan in that matter?

Answer: I fully agree that segregation is wrong and unconstitutional. I strongly support integration in all our nation's schools. My actions in this case reflected my obligation as the state attorney general to defend my client in the litigation, and each appeal represented a separate, appealable legal issue, not an attempt to relitigate already decided issues. Indeed, Missouri's current attorney general, a Democrat, has pursued a similar course of litigation representing the state of Missouri. And I of course agree that once the court has ruled, one must accept the court's ruling, subject, of course, to any right of appeal. Indeed, in Missouri, I repeatedly had to urge fealty to rule of law in the face of political pressure to do otherwise from other elected officials.

Responses of the Nominee to questions submitted by Senator Levin

Question (A): You made a number of strong statements in your speech to the Senate of October 4, 1999 in opposition to the nomination of Judge Ronnie White. You said that Judge White "has been very willing to say: We should seek, at every turn, in some of these cases to provide an additional opportunity for an individual to escape punishment." Do you believe that is a fair characterization of Judge White's record?

Do you believe it is fair to say that Judge White's opinions are "procriminal" and that he will "push law in a procriminal direction" and that he practices "procriminal jurisprudence?"

Do you believe it is fair to say Judge White's "opinions, and particularly his dissents, reflect a serious bias against a willingness to impose the death penalty?" (Given the apparent fact that Judge White's average for upholding death penalty cases is 70 percent, and the averages of your own appointees to the Missouri Supreme Court closely mirrors his, ranging from 75 to 81 percent.)

Answer: I stand by my criticisms of Judge White's voting record in death penalty cases. By my count, Judge White dissented in approximately 11.6 percent of death penalty cases, in comparison of rates of 1.2-2.6 percent for judges that I nominated to the bench when governor. In my view, Judge White would not have been an appropriate choice for the federal district court, where his decisions alone could, in habeas cases, reverse the judgment of the entire Missouri Supreme Court.

Question (B): A Washington Post article of January 1, 2001, reports that your aides "now acknowledge that they initially spread the word about White to law enforcement groups." Is that an accurate quote and, if so, how is that consistent with your statement to the Senate of October 4, 1999, that law enforcement "decided to call our attention to Judge White's record in the criminal law?"

Answer: It is altogether possible, indeed likely, that my staff had contact with constituents that had an interest in Judge White's nomination. This is, however, perfectly normal, and fully consistent with my statement quoted above.

Question (C): What is the "personal political agenda" that you said in your Senate statement of October 4, 1999, that Judge White would have advanced as a federal judge?

Answer: My criticism of Judge White was based primarily upon his decisions in death penalty cases. My recollection is that the statement to which you refer addressed Judge White's views in the area of the rights of criminal defendants.

Question (D): You stated in your Senate statement of October 4, 1999, that Judge White has "written or joined in three times as many dissents in death penalty cases?" To what numbers are you referring?

Answer: By my count, Judge White dissented in approximately 11.6 percent of death penalty cases. In contrast, Judges that I nominated to the bench dissented in approximately 1.2–2.6 percent of death penalty cases.

Question (E): Is it reasonable for an African-American facing trial to seek recusal of a judge who five days before trial made highly inappropriate, derogatory comments about African-Americans? If so, is it fair to call Judge White "procriminal" for accepting the reasonableness of that argument?

Answer: While criminal defendants may advance many arguments in the range of "reasonableness," it is not, in my view, appropriate to reverse a criminal conviction where there is no finding that any alleged error would affect the outcome of the case.

Question (F): In your speech to the Claremont Institute, you said that funding for drug treatment "accommodates us at our lowest and least." Who or what are the "lowest and least"?

Answer: In my speech at the Claremont Institute, I was expressing the concern that our paramount message to America's youth must be that drug use is wrong. Of course, I agree that treatment must be part of a comprehensive approach to combating drug use. Such treatment, however, should not come at the expense of undermining the primary message.

Question (G): As a Senator on the Judiciary Committee last Congress, did you play any role or support the Committee's failure to hold hearings or act upon the 17 Circuit Court of Appeals nominees left pending in Committee at the end of the last Congress? Was it fair for the Judiciary Committee to keep 15 of those nominees pending—many of whom waited over a year—without even scheduling confirmation hearings?

Answer: Like all Senators on the Judiciary Committee, I was involved in reviewing judicial nominations. During that time, I believe that all of my actions were consistent with ensuring that nominees were given a full and fair review.

Question (H): At the beginning of the 107th Congress, President Clinton renominated eight appellate court nominees who had been left pending at the end of the last Congress. All eight were nominated for seats considered "judicial emergencies" by the Judicial Conference of the United States. Do you believe the Judiciary Committee should hold hearings on these eight who were renominated for "judicial emergencies" and that the Senate should vote up or down on their nominations?

Answer: It is the prerogative of both the Senate and the President to determine how best to proceed with these nominations. I will defer to their judgment on this matter.

Question (I): Congressman Conyers wrote you a letter on January 12, 2001, which he has made public, asking you 16 questions. Have you answered Congressman Conyers and if not do you intend to do so? If so, please attach a copy of your answers.

Answer: Congressman Conyers' letter, though written on January 12, was only received by me on January 17. After I have responded to the questions provided by members of the Senate Judiciary Committee, it is then my intent to turn to the questions posed by Congressman Conyers.

Responses of the Nominee to questions submitted by Senators Graham and Nelson

It has been reported that the Department of Justice Civil Rights Division is pursuing an investigation into allegations of discrimination in the November 7, 2000

election in Florida, including counties' use of voting devices which result in a significantly higher number of votes cast by certain minority groups being thrown out because of overvotes or undervotes; a situation in which a crowd of protesters stormed an election office in an effort to stop the counting of ballots, thereby potentially intimidating election officials; and allegations of police officers, in an effort to intimidate, placing road blocks in close proximity to polling places. What will be your commitment to continuing this investigation?

Question (A): Can you assure us that such an investigation will be completed in a timely manner? I would appreciate knowing within thirty days of you assuming the office of the Attorney General what will be the completion date for this investigation.

Question (B): If violations of the Voting Rights Act are identified, would you consider remedies such as these to be appropriate: to decertify all "punch-card" voting methods and other unreliable voting methods as acceptable voting methods under Florida law; to discontinue all voter purges of the voter registration rolls until the development of procedures to ensure uniform, non-discriminatory application of the law; to provide a mechanism for persons whose names do not appear on the list of registered voters at the polling place to vote in as timely a fashion as those whose names do appear on the list; or to adopt standards and implement training designed to insure that voting systems and procedures at polling places within their jurisdiction are equal, accurate and reliable, and are uniformly administered?

Question (C): If the independent United States Commission on Civil Rights does discover instances of voter disenfranchisement, will the Department of Justice expand its investigation into allegations of violations of Floridians' voting rights and aggressively prosecute violations of the Voting Rights Act?

Question (D): Based on what the Department of Justice will learn from this investigation of the 2000 election in Florida, what specific plan will you use to ensure that the discriminatory practices do not recur in future elections? What resources will you commit to ensure that this specific plan achieves its objective of avoiding discriminatory practices in future elections?

Answer: If confirmed as Attorney General, I will ensure that the allegations of vote irregularities connected with the recent election in Florida are fully investigated, and will take all appropriate steps to complete that investigation in a timely manner. In addition, I will work to ensure that the Congress is kept apprised of the progress of the investigation.

If violations of the Voting Rights Act are identified, I will consider all reasonably appropriate remedies. It would, however, be imprudent for me to comment on any specific remedy without the full learning of the nature of any specific violations which may be found and the various approaches to addressing those violations.

If confirmed, I will ensure that the Department of Justice takes all reasonable and appropriate steps necessary to investigate all credible allegations of vote irregularities, including any credible allegations raised by the United States Commission on Civil Rights.

Once the Department of Justice completes its investigation, I will be in a position to determine what specific steps are appropriate to address any irregularities discovered, to help ensure that such irregularities do not recur in the future, and to determine the appropriate level of resources to commit to the issue. Such determinations, however, cannot be made in advance of a thorough investigation.

Responses of the Nominee to questions submitted by Senator Schumer

ENVIRONMENTAL LAW

Question: What is your philosophy on enforcement of environmental laws?

Answer: I firmly believe that the federal government must play an important role in protecting the environment and our natural resources. If confirmed, I will see to it that federal laws protecting the environment are fully and faithfully enforced.

HATE CRIMES

On January 18, 2001, you said, in response to a question from Senator Schumer that you would fully enforce the Hate Crimes Statistics Act. This act, passed in 1990, requires the Justice Department to collect data on crimes which "manifest prejudice based on race, religion, sexual orientation, or ethnicity" from law enforcement agencies across the country and to publish an annual summary of the findings. In the 1994 crime bill, Congress expanded coverage of the act to require FBI

reporting on crimes based on “disability.” In the 106th Congress, legislation passed the floor of both the House and the Senate that would require FBI reporting on crimes based on “gender.” Unfortunately, it was not enacted into law.

Question: Would you be inclined to recommend that the Administration support adding gender to the categories in the Hate Crimes Statistics Act? If not, why?

Answer: Although I cannot comment on the details of the specific legislation, I agree that it is extremely important to take all reasonable and appropriate steps necessary to collect crime statistics. Further, should the referenced legislation be enacted into law, I assure you that if confirmed, I will fully and faithfully enforce that law.

Question: Will you fully enforce the Hate Crimes Sentencing Enhancement Act?

Answer: If confirmed, I will fully and fairly enforce all laws passed by Congress.

Question: If you believe as you said on January 18, 2001, that the Hate Crimes Prevention Act is constitutional, why did you oppose it as a Senator?

Answer: As I explained during the hearing, many laws that some might oppose based on public policy grounds, fully comport with the requirements of the Constitution. There is, in short, nothing inconsistent between voting against a law for policy reasons, but nonetheless fully agreeing that such a law is well within the bounds of Congress’s constitutional authority.

Question: Do you believe sexual orientation should be a category added to the federal hate crime law currently used to prosecute hate crimes based on race, religion, national origin and color, 18 USC Section 245? If so, why? Or, why not?

Answer: President Bush has indicated that he supports Senator Hatch’s hate crimes legislation. I support the President’s position on this issue.

Question: Do you believe gender should be a category added to the federal hate crime law currently used to prosecute hate crimes based on race, religion, national origin and color, 18 USC Section 245? If so, why? Or, why not?

Answer: President Bush has indicated that he supports Senator Hatch’s hate crimes legislation. I support the President’s position on this issue.

Question: Do you believe disability should be a category added to the federal hate crime law currently used to prosecute hate crimes based on race, religion, national origin and color, 18 USC Section 245? If so, why? Or, why not?

Answer: President Bush has indicated that he supports Senator Hatch’s hate crimes legislation. I support the President position on this issue.

Question: Under your leadership would the Department of Justice continue the important work of the U.S. Attorney Hate Crimes Working groups currently in place?

Answer: As the Governor of Missouri, I was proud to sign Missouri’s first hate crimes legislation. If confirmed, I will take all reasonable and appropriate steps to combat hate crimes at the federal level and will devote the necessary resources to do so.

Question: There are currently studies and training programs on how to identify, report and respond to hate violence as defined by the 1994 Hate Crimes Sentencing Enhancement Act. Will you continue these important outreach and training programs?

Answer: As the Governor of Missouri, I was proud to sign Missouri’s first hate crimes legislation. If confirmed, I will take all reasonable and appropriate steps to combat hate crimes at the federal level and will devote the necessary resources to do so.

Question: Under your leadership would the Department of Justice continue including “sexual orientation” as a category in the anti-bias programs developed by the Department of Justice or under contracts and grants provided by the DOJ?

Answer: As I explained during the hearing, if confirmed, sexual orientation will not be a factor in my hiring decisions. I am, however, not familiar with the details of the particular policy to which you refer.

GUN CONTROL

The United States has a serious problem with illegal firearms trafficking. This is clearly a federal issue, as demonstrated by the experience of my state of New York. New York streets are flooded with guns coming from southern states. For example, 1,685 guns traced to crime scenes in New York originated in Florida, Georgia, the Carolinas, and Virginia. As a candidate for Senate, you were quoted in the St. Louis-Post Dispatch as supporting stronger penalties for people who sell gun illegally as well as for stronger penalties for people who commit crimes with guns.

Question: Do you believe that the federal government should have a strong role in the prosecution of illegal firearm trafficking?

Answer: Yes.

Question: Is it your opinion that federal authority to prosecute illegal gun traffickers should be enhanced?

Answer: President Bush has made clear that the federal gun laws on the books should be fully and fairly enforced and has proposed additional, common-sense gun restrictions. I will support the President's position on this issue.

Question: Would you say that federal prosecutors should have at their disposal every available tool to prosecute illegal gun runners?

Answer: No. For example, as in all prosecutions, federal prosecutors should not be allowed to disregard the strictures of Due Process. But I do agree that prosecuting gun crimes should be a top priority of the Department of Justice.

Question: As a senator did you not oppose the addition of firearms offenses to the list of crimes that could be prosecuted under the federal RICO statute?

Answer: My position on this matter was based on by belief that the RICO statutes have, in some circumstances, been abused. Indeed, the ACLU has been very critical of RICO and has opposed its expansion.

Question: A 1999 analysis performed by my staff of crime gun tracing data showed that one percent of gun dealers were the source of 45 percent of crime guns. Moreover, a June 2000 study from the federal Bureau of Alcohol, Tobacco and Firearms, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* found that corrupt licensed gun dealers were associated with by far the highest mean number of illegally diverted firearms per investigation.

With these facts in mind do you favor measures that would crack down on such "bad apple" dealers?

Answer: Yes.

Question: Specifically, would you support criminal prosecution of licensed gun dealers who transfer a firearm "having reason to know" that such a firearm will be used to commit a crime of violence or a drug trafficking crime?

Answer: I believe that all federal gun laws should be fully and fairly enforced.

Question: Do you support steps that have been taken to reduce the number of federally licensed gun dealers from nearly a quarter of a million in 1992 to approximately 70,000 today?

Answer: I support the full and fair enforcement of all federal gun laws aimed at reducing gun crimes.

Question: Do you support the current concept of background checks for firearm purchasers and will you will work to maintain the effectiveness of the NICS.

Answer: Yes, I am committed to doing so.

Question: As you may be aware, the FBI has determined that in order to insure the effectiveness of the NICS, it is essential to maintain an audit log. The FBI has determined that records from NICS should be kept for six months to guarantee that the NICS is functioning. Are you planning to support the FBI's expertise in this matter?

Answer: I will fully consult with the experienced professionals of the FBI before making an assessment of the best approach to this issue.

Question: You may be aware that the National Rifle Association filed a lawsuit against the Department of Justice, *NRA v. Reno*, that would have required the FBI to immediately destroy records from NICS instead of allowing the audit log. The NRA's lawsuit failed. In a case like this, would you side with the FBI and defend the lawsuit?

Answer: It would be imprudent of me to comment on a specific lawsuit without the benefit of the FBI and Department of Justice's full learning on this case. Any decision that I make would be done only after full and fair consultation with the experts in this area.

Question: On July 21, 1998, you voted for an amendment offered by Senator Robert Smith from New Hampshire to the Justice Appropriations bill that would have required immediate destruction of any NICS records relating to an approved transfer. You have voted to undermine what the FBI maintains is an essential to successful operation of the NICS. How can we be sure that you will work with the FBI to maintain the integrity of the NICS when you have already sided with the gun lobby over the FBI?

Answer: As I explained during the hearing, if confirmed, I will be law-oriented. That means that I will fully and fairly enforce the law as enacted by Congress and signed by the President. My record as Missouri's attorney general attests to the fact

that this is a distinction that I fully recognize and adhere to. It further demonstrates my longstanding commitment to law enforcement.

Question: Do you support the current law requiring federally licensed firearm dealers to conduct background checks on firearm purchasers?

Answer: The President has indicated that he supports this law, and I support his position on this matter.

Question: What in your opinion is the purpose of the background check law?

Answer: The primary purpose of a background check is to prevent those individuals who have been barred by law from purchasing a firearm to purchase one.

Question: Are you aware that the Department of Justice has determined that 95% of background checks are completed within two hours?

Answer: I am not familiar with all the details of the Department of Justice's crime statistics.

Question: Are you aware that the Department of Justice has determined that of the remaining 5%, "22% of all gun buyers who are found to be prohibited persons are not found to be prohibited until more than 72 hours have passed."

Answer: I am not familiar with all the details of the Department of Justice's crime statistics.

Question: Why did you vote to reduce the time allowed to conduct background checks at gun shows, by all sellers, including licensed dealers, from the current three business days to 24 hours?

Answer: As with many laws, the need for health and safety regulation must be balanced against the rights of law abiding citizens. As a legislator, I believed that a 24-hour background check was the best balance to strike in this area. As Attorney General, I will enforce whatever laws Congress chooses to enact.

Question: Why would you vote to establish a weaker standard for licensed dealers selling at gun shows than dealers who are selling at gun stores?

Answer: As discussed above, as with many laws, the need for health and safety regulation must be balanced against the rights of law abiding citizens. As a legislator, I believed that a 24-hour background check was the best balance to strike in this area. As Attorney General, I will enforce whatever laws Congress chooses to enact.

Question: Are you aware that the FBI has estimated that under a 24-hour time frame, more than 17,000 people who had been stopped would have been sold firearms?

Answer: I am not familiar with all the details of the Department of Justice's crime statistics.

Question: The Assault Weapons bill bans the manufacture and importation of semi-automatic assault weapons and high-capacity magazines over 10 rounds as of September 13, 1994. That law is set to sunset on September 13, 2004. What plans do you have as the nation's top law enforcement officer to work to reauthorize that law?

Answer: The President has said that he would support reauthorization of the ban on assault weapons. I will support the President's position on this matter.

Question: On two occasions, July 28, 1998, and May 13, 1999, you voted against amendments offered by Senator Feinstein to ban the importation of high capacity magazines, those over 10 rounds. What is your rationale for opposing such a ban on the importation of high capacity magazines which can hold 20, 32 or even 100 rounds of ammunition.

Answer: As Attorney General, I will fully enforce our nation's gun laws. The President has said that he would support banning the importation of high-capacity ammunition magazines. I will support the President's position on this matter.

Question: Would you support legislation that allowed national carrying of concealed handguns?

Answer: The President has said that he would support legislation to allow active and retired law enforcement officers to carry concealed weapons across state lines, but that, beyond that, the issue is one for states to decide. I will support the President's position on this issue.

Question: As a rule, do you think we are a safer nation if more people are carrying concealed handguns?

Answer: The President has indicated that he believes that the Nation would be safer if certain individuals—active and retired law enforcement officers—were able to carry concealed weapons across state lines. Beyond that, it is up to individual states to decide the matter.

Question: As Governor of Missouri, you opposed legislation that would have allowed individuals to carry concealed handguns in your state, is that correct?

Answer: The Director of Public Safety, a cabinet appointee of the Governor, and the Superintendent of the Missouri Highway Patrol, also an appointee of the Governor, opposed the legislation. As Governor, I took no position on the legislation, which did not pass the General Assembly.

Question: In 1999, you supported an NRA backed referendum, Proposition B, to allow carrying concealed handguns in Missouri, is that correct?

Answer: Yes.

Question: In fact, you did a radio ad that according to the Associated Press “blanketed the Missouri airwaves” indicating your support for that measure, is that correct?

Answer: I did record a radio spot in favor of the referendum. I am not aware of the extent to which that radio spot received air time in the state.

Question: How did that radio ad come about?

Answer: Although I do not recall the specific details, my recollection is that supporters of the referendum approached me and asked me to record the radio spot.

Question: Were you aware of who funded the campaign to allow the carrying of concealed handguns in the state?

Answer: No. I was not aware of the details of which groups or individuals funded the referendum. My understanding, however, is that such information is publicly disclosed.

Question: Proposition B would have prevented felons and criminals convicted of violent crimes from carrying handguns. But as the system was created, it would have not only allowed, but could not prevent, other categories of criminals, like child molesters and stalkers, from obtaining a license to carry handguns in Missouri. How would Missouri have benefitted from a law that allowed child molesters and stalkers to carry handguns in your state.

Answer: My support for this initiative was predicated on the fact that federal law prohibits convicted felons and other prohibited persons from possessing firearms at all. Federal law obviously would pre-empt any state law that purported to permit felons to possess firearms. To the extent there were loopholes in Missouri law lowering the status of the two crimes you mention in your question, I was unaware of those provisions at the time.

NOMINATIONS

Question: Three months before you voted against Mr. Hormel to be Ambassador to Luxembourg, you joined with a unanimous Senate in approving him as Alternate Delegate to the United Nations General Assembly. What, if anything, did you learn about Mr. Hormel in those intervening three months? Did you speak with Mr. Hormel at any time in those three months? In what way, if at all, was “the totality of [Hormel’s] record” different at the time you voted against his nomination as Ambassador to Luxembourg from the time you voted to approve him as a delegate to the United Nations?

Answer: Like many other Senators, the standard that I applied for presidential nominees varied depending upon the office for which the nominee was nominated. I thus believed that while Mr. Hormel might serve adequately as an Alternate Delegate to the United Nations General Assembly, he would not, based on the totality of his record, have been an appropriate person to serve as Ambassador to Luxembourg.

SUBMISSIONS FOR THE RECORD
African American Republican Leadership Council
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Office of The Chairman
Alex-St. James

FOR IMMEDIATE RELEASE
January 18, 2001

CONTACT: Alex-St. James
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Statement of Alex-St. James
Chairman of The African American Republican Leadership Council (AARLC)
In Support of Hon. John D. Ashcroft
President-Elect George W. Bush, Attorney-General Designate

"Senator John D. Ashcroft is no racist."

Mr. Chairman, after careful study and thorough review of the 30-year record of public service of Senator John Ashcroft and based on his testament to this committee under Oath, on behalf of the African American Republican Leadership Council and in my own name, I declare our support of the distinguished Senator, John Ashcroft from the Great State of Missouri for Attorney-General of the United States of America **without reservation.**

Mr. Chairman, as an African American, I would be honored to have Senator John Ashcroft as our Attorney-General, and ask for your aye vote and the aye vote of the distinguished members of your Committee in favor of his nomination.

I am confident that an objective review of his record and his personal asserted emphatic declarations (leaving no room for doubt) to you and this committee of *his repudiation of racism and his personal primary belief, that the law is supreme, could but* give you and each distinguished member a clear conscience *but only* to vote in favor for his nomination.

Mr. Chairman, I ask that in the event due to scheduling and time limitations I am not able to testify in his behalf on behalf of the African American Republican Leadership Council, that my statement be inserted into the record.

Our support of Senator Ashcroft is one that required thorough review of his public service as well as an examination of “as it were” reading between the lines to determine any inconsistencies or potential for misjudgment of him by us in determining our support or rejection of his nomination.

Our support of Senator Ashcroft is not one of rubber stamping and just going along. It is based on the *facts* that provided us a preponderance of consistent actions, all in line with the specific duties as called for and of the Senator at that moment in time, irrespective of his personal beliefs.

Mr. Chairman, permit me to cut to the chase, as an African American I could find not one iota of evidence or the appearance of prejudice of Senator Ashcroft against people of color.

Instead, to the contrary his public service is replete with a plethora of decisions and actions that exemplified his deep conviction of the preeminent equality of all citizens of these United States, all endowed with inalienable rights.

I can confidently state that based on his record to date, Senator John Ashcroft is no racist, as he has been falsely labeled by others, not members of this august Committee. Hence, I beseech you not to deny this Great Nation the most qualified to date of any Attorney-General nominee, *a man that is duly ablest to discern the intrinsic difference from enacting legislation versus enforcing legislation enacted by the Senate.*

Interestingly, save *but* Judge Ronnie White, I suppose some might say that Senator Ashcroft is Pro-African Americans. After all he voted 26 out of 27 judicial nominees of African Americans. Well, yet for a few special interest African American groups, with a bone to pick, the Senator became a racist after the 26th judicial nominee. How convenient for them.

Where are the African Americans from Missouri that are protesting his nominations because he advanced by appointment the first African American woman to the St. Louis County Circuit Court?

Where are the African Americans from the Great State of Missouri, Mr. Chairman that oppose his nomination because the then Governor Ashcroft, by Executive Order, made their State one of the first states to recognize Dr. Martin Luther King Day, a national observance signed into law by President Ronald Reagan, who is recuperating as we speak. I pray for his speedy recover. We are all still fond of the Gipper.

Further, Mr. Chairman, where are those liberal special interest groups today that oppose Senator Ashcroft's nomination because he voted to confirm all save, *but* 15 of President Bill Clinton's nominees? Did they give the Senator the thumb's up when they got their nominees supported by him then?

Mr. Chairman, What is one to do, be darn if you support, or be darn if you support not?

Only God can divine ones thought.

Senator John Ashcroft the last time I looked remains human, and by default can only act based on his own discernment of matters as presented to him in a particular capacity, be it then Governor, former Senator or Attorney-General if so graced by the people of the United States with your confirmation. This is the man that our President-elect trusts to enforce the laws of this land. And as an African American I trust Senator John Ashcroft too. My confidence rests in his abilities to enforce the laws irrespective of his personal opinion as he has exemplified.

Mr. Chairman, were some in this Committee to vote against Senator Ashcroft, it is my opinion that it could be based on pressures from certain special interest groups with very narrowly jaundice political agendas, all with a bone to pick with the Senator.

Mr. Chairman, while our form of government allows for strong opposing opinions by all Americans, statements made under this pretext without impunity, still is contrary to a long-standing American tradition of fairness and deference in respect of what one says. Not all statements made in a free society are without repercussions.

I for one, believe that healthy discourse while welcome and necessary, must be tempered with sage wisdom to uplift and not smear and pull down, nor attempt to wound someone just to make a point. That's just not right. And the American people can see right through that. We are a fair people. Senator Ashcroft deserves no less. And I can take comfort as I know you will be just that. Fair.

Mr. Chairman, while I did not comment on other issues raised by some in opposition of Senator Ashcroft's nomination, permit me to insert in this statements additional preponderance of evidence that debunks the false caustic accusations against your former colleague.

As Missouri Attorney General, John Ashcroft did not allow his personal religious beliefs on abortion to prejudice his legal analysis. [AG Opinion # 5, 10/22/81(1981 WL 154492)], [AG Opinion # 127, 9/23/80 (1980 WL 115450)].

As Missouri Attorney General, John Ashcroft did not let his personal beliefs on religion obfuscate his view of the law on the separation of church and state. [AG Opinion #102, 5/16/77(1977 WL 33542)] [AG Opinion #148, 8/7/79(1979 WL 37837)].

As Missouri Attorney General, John Ashcroft did not allow his personal opinions and beliefs on the Second Amendment vis-à-vis the enforcement of firearms laws. [AG Opinion # 50, 2/27/77(1977 WL 33524)];

Mr. Chairman, as the Romans on whose model this great institution is based would retort during debates, "*Festina Lente*" that is, make haste slowly. Make haste slowly, as you listen to all those that today would impute Senator John Ashcroft ability to make law vs enforcement of the law.

Look at their hands. And if you can with a clear conscience say that this man would serve his beloved nation well to the best of his ability and enforce the laws of this land as he must, then you must vote your conscience, and not necessarily what some constituents would like.

After all, Senators, John Ashcroft, (pardon me I mean no disrespect Senator Ashcroft), has come home one last time, to ask of his former colleagues, your blessings, to assume a most important position in our nation.

I believe that you will do right by him.

Do not deny an excellent man this opportunity to serve his nation.

Do not deny him this opportunity because others have called him racist.

Senator John Ashcroft is no racist.

Submitted Alex-St. James, Chairman of the African American Republican Leadership Council.

Thank you Mr. Chairman.



Agudath
Israel
of America
אגודת ישראל באמריקה

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Abba Cohen
Director and Counsel

January 12, 2001

The Honorable Patrick Leahy
United States Senate
Washington, DC 20510-4502

Dear Senator Leahy:

Re: Nomination of John Ashcroft

You and the other members of the Senate Judiciary Committee will soon deliberate upon the nomination of John Ashcroft to be Attorney General of the United States. Agudath Israel of America, a 79-year-old Orthodox Jewish organization, urges your favorable consideration of this important nomination.

We know John Ashcroft to be a man of honesty and integrity – not only in regard to his personal and professional dealings, but also in a broader, more profound sense. There is no dichotomy between his private and public personae. He has been principled and consistent in both word and deed, and has stressed values and ideals even at the expense of political gamesmanship or personal popularity. The cause of justice will be served by such honesty and integrity – indeed, by such courage – and the interests of all Americans will be advanced by John Ashcroft as Attorney General.

We recognize that there are those who claim not to be “comfortable” with some of Senator Ashcroft’s policy stances and fear that his “personal ideologies” will interfere with proper law enforcement. But applying such an ideological litmus test to an experienced and respected public servant is patently unfair. It is especially unfair in the context of an individual who has already served as a state attorney general, and whose tenure in that post was marked by extraordinary competence and the highest standards of professionalism in the enforcement of the law.

It has been quite troubling, frankly, to see John Ashcroft portrayed in certain circles as an intolerant extremist. This portrayal is a grotesque caricature of the man we know. During Senator Ashcroft’s years in Washington, Agudath Israel’s national organizational structure – through its headquarters in New York as its Washington Office – had the opportunity to observe his qualities first-hand and to work with him closely on various matters.

While he certainly possesses strong views and convictions, and while we have disagreed with him on certain issues, we categorically reject the absurd notion, the libelous notion, that he is in any way prejudiced against social and religious minorities.

Even more telling, our Missouri constituents – some of whom have known John Ashcroft for decades – hold him in the highest personal and professional regard. We have

The Honorable Patrick Leahy
January 12, 2001
Page Two

heard testimonial upon testimonial from Agudath Israel members in Missouri reflecting their profound admiration and respect, deep affection and fondness, for John Ashcroft – as a man, as a leader and as an American. Please take note of the enclosed letter from Rabbi Menachem Greenblatt, spiritual leader of Agudath Israel of St. Louis, which expresses the warmth and esteem our members in Missouri have for the Senator.

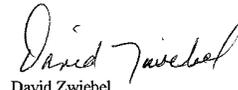
As Orthodox Jews, we are a minority within a minority, and we have an especially great stake in a society that displays tolerance and provides equal opportunity to all its citizens. Our experiences with John Ashcroft, both at the national and local levels, persuade us that he is a person who possesses a profound appreciation and deep respect for the inherent dignity and value of every human being – irrespective of race or religion.

Agudath Israel believes that John Ashcroft will be an outstanding custodian of the law in the post of Attorney General of the United States. We urge you to reject the voices of negativity that seek to portray him as someone, and something he is not. We urge you to confirm his nomination.

Thank you for considering our views.

Sincerely yours,


Abba Cohen
Director and Counsel
Washington Office


David Zwiebel
Executive Vice President
Government and Public Affairs

DZ,AC/asp
Enclosure



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Summer Camp
Scholarship Fund
*
Rabbi Shmuel Haber
Memorial Type Library

January 11, 2000

Mr. Abba Cohen
Director and Counsel
Agudath Israel of America Washington Office
1730 Rhode Island Ave.
Washington, DC, 20336

Dear Mr. Cohen,

Agudath Israel of America has always been the address to turn to when our community has needed to express itself to the highest levels of government. I trust that you will share our urgent concerns regarding the opposition to Senator John Ashcroft's nomination to the position of Attorney General with the Senate Judiciary Committee.

As a leader within my Jewish community in St. Louis, I feel strongly that Mr. Ashcroft would serve well in the proposed position that President-elect Bush deems him worthy of with great dedication and responsibility. In terms of integrity and credibility, he has proven throughout his two terms as Attorney General of the state of Missouri, two terms as Governor and one term as Senator that his responsiveness to his constituent's needs is supreme on his agenda. He has always provided an open door policy wherein we were able to discuss issues of concern. He has consistently been both sympathetic and empathetic to the concerns of members of our community.

On a local level, his assistance has been of vital importance in implementing the "Eruv", an amenity which has vastly improved the quality of life for Sabbath observant Jews. His concern for the needs of the Kosher consumer resulted in the uninterrupted service of "Shechita" or ritual slaughter of livestock on the local level. The well being of our brethren in Israel is of extreme concern to our community. To that end, he has demonstrated his unwavering support. Mr. Ashcroft petitioned Chairman Arafat of the PLO and President Assad of Syria and cosponsored legislation regarding the MIA situation in Israel.

The list goes on and on proving his outstanding integrity, honesty, and commitment to his ideals. As far as the baseless allegations of racism on his part, let me assure you that as a member of a minority group in our country I, along with other orthodox Jews, have found him to be most respectful of us and clear of any such accusations.



Agudas Israel of St. Louis

8202 Deimar Blvd, University City, Mo. 63124

Tel: (314) 863-8978

Fax: (314) 863-0820

Menachem Greenblatt
Rabbi

Byron Cohen
President

Please consider these views and opinions regarding John Ashcroft as you formulate and articulate your feelings on this matter.

Thank you.

Sincerely,

Rabbi Menachem Greenblatt

MG:js

NS'hei Aguda
Women's Organization
Pirchei Youth Groups
Tehillim Cooperative
Yeshiva U'Maarivim
Youth Classes
Free Loan Society
Tutorial Service
Nafra Memorials
Evening Beth Midrash
Summer Seed Program
Varchel Kallah
Adult Education
Daf Yomi
Jonathan & Louise Bortz
Summer Camp
Scholarship Fund
Rabbi Shmuel Heber
Memorial Tape Library

until it's over
AIDS ACTION

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee

Senator Orrin G. Hatch
Ranking Member, Senate Judiciary Committee
Dirksen Senate Office Building, Room 224
Washington, DC 20510

January 19, 2001

Senators,

AIDS Action, the nation's only organization solely dedicated to responsible federal policy for improved HIV/AIDS care and services, vigorous medical research and effective prevention, staunchly opposes President-elect George W. Bush's nomination of John Ashcroft as U.S. Attorney General.

Senator Ashcroft's record on the issue of HIV/AIDS is cause for grave concern and raises significant questions about his willingness as Attorney General to enforce the laws and policies, such as the Americans with Disabilities Act, which provide essential protections and benefits for people living with HIV/AIDS and their families. Both his actions – as well as his inaction – in the Senate and as Governor of Missouri indicate that his confirmation as Attorney General would have negative consequences for people living with or at risk for HIV/AIDS.

Throughout his years in the Senate, Ashcroft has consistently opposed legislation that benefits people with HIV/AIDS: He voted against guaranteeing Medicaid Supplemental Security Income benefits to people living with HIV/AIDS; in favor of cutting off funding to local gay community centers that provide care to men, women, and children with HIV/AIDS; in favor of capping Ryan White CARE Act Reauthorization funding through FY2000 at FY1995 levels; and against guaranteeing AIDS drug safety. Senator Ashcroft's lack of commitment to this public health crisis is shown as much through his inactions as through his actions; despite wide, bipartisan support, he declined to co-sponsor Ryan White CARE Act Reauthorization bills in both 1996 and 2000.

Senator Ashcroft's insensitivity towards the gay, lesbian, bisexual, and transgendered (GLBT) community is cause for particular concern. His stated belief that the gay "lifestyle" leads to

“early death” shows not only a disheartening lack of empathy for the GLBT community, it demonstrates a fundamental lack of understanding about HIV/AIDS.

And although objective, scientific studies have clearly and repeatedly shown that needle exchange programs reduce the spread of HIV without encouraging increased drug use, Senator Ashcroft has a long history of opposing these effective programs. He has said that needle exchange was “like arguing that providing bulletproof vests to bank robbers would make it safer for them to rob banks.” In the Senate, Ashcroft voted to prohibit federal funding of needle exchange programs and co-sponsored anti-needle exchange legislation. As Governor, Ashcroft ordered the Missouri Health Department to stop any consideration of a needle exchange program. At the same time, Ashcroft denied assistance to individuals at risk for HIV by voting to cut millions of dollars from drug and alcohol abuse treatment programs.

AIDS Action believes that Ashcroft’s confirmation would be disastrous for people living with or at risk for HIV/AIDS, and that his actions as Attorney General would lead to a further increase in the spread of HIV/AIDS in the United States and around the world.

The United States cannot afford to have its national health and security further jeopardized by the global HIV/AIDS pandemic; therefore, on behalf of all people affected by HIV/AIDS and over 3,200 community-based organizations that serve them, AIDS Action urges all Members of the Senate to vote against confirmation of Senator John Ashcroft as U.S. Attorney General.

Sincerely,



Claudia French
Executive Director



January 15, 2001

The Honorable Patrick J. Leahy
 Senate Judiciary Committee
 U. S. Senate
 433 Russell Senate Office Building
 Washington, D. C. 20510

Attention: Chief of Staff

Re: Educational Materials Related to Nomination Hearings: Senator John Ashcroft

Dear Senator Leahy:

We have learned that the most active participants in the attack network opposing Senator Ashcroft's nomination are members of the pro-drug legalization movement. (See Exhibit III) We hope the materials we are providing will be helpful to committee members. This letter and all exhibits are being hand delivered to each member of the Senate Judiciary Committee.

The letter is written on behalf of every child in America and, indeed the world. Our intent is to present a preview of those who support drug legalization. They, of course, oppose the nomination of Senator John Ashcroft. Other information included will provide a preview of those of us who believe **we must have a strong anti-drug leader in the office of Attorney General.**

Though we are aware there are other issues facing the candidate for attorney general, it is our unified belief that if we can reduce the risk of drugs in childrens' lives, we can reduce school drop-outs, teen pregnancy, the spread of diseases, including AIDS, juvenile and adult crime, and many other maladies harming our country.

Our exhibits begin on a very positive note with a copy of our Amicus Brief (Exhibit I) which we recently filed with the United States Supreme Court in the case of:

Exhibit I **United States, Petitioner**
vs
Cannabis Buyers' Cooperative, etal, Respondent
No. 00-151

Our brief addresses the question, "Whether crude marijuana is a safe and effective medicine that should be available for medical purposes and be removed from Schedule I as a controlled dangerous substance?"

Our position is scientifically based to prove that it should not be removed from Schedule I and supports the position that only the Food and Drug Administration has the authority to approve medicines. It is not the role of voters.

The Amicus is most significant because it represents truly the voice of the people, including parents, grandparents, law enforcement, educators, physicians, and others from the grassroots who have spent over 22 years trying to fight back the tide of drugs and to stop the efforts of those who would legalize all drugs. The full list of Amici appears on Page 7 of our brief; however, we have filed it on behalf of everyone who cares about

children and their future. We would have had many more signers if we had more time; however, the brief was prepared and delivered in less than three weeks.

Exhibit II (Copy of US Court of Appeals Case No. 92-1168, decided February 18, 1994)

The following case is presented to show you how persistent the drug legalizers are. It doesn't matter to them that the courts have turned them down time after time, they have simply gone on to work another avenue toward legalization via state initiatives--as demonstrated in our Exhibit VI, "High On A Lie."

**Alliance for Cannabis Therapeutics, Drug Policy Foundation, National
Organization for the Reform of Marijuana Laws, NORML, Petitioner
vs
Drug Enforcement Administration, Respondent**

In this case, a three-judge panel including Mikva, Chief Judge, Buckley and Ginsburg, Circuit Judges, you will see, on the final page, the judges' comments about the witnesses that, "Only one had enough knowledge to discuss the technicalities involved. Eventually, each one admitted he was basing his opinion on anecdotal evidence, on stories he heard from patients, and on his impressions about the drug." For the foregoing reasons, the petitions for review are: *Denied*.

Exhibit III

This is an e-mail message alerting NORML's pro-drug colleagues to oppose Senator Ashcroft. It was sent out by Kevin Zeese, former director of the National Organization for the Reform of Marijuana Laws (NORML). Note toward the bottom of the first page, the message:

"To friends of Cal NORML" (California /NORML), Line 7 counsels their members, "The best approach may be not to emphasize Ashcroft's views on the drug war, but rather his opposition to abortion, civil rights, and gun control."

Exhibit IV

Though this exhibit has an early date, we have included it because it came from two of your former colleagues, one a Republican and one a Democrat (Representative Robin Beard and Representative Billie Lee Evans) when we first began our anti-drug activities. The letter was in response to our request to remove one of NORML's Board Members from the National Advisory Board of the National Institutes on Drug Abuse. Please read it all if you have time. If you cannot, simply read the first paragraph on Page 2.

The second paragraph mentions a \$67,000 donation to NORML from the drug paraphernalia industry. See our Exhibit 7 for a copy of the article from the drug glamorizing magazine **High Times**.

Exhibit V

Letter from Dr. Carlton Turner, former Director, Marijuana Research Project at the University of Mississippi and later Drug Policy Advisor to President Reagan. Dr. Turner is considered one of the world's experts on marijuana. His letter simply validates our position that smoked marijuana is "ineffective for medicinal purposes."

Exhibit VI

Reader's Digest article, "High On A Lie" exposing the underwriters of the drug legalization movement. This is must reading for all members since they need to be aware Soros' et al are likely contributors to campaigns.

Exhibit VII (2 articles)

High Times Magazine article detailing the \$67,000 donation from the drug paraphernalia industry to the National Organization for the Reform of Marijuana Laws (NORML) (See Exhibit IV, P. 2, paragraph 2.)

Article from Insight Magazine titled, "Should 'safer smoking' kits be distributed to crack users?" demonstrates the legalizers' idea of 'harm reduction.' The kits are provided by the Drug Policy Foundation which recently merged with the Lindesmith Center. The Lindesmith Center is funded by George Soros. (See Exhibit VI, Reader's Digest article.)

The legalizers have been promoting the "harm reduction" message (instead of clear "no use") for the last several years. Crime and youth drug use rose dramatically as harm reduction-based drug education taught children how to use drugs "responsibly."

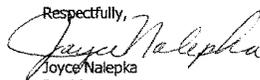
The harm reduction philosophy has crept into very important agencies. For instance, when I called the Department of Education to express concern about what I perceived to be a school curriculum that was "soft on drugs," I received a letter back chastising me for mentioning it to a member of Congress and telling me I should know that the program had been evaluated by Matea Falco of Drug Strategies. Matea has, in my opinion, been a colleague of the legalizers for over 15 years. We know the DOE is not the AG's responsibility but tell the story to demonstrate we have a long way to go to correct all these problems.

Currently, we are monitoring a situation in the Justice Department involving a group called the Santo Daime "church" that is challenging Justice to allow them to use an LSD-like substance in their religious services. Justice lawyers have actually met with them on several occasions, one of them telling me he thought it might be worse if they told them "No" because they might turn around and sue Justice." I told him there was only one answer and that was "No." and that I thought that was the job of Justice lawyers to defend against these cases. The substance is a Schedule I drug. The decision still has not been made as I understand it.

Exhibit VIII

The final exhibit is a worn copy of an article from an Emory University student newspaper quoting NORML Founder, Keith Stroup, promising from the beginning to get marijuana rescheduled medically so they could use the issue as "a red herring to give marijuana a good name."

We are certain the most active participants in the stealth attack network opposing Senator Ashcroft's nomination are the drug legalizers. This is proof enough they are afraid Senator Ashcroft will stifle their campaign to legalize drugs. We hope the educational information we have provided will be of assistance to you.

Respectfully,

 Joyce Nalepka
 President

Drug-Free Kids: America's Challenge
 America Cares

DRUG TEST

Most Americans Can't Pass This Drug Test

Let's face it. Most information on America's drug fight is limited to sound bites. Drug users and dealers are made to look like victims and the police and the system are under constant criticism. The facts are harder to discover.

1. What federal criminal is least likely to serve time in prison?
 - A. tax law violator B. motor carrier violator C. liquor law violator D. heroin, cocaine or marijuana possessor
2. What is the average amount of marijuana per inmate in a federal drug trafficking case?
 - A. 22 lbs, B. 10 lbs, C. 120 lbs, D. 3.5 Tons
3. What proportion of all inmates are blacks serving time for federal crack possession?
 - A. 25% B. 50% C. 5% D. 0.06%
4. From 1960 to 1980, the incarceration rate for drugs _____?
 - A. Increased 125% B. Increased 79% C. Stayed the same D. Declined 374%
5. Tougher drug incarceration policy from 1980-1995 has been associated with?
 - A. Murder, violent crime, and property crime declines and drug use declines; B. Murder, violent crime, and property crime increase and drug use increase C. Murder rate decline; violent and property crime decline, drug use increase. D. Murder and violent crime increase, property crime and drug use stable.
6. What proportion of the total state and local government budget is for drug control?
 - A. 45% B. 15% C. 1.5% D. 33%
7. What % of prisoners are non-violent, first time drug offenders and what % are non-violent, first time marijuana offenders?
 - A. 45% drugs/25% marijuana B. 33% drugs/12% marijuana C. 1.3% drugs/0.1% marijuana 63% drugs/30% marijuana
8. In 1990, the federal drug enforcement administration's (DEA) domestic operations cost taxpayers \$ _____ million
 - A. \$325 million B. \$457 million C. \$562 million D. DEA posted a \$22 million surplus.
9. From 1989-1993, the federal treatment budget increased 104% and the number of persons served with drug treatment ____?
 - A. Increased 250% B. Increased 127% C. Decreased 9% D. Stayed the same
10. The race of those committed to federal prison for drug possession was _____?
 - A. Twice as many blacks as whites B. Equal among races C. Twice as many whites as blacks D. Four times as many whites as blacks E. Four times as many blacks as whites
11. The number one referral source for residential and outpatient drug treatment is?
 - A. Self referrals B. Family referrals, C. Criminal justice referrals D. Medical and other

ANSWERS: 1. D. Drug possessors also serve the least prison time. 2. D 3. D 4. D 5. A 6. C – half the states spent under 1% 7. C 8. D – with forfeiture, DEA had a profit 9. C 10. D 11. C

From: Drug Enforcement Works, 1997, R. E. Peterson, O'Grady Press
R. E. Peterson was Drug Czar for Governor John Enzler.

Subj: FYI: Legalizers try to stop Ashcroft nomination using masquerade
Date: 1/10/01 9:08:33 PM Pacific Standard Time
From: GABRIEL364@aol.com
To: GABRIEL364@aol.com

In a message dated 1/10/01 11:04:15 AM Pacific Standard Time, John English forwarded the following information picked up a pro legalization site.
masquerade

<< Subj: Sandra and Senators Fw: DPFCA: Alert: Stop Ashcroft nomination
Date: 1/10/01 11:04:15 AM Pacific Standard Time
From: (John E. English)
To: gabriel364@aol.com (Sandra Bennett)
CC: oregon@gsmith.senate.gov (Senator Gordon Smith),
senator@wyden.senate.gov (Senator Ron Wyden)

Senators Wyden and Smith,

I copied the note below from a druggies' newsgroup on the internet.

Please note the fact that the drug legalizers are recommending below - to oppose Ashcroft's nomination but to claim it is because of gun control, abortion and civil rights, not their true motivation - legalization of drugs.

Sincerely John E. English
For Our Children's Children

--- Original Message ---

From: "Dale Gieringer" <canoml@igc.org>
To: <cannabiscoop@aol.com>; <AMMA-Talk@drugsense.org>
Sent: Wednesday, January 10, 2001 10:23 AM
Subject: AMMA: DPFCA: Alert: Stop Ashcroft nomination

> To friends of Cal NORML:
> Californians are urged to join the nationwide lobbying effort
> against the nomination of John Ashcroft for Attorney General by
> expressing their views to Sen. Dianne Feinstein.
> As the following post explains, Ashcroft's views on marijuana
> and drug policy are Neanderthal. There is probably no hope of medical
> marijuana reform if he takes office. Of course, Feinstein's views >
> aren't much better. The best approach may be not to emphasize > Ashcroft's
> views on the drug war, but rather his opposition to
> abortion, civil rights, and gun control, all of which Feinstein
> supports.
> We are targeting Sen. Feinstein because she is on the Senate
> Judiciary Committee, which will be holding hearings on Ashcroft's
> nomination. However, it wouldn't hurt to contact Sen. Boxer as well.
>
> Sen Dianne Feinstein, 202-224-3841; FAX 202-228-3954
> 331 Hart Office Bldg, Wash DC 20510
> senator@feinstein.senate.gov
> Sen Barbara Boxer, 202-224-3553; FAX 202-228-1338
> 112 Hart Office Bldg, Wash DC 20510
> senator@boxer.senate.gov



>
> Dale Gieringer Cal NORML
> >Date: Wed, 10 Jan 2001 00:45:58 -0500
> >From: Kevin Zeese <keveese@laser.net>
> >Organization: Common Sense
> >To: ARO <ARO@drugsense.org>
> >Subject: ARO: Ashcroft nomination
> >Sender: owner-arc@drugsense.org
> >Reply-To: Kevin Zeese <keveese@laser.net>
> >Organization: DrugSense <http://www.drugsense.org/>
> >
> >PLEASE DISTRIBUTE WIDELY TO GROUPS AND INDIVIDUALS WHO YOU THINK WILL BE
> >INTERESTED
> >
> >Friends:
> >
> >A broad coalition of organizations from various human rights, civil
> >rights, woman's rights, criminal justice, drug policy, gay advocacy and
> >environmental organizations has come together to oppose the nomination
> >of John Ashcroft as Attorney General. It is the largest coalition to
> >ever oppose an executive branch nomination and has come together more
> >quickly than the coalition that successfully opposed the Bork nomination
> >to the Supreme Court. The coalition held its first public event today -
> >in attendance were over three dozen organizations. The event drew 20
> >television cameras and numerous other media. At an organizing meeting
> >later in the day over 80 leading Washington operatives came together to
> >strategize to stop this nomination. They represent a grass roots base of
> >millions of people.
> >
> >I am writing to you in my role as a director of the Common Sense
> >Legislative Group - the 501(c)(4) sister organization to Common Sense
> >for Drug Policy. I have taken a leave of absence from Common Sense for
> >at least the next two weeks to work for the Legislative Group and the
> >Stop Ashcroft Coalition full-time. I hope that gives you a sense how
> >important we view this effort.
> >
> >As you know Senator Ashcroft is a grave danger to sensible drug policy
> >as well as other important issues. He favors a policy based almost
> >solely on interdiction and law enforcement. He has advocated cutting
> >treatment and prevention budgets to expand drug war strategies (even
> >though two of every three federal dollars already go to law enforcement).
> >He opposes needle exchange, opposes reforms to stop racial profiling,
> >favors mandatory sentencing, opposes medical marijuana, favors
> >prosecution for web links to certain drug advocacy sites and has favored
> >secret searches (where police can conduct warrantless searches without
> >telling the property owner they did so).
> >
> >It is likely that the hearings will start next week under the
> >Chairmanship of Patrick J. Leahy (D-VT) and will conclude under the
> >Chairmanship of Orrin G. Hatch (R-UT) after President-elect Bush is
> >inaugurated. The decision on this nomination could be made in the next
> >two to three weeks so prompt action is necessary.
> >
> >Stopping this nomination will be an uphill battle, but stopping it is
> >possible. It will take an intensive focus on energizing the grass roots
> >base of many organizations from many different issue areas including
> >drug policy reform and influencing the media in their coverage of

> >Senator Ashcroft.
 > >
 > >While you should contact your senators, the initial focus is on the
 > >Senate Judiciary Committee. The current members of this committee
 > >include:
 > >
 > >Republicans
 > >Orin G. Hatch (UT)
 > >Strom Thurmond (SC)
 > >Charles E. Grassley (IA)
 > >Arlen Specter (PA)
 > >Jon Kyl (AZ)
 > >Jeff Sessions(AL)
 > >Robert C. Smith (NH)
 > >John Ashcroft (MO) and Spence Abraham (MI) were defeated in the recent
 > >election.
 > >
 > >Democrats
 > >Patrick J. Leahy (VT)
 > >Edward M. Kennedy (MA)
 > >Joseph R. Biden (DE)
 > >Herb Kohl (WI)
 > >Dianne Feinstein (CA)
 > >Russell D. Feingold (WI)
 > >Robert G. Torricelli (NJ)
 > >Charles E. Schumer (NY)
 > >
 > >The make-up of this committee will change as the new Senate takes
 > >effect. I will update the membership as this information becomes
 > >available.
 > >
 > >While all of these Senators need to be contacted members of the
 > >committee that need particular attention through letters, phone calls,
 > >emails and faxes, especially from people from their states, include:
 > >
 > >Arlen Specter (PA)
 > >Mike DeWine (OH)
 > >Dianne Feinstein (CA)
 > >Herb Kohl (WI)
 > >Russell Feingold (WI)
 > >Robert Torricelli (NJ)
 > >
 > >Stopping this nomination is very important to our making progress. I
 > >urge you to take action today and urge your colleagues, members,
 > >activists and friends to join you in doing so.
 > >
 > >If anyone would like additional information on this matter, please
 > >contact me at kevzeese@laser.net.
 > >
 > >Kevin
 > >
 > >
 > >
 > >Dale Gieringer (415) 563-5858 // canoml@igc.org
 > >.215-R Market St. #278, San Francisco CA 94114 >>

House of Representatives

Washington, D.C. 20515

September 7, 1979

Dr. William Pollin
Director
NIDA
5600 Fishers Lane
Rockville, Md 20857

Dear Dr. Pollin:

At a hearing of the House Select Committee on Narcotics Abuse and Control on July 17, 1979, Dr. Norman Zinberg, who testified as a witness, was questioned by us not only about his general views on marijuana and drug use but on his role as an advisor to NIDA and as a member of the advisory board of NORML. He was also questioned about his knowledge of NORML's finances.

On reviewing the record, we are more than ever convinced that Dr. Zinberg's intimate and long time association with NORML completely disqualifies him to serve NIDA in an advisory capacity or, for that matter, any other capacity. We also feel that Dr. Zinberg's pretense that he knew nothing about NORML's finances was, at best, evasive and, more probably, a deliberate untruth.

First of all, let us establish what NORML is really about. For a long time NORML maintained the pretense that it was an educational organization committed to the reform of the marijuana laws and that it did not seek to legalize marijuana but simply to decriminalize the possession of small quantities for personal use. Today its leaders no longer trouble to maintain such a pretense. The Atlanta Journal Constitution of December 29, 1978 quoted Keith Stroup, the former executive director of NORML and today chairman of its board of directors, as follows:

It's time we finally took the honest step to declare to the world: We want legal marijuana...It may hurt a little, but it's the price we have to pay for intellectual honesty... The right to use drugs or not to use them is part of the basic right to privacy we hold dear in our system of American government.

In February of this year, Stroup told the students of Emory University,

"Next, we're going to decriminalize the dealers and smugglers, because, after all, they're not criminals either."

> So there we are: NORML not only stands for the legalization of marijuana but for the ultimate legalization of all drug use. But it is not just a matter of having some wrongheaded convictions about the absolute right of the individual to use whatever drugs his fancy turns him to. By every meaningful standard, NORML has to be considered a militant organizational arm of the drug culture in this country, working in close collusion with the paraphernalia industry, the drug culture magazines and, to a certain extent, even the traffickers. <

The law firm of which Keith Stroup has become a member is specializing in the defense of indicted traffickers, and Stroup has arranged for another sizable chunk of income as Washington counsel for the paraphernalia industry. There is public evidence that NORML receives the bulk of its \$530,000 annual budget from sources like High Times and paraphernalia dealers. (June, 1978, High Times Magazine reported \$67,000 contribution to NORML from a fundraiser.) Among other things, the publisher of High Times (readership 4 million) has stated that he has placed the ownership of the magazine in a "charitable" trust and has arranged to turn over 50% of its profits to NORML (Journal of the Addiction Research Foundation, Feb. 1, 1977.)

As we have indicated above, we find it unbelievable that Dr. Zinberg is unaware of NORML's major sources of income. Actually, we have it on eyewitness authority that Dr. Zinberg was present on the platform at the 1975 NORML conference when it was announced that High Times was contributing \$100,000 to NORML to compensate for the slack in their finances caused by the cutback in support from the Playboy Foundation. The conference participants applauded wildly when they received this news.

After pleading innocent of any knowledge about NORML's income, Dr. Zinberg then turned to the argument that it didn't really matter. "If I understand you correctly," he said in response to Mr. Evans, "you are suggesting that because Harvard accepts money from South African interests which promote apartheid, I should quit Harvard." He insisted that this was an exact analogy. In reality, there is no analogy at all. If Harvard University were to receive 90% of its support from the South African government, Dr. Zinberg, who apparently believes in civil rights, would have to give very serious consideration, indeed, to whether or not he should continue at Harvard because, automatically, the question would be posed as to the motives of the South African government and of the Harvard trustees.

We feel, too, that Dr. Zinberg was less than candid when he told the committee that he did not approve of High Times. Actually, Dr. Zinberg is on record as telling the Christian Science Monitor that he thought High Times was performing a very useful function.

But let us come now to Dr. Zinberg's personal views, as he has expressed them in articles and interviews and reports...In the August, 1976 issue of High Times, Dr. Zinberg made the following statement in response to a question by the interviewer:

"The legal control of drugs disrupts the social fabric, ruins parent-child relationships and labels many people deviant..."

Asked specifically about heroin and morphine "chipping," (i.e., using small amounts below the level at which addiction takes over) Dr. Zinberg said:

"I can't be specific, but now that I've interviewed a great many chippers, it's hard for me to feel that it's bad for them...In 1964, I stumbled on a group of doctors who were chippers...One doctor had been chipping for a number of years; in fact, he is still doing it 10 years later. He uses morphine four times a day--but never on weekends and never on vacations. He never has withdrawal syndrome. And he says that he takes one shot (a quarter grain of morphine) for his practice, one shot for his mistress one shot for his family and one shot to go to sleep at night...He's at the furthest limit of chipping, but I think he is a chipper. He feels better. It doesn't interfere with his function--far from it. He feels that it enhances his function, his work as a physician, his sexual capacities."

All of which makes heroin or morphine chipping sound like a very safe and very pleasurable habit.

The philosophy outlined in the paragraphs quoted above found its most damaging expression in the study report produced a year ago by the Liaison Task Panel on Psychoactive Drug Use and Misuse of the President's Commission on Mental Health--of which Dr. Zinberg was the chairman. Speaking about the decriminalization of marijuana, the report said: "When this goal is more fully implemented, and if the present trend toward responsible use of marijuana continues, then policy options should be developed to provide taxation, regulation and control of marijuana." Dr. Zinberg did not deny this, but he said he thought this might be an option 10 or 15 years down the line.

On the subject of drug education--which is supposed to be one of NIDA's primary concerns--Dr. Zinberg's panel said the following:

The task panel recommends that drug education and prevention strategies be aimed at the avoidance of

the destructive patterns of psychoactive drug use, and that an immediate cessation be imposed on the development of materials and programs aimed exclusively at prevention of all use.

We think we have made a sufficiently strong case in the hearing record and in this letter to warrant Dr. Zinberg's immediate resignation as an advisor to NIDA. We feel very strongly that, in serving as an advisor to both NIDA and NORML, Dr. Zinberg is involved in a serious conflict of interest--not in the narrow legal or fiscal sense, but in a more profound moral sense. NIDA's entire justification is that it is an instrument of the U.S. Government designed to discourage drug use by conducting research and education programs and by other means. Dr. Zinberg and his colleagues of NORML and his friends at High Times are completely opposed to any educational efforts and believe that the American Constitution demands that we let the drug culture take over this country.

We see no way in which this conflict of interest can be resolved other than by Dr. Zinberg's resignation from NIDA. If this resignation is not forthcoming, we intend to propose hearings at an early date designed to probe the entire relationship between NORML and High Times and the paraphernalia industry on the one hand, and, on other hand, between NORML and Dr. Zinberg and the other professionals who share his views and who have, in some mysterious way, risen to top positions in what is supposed to be the Federal drug control bureaucracy.

We look forward to receiving your reply.

Sincerely,

Robin Beard, M. C.

Billy Lee Evans, M. C.

RBEE:ch

cc: The Honorable Jimmy Carter

The Honorable Patricia Harris



Mrs. Joyce Friend-Nalepka
President
America Cares
P.O. Box 14002
Silver Spring, MD 20911-4002

Dear Joyce:

L. Warren Regan
Jay

This is to confirm a recent conversation regarding the commonly misunderstood use of marijuana for medicine.

Again, let me say, there is no therapeutic use for marijuana. Under existing FDA guidelines the crude drug marijuana will never be approved. Of course, if one does away with FDA and the United Nations Single Convention on Narcotic Substance, then things could change.

THC, one of marijuana's 421 chemicals, has been replicated synthetically and is already available by prescription through the name Marinol[™]. Marinol[™] is not marijuana. Special interest groups have very successfully confused the public on this issue. It should be cleared up once and for all. Marijuana is not Marinol[™] nor vice-versa. This issue belongs to the FDA--not in state legislatures!

Many double-blind studies have been done using marijuana proving it is ineffective for medicinal purposes.

Good luck in your endeavors to educate the public on this issue. Congratulations on defeating this issue in the Maryland legislature.

Sincerely,

Carlton E. Turner, Ph.D., D.Sc., CLD
President/CEC

CET/las



Funded by billionaires, the
 “medical marijuana” movement is blowing
 smoke in our eyes

High on a Lie

BY DANIEL LEVINE

ONE SATURDAY last September, 50,000 people, most of them teen-agers, crowded into the Boston Common for the eighth annual Freedom Rally. Its organizers billed it as the largest marijuana-legalization event on the East Coast. Strolling through the crowd, holding a joint, was a 17-year-old high-school senior who said his name was Bill. “If they allow sick people to use it,” he said, “it can’t be that damaging.”

Sharing a marijuana pipe with two friends, a 15-year-old named Nicole agreed. “Pot is harmless,” she said. “It should be legalized because there are so many medical benefits. It helps you with a lot of things. It’s the best.”

An increasing number of young Americans agree. They have gotten this idea from a well-funded movement to legalize the “compassionate” use of marijuana. While every legitimate drug requires rigorous

testing by the FDA before being approved, marijuana advocates are opting for medicine by popular vote. This year signatures are being gathered for medical-marijuana initiatives in a half-dozen states and the District of Columbia.

Marijuana’s main active ingredient, THC, is effective in relieving nausea and inducing weight gain in cancer and AIDS patients. That is why the FDA has approved Marinol, a synthetic pill form of THC. But marijuana in its smoked form has never been shown in controlled scientific studies to be safe or effective. In fact, marijuana smoke contains over 2000 chemicals, many of which produce psychoactive reactions, cause lung damage and—in cancer and AIDS patients—increase the risk of pneumonia and weaken the immune system. Inhaling the smoke also disrupts short-term memory and leads to changes in the brain similar

HIGH ON A LIE

Behind the Pot Vote

George Soros	Peter Lewis	John Sperling
\$550,000	\$500,000	\$200,000

Californians for Medical Rights
Campaign for the "Compassionate Use Act"
to legalize medical marijuana

SOURCE: CALIFORNIA DEPARTMENT OF STATES OFFICE

new millennium." Soros, Lewis and Sperling gained their biggest victory in November 1996 when California voters passed Proposition 215, also known as the Compassionate Use Act. It allows pot to be grown and smoked for "any illness for which marijuana provides relief." There are no age restrictions. "Illness" is loosely defined and can include headaches, chronic pain and arthritis. A doctor's oral recommendation is all that is required.

The principal author of the California initiative was 52-year-old Dennis Peron, a San Francisco "medical pot club" owner who's been arrested 15 times on marijuana charges. Peron says he worded the initiative vaguely because he believes "all marijuana use is medical."

Peron's Cannabis Cultivators' Club is the state's largest pot club, taking in over \$20,000 a day. One day last fall, Peron wandered the club greeting patrons and handed one a bulging quarter-pound bag of marijuana.

Standing in line at Peron's smoke-filled club to buy an eighth of an ounce of high-grade Mexican marijuana was a 39-year-old named Anthony. Under California's law, Anthony is

considered a "seriously ill patient" who can purchase and smoke pot. He takes up four or five times a day.

When asked about his ailment, Anthony answered: "Officially, her- nia discomfort from over strenuous intercourse. Actually, I can't feel it."

He said the club admitted him without any medical referral. A self-described "potaholic," Anthony has smoked dope since he was 16. "My problems," he conceded, "are related to a general life-style kind of thing."

Peron's club had operated for years despite violating state and federal drug laws. In August 1996, state drug agents raided it, seizing 86 pounds of pot and \$62,000. "The club was running a sophisticated illegal drug-distribution network," said a spokesman for California Attorney General

READER'S DIGEST

to those caused by heroin, cocaine and other highly addictive drugs.

"There is no conclusive scientific evidence that marijuana is superior to currently available medicines," says Dr. Eric Voth, chairman of the International Drug Strategy Institute in Omaha. "Medical marijuana is a scam that takes advantage of sick and dying patients."

Says Gen. Barry R. McCaffrey (Ret.), director of the Office of National Drug Control Policy, "Medical marijuana is a stalking-horse for legalization. This is not about compassion. This is about legalizing dangerous drugs."

"Daddy Warbucks" of Drugs. The legalization of marijuana and other drugs has been debated for more than 30 years, with a vast majority of Americans standing in opposition. Legalization supporters have used the argument that drugs are necessary for medical reasons. But now, for the first time, they have significant financial backing.

In the last six years a handful of America's wealthiest people have contributed \$20 million to groups that promote medical marijuana or other radical drug-policy reforms. Billionaire financier George Soros is the biggest giver, donating more than \$16 million. Others include Peter Lewis, CEO of Cleveland-based Progressive Corp., the nation's sixth-largest auto insurer, and John Sperling, president of the Apollo Group, a holding company that controls for-profit universities and job-training centers.

In an interview with Reader's Digest, the 76-year-old Sperling said he believes doctors should be allowed to pre-

scribe all drugs, including heroin and LSD. Lewis declined to be interviewed.

A spokesman for Soros said he does not support drug legalization. Nonetheless, Soros has donated millions since 1992 to groups led by people advocating it. Former Health, Education and Welfare Secretary Joseph A. Califano, Jr., calls him the "Daddy Warbucks of drug legalization."

Soros created a drug-policy institute called The Lindesmith Center and has funded it with \$4 million. Its director, Ethan Nadelmann, Soros's point man on drug policy, has said he wants to "legalize the personal possession of drugs by adult Americans."

Soros has also given \$6.4 million to the Drug Policy Foundation (DPF), a leading advocate for medical marijuana. Its stated mission is "publicizing alternatives to current drug strategies." Its founder, attorney and college professor Arnold Trebach, calls himself a "flat-out legalizer" who advocates the repeal of current drug laws.

Richard J. Dennis, a 49-year-old Chicago commodities trader and member of DPF's board of directors, supports both medical marijuana and legalization in general. In fact, says Dennis, "I'd like to see legalization for adults for all drugs, including heroin."

On DPF's advisory board is Harvard Medical School psychiatrist Lester Grinspoon, a leading advocate of medical marijuana for over 25 years. He compares marijuana's potential benefit to that of penicillin, predicting, "It will be the wonder drug of the

PHOTOS: SOROS © SHOOTINGSTAR/REX USA; LEWIS © AUSA/GETTY IMAGES; SPERLING © BPC/INLET

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Dan Lungren. A grand jury indicted Peron, and he awaits trial on felony drug charges. Meanwhile, Peron is running for governor of California.

Peron's initiative never would have made it to the ballot without the help of Soros, Lewis and Sperting. California requires 433,269 valid petition signatures before a "citizen's initiative" can be placed on the ballot. As the deadline neared, Peron and his unorganized group of volunteers had collected only 40,000.

That is when Ethan Nadelmann of Soros's Lindesmith Center stepped in. He helped create Californians for Medical Rights, a sophisticated campaign organization that pushed the medical-marijuana initiative. Soros and Lewis poured \$400,000 into the group, which paid professional signature gatherers who, in 90 days, obtained more than 700,000 signatures. Once the measure was on the ballot, Soros, Lewis and Sperting contributed a combined \$450,000 for advertising. Commercials featured emotional appeals for relief through the use of marijuana. The ads never mentioned that Proposition 215 would allow marijuana to be smoked for any condition, without age restriction and without a prescription. One of the numerous medical-marijuana clubs that opened as a result of Peron's measure was the Dharma Producers Group in San Francisco, which bragged that it offered "medical marijuana with a Tibetan touch." The club's "medical director," a pony-tailed 52-year-old named Lorenzo Pace,

laughed when he explained his medical-marijuana credentials: "I did preliminary research all through the '60s."

Californians for Medical Rights has since changed its name to Americans for Medical Rights. Today it is leading a campaign to place medical-marijuana initiatives on state ballots across the country.

RE: LSD. While Californians were voting on medical marijuana, their neighbors in Arizona were considering an even more radical initiative. The Drug Medicalization, Prevention and Control Act of 1996 proposed to legalize not only marijuana but also more than 100 other drugs—including heroin, LSD and PCP (angel dust)—for medical use.

Arizona's initiative was sold to voters as a way to get tough on violent criminals. How? Open up jail space by paroling all first- and second-time drug offenders. This ignored the fact that virtually all of the 1200 inmates affected had plea-bargained down from much more serious charges or had prior felony records.

In Arizona, Sperting spearheaded the campaign. He, Soros and Lewis contributed a total of \$1.2 million; the DPP gave \$303,000. This accounted for 39 percent of the initiative's total funding. As in California, much of this money paid for a massive media campaign. Opponents of the initiative, caught unprepared, did not run a single advertisement.

The measure passed, but a post-election survey revealed that Arizona voters had been badly misled. Seventy-

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four percent did not believe doctors should be able to prescribe drugs such as heroin, PCP and LSD, as the proposition allowed; 70 percent agreed the initiative would give children the sale of marijuana in state liquor stores. In Washington, D.C., Initiative 59 would allow up to four caregivers, including "best friends," to cultivate pot for a "seriously ill" person. Organizers are hoping that passage of these initiatives will spur Congress to legalize medical marijuana under federal law.

Says Dr. Robert DuPont, a former director of the National Institute on Drug Abuse: "Never in the history of modern medicine has burning leaves been considered medicine. Those in the medical-marijuana movement are putting on white coats and expressing concerns about the sick. But people need to see this for what it is: a fraud and a hoax."

Despite being outspent more than ten to one, opponents of the Washington initiative were not about to be caught unprepared. They took every opportunity to stress that the measure was not about compassion, but about legalizing dangerous drugs. Last November voters rejected the measure.

The defeat in Washington has not sidetracked plans for similar medical-marijuana initiatives in other states.

Let us know what you think about this topic at www.readersdigest.com.

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Paraphernalia Moguls Give 67G's to NORML

NEW YORK—In less than one month the National Organization for the Reform of Marijuana Laws (NORML) raised \$67,600 in pledges for the first three months of 1978 from the \$200-million-a-year paraphernalia industry. The amount is the largest single infusion of funds ever made into the seven-year-old marijuana lobby.

The bulk of the \$67,600 came during a fast and furious series of pledges at the National Boutique and Fashion Show here. At a \$75-a-head NORML fund-raising reception given by paraphernalia distributor Bert Kaplan, glass-bong maker Maury Karp stood up and proclaimed a \$6,000 pledge if other paraphernalia moguls would do the

same. Before the evening was over nearly \$30,000 had been raised.

Donations included \$5,000 from the California-based Sarah's Family, \$5,000 from Natpac, \$1,000 from Tokc International, \$1,000 from Wallet, \$1,000 from Lenter Enterprises Ltd., \$2,500 from U.S. Bongs and \$2,500 from El Dorado.

Two weeks prior to the boutique show \$25,000 was raised at a meeting of the NORML finance committee. The committee, chaired by Washington restaurateur Fred Moore, received pledges of \$10,000 from Adam's Apple owner Don Levin, \$5,000 from E-Z Wider owner Bert Rubin, \$5,000 from Thai Power owner Bill Kaufman and \$5,000 from *High Times*.

symposium

Q: Should 'safer smoking' kits be distributed to crack users?

Yes: It may seem outrageous, but our moral duty is to save lives — no matter whose.

BY ARNOLD S. TREBACH



Trebach, professor emeritus at American University, is the founder and former president of the Drug Policy Foundation and author of a forthcoming book on modern drug-policy reform.

assumes, get very direct advice on how to use crack in the most healthy fashion from their private doctors and nurses. Public-health measures, as embodied in the crack kit and the pamphlet, often involve connecting lower-class and marginalized citizens to some form of middle-class medical service.

Some years ago I labeled the underlying philosophy of this approach "medicalization." By that I meant that society should make the sometimes-difficult choice of

I am writing this with a crack-cocaine kit next to my word processor. This is the first one I have ever seen. The small plastic envelope does not contain crack, but it does contain a small rubber mouthpiece and filters for the pipe, alcohol wipes, antibiotic ointment, vitamin C tablets and condoms — two of them.

The kit is accompanied by a pamphlet from the Bridgeport, Conn., Health Department which tells crack smokers: "Avoid cut lips... Have safer sex... Be careful with your stem of pipe... Take care! Don't share!" The pamphlet is chock-full of explicit advice such as, "Don't get cut lips! Cuts caused by sharp or hot pipes can expose pipers and others to infectious diseases, especially when you have oral sex without a condom, dental dam, or a latex barrier."

My instinctive reaction is to be repulsed by much of this, the kit and the advice on the pamphlet; this is intimate behavior that should be discussed only behind closed doors. My traditional mores were jolted a bit more when I read the small print on the front of the pamphlet: "Funding provided by Drug Policy Foundation." I recently retired as president of the Drug Policy Foundation and I do not speak for it, but as I reflect on this grant, I am proud of the award and hope that the foundation and other funders provide more like it. Here is why.

Personal mores and instinctive repulsive reactions are to be heeded but they should not rule public-policy decisions in the arena of health. Much of standard medicine involves invasive procedures and advice from physicians and nurses that is, quite frankly, repulsive. Good medicine is at times embarrassing.

Middle- and upper-class folks get that advice in the privacy of a medical suite. The crack smokers among them would, one

approaching behavior in the marginal arena that blends criminal and medical deviance by calling a doctor rather than a police officer. One of the earliest and best examples of this philosophy was embodied in the *Rollston Report*, published in Britain in 1926, which stated that addicts were suffering from a disease and that sometimes it was proper medical treatment for doctors to provide them with their drugs of addiction on a long-term maintenance basis.

Recently, drug-control leaders in Europe came up with a broader adaptation of the *Rollston* philosophy, which might be called "medicalization plus." They called it "harm reduction." Harm reduction reluctantly accepts the use of drugs in modern society, rejects the notion of seeking a drug-free society as inherently impossible, accepts drug users as potentially decent human beings with dignity, recognizes nevertheless that drugs do cause harm and then sets out to design programs that reduce the damage that drugs cause to individuals and to the public at large.

The logical progression from *Rollston* to crack kits is as follows. First, addicts and drug users are worthy subjects of care and compassion. Second, drug maintenance on the drug of addiction is a proper procedure for some of them; it relieves their agonies and helps society by reducing the crime and chaos of the black market. Third, since many addicts inject and share needles if they are not easily available, it is within the medical model to provide clean needles to reduce the spread of blood-borne diseases such as hepatitis and, now much more compelling, AIDS. Fourth, addicts do not always understand the best ways of injecting; accordingly, they should be taught safe injecting practices lest they hurt themselves. Finally, because needle- (continued on page 26)

American Federation of Labor and Congress of Industrial Organizations



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January 18, 2001

Dear Senator:

The AFL-CIO strongly objects to the nomination of John Ashcroft as Attorney General and urges you to vote against this ill-advised nomination. Attached is a memorandum that highlights our principal reservations about the Ashcroft nomination.

As the memorandum describes, Mr. Ashcroft's public record is one of ideological extremism and intolerance, a lack of commitment to civil rights, contempt for federal courts and federal judges, and opposition to basic protections for workers and their unions. Moreover, throughout his career, Mr. Ashcroft has demonstrated a willingness to distort facts and seize on divisive and polarizing issues to advance his own political fortunes. He did that as Attorney General of Missouri, when he led the fight against efforts to desegregate St. Louis schools, and he did it again more recently in his shameful campaign to derail the nomination of Judge Ronnie White to the U.S. District Court of Missouri. As the *St. Louis Post-Dispatch* noted in a January 14th editorial, "[t]he conflict between [Ashcroft's] record and the duties of the office raises serious questions as to whether John Ashcroft should be confirmed as Attorney General."

If confirmed as Attorney General, I fear Mr. Ashcroft would undermine important protections for working families and threaten fifty years of progress toward the goal of equal justice for all. I urge you to do all that you can to defeat this troubling nomination.

Sincerely,


John J. Sweeney
President

JJS:nj
Attachment

**SUMMARY OF AFL-CIO CONCERNS ABOUT
PRESIDENT-ELECT GEORGE W. BUSH'S NOMINATION OF
JOHN ASHCROFT TO BE
ATTORNEY GENERAL OF THE UNITED STATES**

January 17, 2001

INTRODUCTION

John Ashcroft has a long career in public life. Among other things, he was the Missouri Attorney General from 1976 to 1985, its Governor from 1985 to 1993, and its junior Senator for one term, from January 1995 until losing his re-election bid last November.

Now, Mr. Ashcroft is under consideration for another post, one to which he has *not* been elected but for which he has been nominated, one in which he would serve *not* as a representative of the State of Missouri but as the *nation's* chief law enforcement officer and guardian of civil rights and constitutional liberties for *all* Americans. John Ashcroft has been nominated for Attorney General of the United States. It is no overstatement to say that, short of the Presidency itself, the position of Attorney General may be the most important and most consequential public office any American holds.

Mr. Ashcroft's record is, for the most part, a public one. Few individuals or institutions know that record better than the state's leading newspaper, the *St. Louis Post-Dispatch*, which has followed and chronicled Mr. Ashcroft's career through more than 16 years in state government and another six in the Senate. Thus, the newspaper's assessment of one of the state's favorite sons and his fitness for the post of Attorney General is especially relevant – and deeply disturbing. The editors wrote:

John D. Ashcroft has spent the better part of his political career at odds with core values of the Constitution – equality, religious freedom, judicial independence and individual autonomy. Now he is nominated to be the people's guardian of those values. The conflict between his record and the duties of the office raises serious questions as to whether John Ashcroft should be confirmed as Attorney General. ...

If Mr. Ashcroft were the nominee for secretary of agriculture there would be no problem. But the attorney general vets federal judges, enforces civil rights laws, safeguards the reproductive rights of women and determines the legal position of the United States. ...

John Ashcroft is indisputably a man of principle. The problem is those principles put him at odds with the Constitution, with contemporary notions of equality and with the mainstream of the American public. ...¹

The AFL-CIO recognizes the gravity and solemnity with which the Senate must approach the task of giving "advice and consent" to the President's nominations for the Cabinet. We recognize and agree that, under usual circumstances, the President's choice of his cabinet is entitled to deference, though the degree of deference Senators should accord individual nominees quite reasonably and necessarily must be tempered by other considerations -- the nature and importance of the position and the nominee's suitability for it, chief among them. We also recognize and understand that it is difficult for Senators to decline to approve a former colleague, who is competent and experienced and who would, in many other positions, serve the nation well.

But John Ashcroft has *not* been nominated for just any position -- he has been nominated to be Attorney General of the United States. In the days since Mr. Ashcroft's nomination, much has been written about his suitability -- his fitness -- for the post of Attorney General. Few, if any, dispute his experience and his skills. But many, including hundreds of prominent organizations, individuals and commentators have raised very serious questions about his ideological extremism and rigidity and whether these very qualities make him unsuited to be Attorney General.

We believe they do. We will not repeat here the many objections that have been raised to the Ashcroft nomination based on his public record as a one-term Senator and, before that, as Attorney General and Governor of Missouri.² Suffice it to say we share many of the concerns articulated so eloquently and ably by so many in the civil rights and civil liberties movements. We focus here on three specific aspects of Mr. Ashcroft's record that we believe reflect his undeniable unfitness to be Attorney General.

First, as Missouri Attorney General and Governor, Mr. Ashcroft had a guiding hand in opposing school desegregation in St. Louis, objecting even to voluntary plans -- to which all other parties had agreed -- designed to dismantle the dual school system. Mr. Ashcroft's conduct during this period speaks volumes about his commitment to civil rights, his regrettable willingness to inject divisive racial rhetoric into public discourse where doing so advances his own political aims, and his questionable fidelity to the rule of law where his personal ideology conflicts with the law of the land.

Second, Mr. Ashcroft's unfounded and often disingenuous attacks on Presidential nominees, most notably Missouri Supreme Court Justice Ronnie White, and his open disdain for federal judges and federal courts make him especially ill-suited to be Attorney General of the United States. As the nation's chief law enforcement officer, the Attorney General plays a special role in relation to federal judges and federal courts. Whatever the motive and rationale for Mr. Ashcroft's denunciations of federal judges, his consistent resort to invective serves only to inflame passions and breed contempt for the courts. One who has challenged and condemned the courts as long and as loudly as he simply should not become United States Attorney General.

Finally, Mr. Ashcroft's consistent opposition to worker protections, including some that

benefit most those who most need the safety net that government alone provides, bespeaks an ideological extremism and insensitivity inappropriate to a nominee for Attorney General.

Mr. Ashcroft's record makes him an unsuitable candidate for Attorney General of the United States. Though he offers adamant assurances that he will enforce the laws as they exist regardless of his strong objections to them, these promises ring hollow coming from a nominee whose public record is one of such extremism and who, himself, has refused to accept similar assurances from other nominees in the past. Indeed, only a short while ago, Mr. Ashcroft voted to reject the nomination of Bill Lann Lee for Assistant Attorney General for Civil Rights (a post subordinate to the Attorney General) because, he said, he feared Lee "would pursue the job 'with the kind of intensity that belongs to advocacy, but not with the kind of balance that belongs to administration.'" ³ Clearly, given the standard regularly applied by Mr. Ashcroft to nominees for judicial and other high-level appointments when he sat on the Senate Judiciary Committee, Mr. Ashcroft the nominee would not by any means meet the Ashcroft confirmation test.

I. ASHCROFT'S DOGGED OPPOSITION TO DESEGREGATING ST. LOUIS PUBLIC SCHOOLS CASTS DOUBT ON HIS COMMITMENT TO CIVIL RIGHTS AND HIS FIDELITY TO THE RULE OF LAW

Desegregation of the St. Louis school system was a long and tortuous path, in no small measure because of obstacles that Ashcroft, as Attorney General and then Governor, erected or countenanced. ⁴ His conduct and public commentary throughout this period casts real doubt on his commitment to civil rights and his fidelity to the rule of law. In our view, this sad episode alone disqualifies him to be Attorney General.

Legal efforts to desegregate schools in St. Louis began in the 1970s and culminated in a 1981 federal district court holding (affirmed by the court of appeals) that the city's school board and the State of Missouri had maintained an unconstitutionally segregated school system for many years after the Supreme Court's landmark decision in *Brown v. Board of Education*, 347 U.S. 483 (1954). Because the State had actually mandated segregation for decades and had taken no effective steps to undo it, the court held that the State was "a primary constitutional wrongdoer with respect to the segregated conditions in the St. Louis schools." *Liddell v. Board of Education*, 491 F.Supp. 351, 359-60, *aff'd* 667 F.2d 643 (8th Cir.), *cert. denied* 454 U.S. 1081 (1981).

Ashcroft appealed the district court decision, a not unusual tactic that, standing alone, might not give serious pause. But that appeal did not stand alone. Instead, even after the Court of Appeals and the Supreme Court had rebuffed him, Ashcroft persisted in his opposition to devising a desegregation plan. Through further appeals and motions for stays, Ashcroft tried to block efforts by the City and its surrounding suburbs to implement a voluntary plan that would facilitate cross-district student transfers to ease segregation. According to the *St. Louis Post-Dispatch*, Ashcroft "nearly wrecked" these initial efforts. ⁵

In addition, over a several month period, the State, through Attorney General Ashcroft, failed or refused to comply with district court orders to submit desegregation plans. This recalcitrance prompted a March 1981 opinion by the judge, who concluded that “the state ha[d], as a matter of deliberate policy, decided to defy [the court’s] authority.”⁶

In July 1983, despite Ashcroft’s continuing objections, the City school board and 23 surrounding suburbs reached a settlement agreement that permitted African-American students to transfer voluntarily to suburban schools and white students to transfer voluntarily to magnet schools in the City. Ashcroft again appealed to the Court of Appeals, and then to the Supreme Court to block the settlement. In addition, although the school year had begun, he sought a stay of the order implementing the plan, an action that, if successful, would have required thousands of students to move from the schools they were attending. The courts denied the stay in relevant part, and also rejected most of Ashcroft’s arguments on appeal.

In a December 1984 order on attorneys’ fees, the district court left no doubt that the State’s excesses, under Ashcroft’s direction, had prolonged the litigation and thus increased its costs to taxpayers:

If it were not for the State ... and its feckless appeals, perhaps none of us would be here at this time. Further litigation to compel the State to meet its responsibilities was unquestionably necessary. ... The compromise settlement was made possible through the cooperation of all parties but the State, which, through opposition and repeated appeals, has delayed implementation of a remedial plan designed to remove the last remaining vestiges of school segregation for which the State, through its Constitution and statutes, remains responsible. It has continued to litigate what the other parties sought to settle, thereby increasing litigation costs for which it now seeks to avoid responsibility.⁷

The State’s resistance to the voluntary desegregation plan persisted after Ashcroft was elected Governor in November 1984. As late as 1989 and 1990, the federal judge then handling the case, Steven Limbaugh, a Reagan appointee, castigated the State for its ongoing obstreperous and obstructionistic tactics. These included “a series of ... unnecessarily adversarial” motions, including the one then before the Court, which the judge viewed as “meddlesome and intrusiv[ive] upon the cooperative efforts of the education personnel of both parties.” The State’s tactics, according to the judge, “wastef[d] the Court’s time and taxpayers’ money.” On another occasion, Judge Limbaugh noted that the State’s assertions included “factual inaccuracies, statistical distortions and insipid remarks regarding the Court’s handling of the case,” and that the State had even made “veiled threats” towards the Court.⁸

Ashcroft’s precise role in guiding the State’s conduct of the litigation while he was Governor is unknown. However, in announcing his gubernatorial bid in 1984, Ashcroft indicated he intended to continue fighting the desegregation order “tooth and nail.” Throughout

the year, the *St. Louis Post-Dispatch* and other Missouri newspapers reported on how Ashcroft and his primary opponent “tr[ie]d to outdo each other as the most outspoken enemy of school integration in St. Louis,” in the process “exploiting and encouraging the worst racist sentiments that exist in the State.” And in December 1984, the federal judge considering the plaintiffs’ fee request noted that “[w]ith equal validity, one might argue that counsel for the State [Ashcroft] voluntarily rode [the plaintiff’s] bus to political prominence.” In 1995, then-Governor Mel Carnahan, who succeeded Ashcroft as Governor and principal defendant in the case, commented that Missouri’s failure to end “the desegregation cases” was because it had “never made a credible attempt to address the concerns of the Federal courts. The state ha[d] always forcefully and consistently objected to Plaintiffs’ demands,” he said, without offering “potential solutions to the desegregation problem.”⁹

The State’s overt opposition to the St. Louis desegregation plan during Ashcroft’s tenure as Attorney General and its pursuit of further litigation while he was Governor raise serious questions about Ashcroft’s commitment to civil rights and his fidelity to the rule of law. We cannot look into Mr. Ashcroft’s heart to assess his real motives in opposing the plan, but this is what we do know: in 1954, the Supreme Court held in *Brown v. Board of Education* that racially segregated, dual school systems were unconstitutional, and it ordered states to move “with all deliberate speed” to dismantle those systems. Twenty years later, the St. Louis school system remained racially segregated, at least in part because of actions the State had taken or failed to take. For a decade, beginning when Ashcroft was Missouri Attorney General and ending for good only after he had stepped down as Governor, the State resisted desegregation efforts, even after all other parties had voluntarily agreed to a desegregation plan. There is *no* evidence that Mr. Ashcroft ever tried in a constructive, affirmative manner to resolve the St. Louis desegregation case and, more important, to end segregation. All of the evidence is to the contrary.

As United States Attorney General, Mr. Ashcroft would have overall responsibility for the nation’s civil rights laws and direct responsibility for enforcing those laws against state and local governments. Mr. Ashcroft’s conduct of the St. Louis desegregation litigation while Missouri Attorney General, the State’s ongoing resistance during his watch as Governor, and his even more recent notorious and controversial actions – his 1999 commencement address at Bob Jones University and his 1998 interview with *Southern Partisan* magazine, while contemplating a run for the Presidency – raise grave concerns about whether and how Mr. Ashcroft would oversee and enforce the nation’s civil rights laws. The *St. Louis Post-Dispatch* summed up these concerns aptly when its editors wrote that “Mr. Ashcroft’s civil rights record raises serious doubts about his commitment to ‘equal protection’ under the law – a seed of liberty scarified by the flames of the Civil War and brought to fruition by the civil rights movement.”¹⁰

II. ASHCROFT'S UNFAIR TREATMENT OF PRESIDENTIAL NOMINEES AND HIS CONTEMPTUOUS VIEW OF FEDERAL COURTS REVEAL QUALITIES AND ATTITUDES ILL-SUITED TO THE ATTORNEY GENERAL OF THE UNITED STATES

Two disturbing hallmarks of Mr. Ashcroft's Senate tenure provide additional unsettling evidence of his unsuitability for Attorney General. First, Mr. Ashcroft played a leading role in blocking or unduly delaying confirmation of numerous Presidential nominees, including a number of judges, largely – if not exclusively – on ideological grounds. Most notable among these was Missouri Supreme Court Justice Ronnie White, whom President Clinton had nominated for a federal district court judgeship.

Mr. Ashcroft did not initially oppose Judge White. In fact, when Judge White was first nominated, Ashcroft reportedly polled the judge's colleagues on the Missouri Supreme Court (all Ashcroft appointees), who gave him a favorable review. Later, however, in the midst of a hard-fought Senate race against the late Governor Mel Carnahan, Ashcroft changed his stance considerably and stepped up efforts to oppose the nomination. As analysts have reported, Ashcroft's descriptions of Judge White and his record were grossly distorted and disingenuous. Ashcroft's attack falsely painted Judge White as the most pro-criminal, anti-death-penalty jurist on the court. As express evidence, Ashcroft relied on two opinions authored by Judge White, in which he dissented from his colleagues' orders affirming the imposition of the death penalty. In both situations, while Ashcroft accurately reported the facts of the cases, he distorted the language of Judge White's decisions and the rationale underlying them. Perhaps equally egregious, in launching his drive to derail the White nomination, Ashcroft essentially ambushed Judge White, giving him scant opportunity to explain or defend his position in these cases or otherwise.¹¹

Ashcroft's conduct with respect to Judge White bespeaks calculated deception and distortion to torpedo a nomination and possibly jeopardize a career primarily, if not exclusively, to advance his own. This episode, timed as it was to exploit an issue – the death penalty – during Ashcroft's Senatorial re-election race, is sadly reminiscent of the words of the district court judge in late 1984, who lamented that “[w]ith equal validity, one might argue that [Ashcroft] ... voluntarily rode [the plaintiffs'] bus to political prominence.”

Second, much of Mr. Ashcroft's career and especially his years in the Senate have been marked by open antipathy to federal courts and federal judges. His inflammatory invective reached a zenith in a 1997 speech before the Heritage Foundation, entitled “Courting Disaster: Judicial Despotism in the Age of Russell Clark.” Among other things, Mr. Ashcroft suggested that the “people” no longer “govern,” and that, instead, “people's lives and fortunes [have] been relinquished to renegade judges – a robed, contemptuous, intellectual elite that has turned the courts into ‘nursery[ies] of vice and the bane of liberty’.” Examples of “how far the federal judiciary has strayed,” according to Ashcroft, included a court-ordered tax increase to fund

desegregation of Kansas City schools during Ashcroft's first term as Governor; the Supreme Court's decision in *Roe v. Wade*, when the Court "challenged God's ability to mark when life begins and ends," and later Supreme Court decisions reaffirming a woman's right to choose; a 1995 Supreme Court decision setting aside a state law that prescribed term limits for federal office-holders; and a district court decision, subsequently reversed, which set aside Proposition 209, the California anti-affirmative action initiative. "These cases," Ashcroft intoned, "are but a page of snapshots in an album of liberties lost."¹²

Aside from their breathtaking tone, Mr. Ashcroft's broadsides against federal courts are deeply disturbing for reasons that go to the heart of his role as Attorney General. As Attorney General, he and his subordinates will appear frequently before the federal courts, representing the United States as plaintiff and defendant in federal cases. When he was Attorney General of Missouri, the federal district court threatened the State with contempt because of its resistance to compliance with desegregation orders. Later, as a Senator, Ashcroft spoke and wrote contemptuously of the courts. It is simply implausible that one with such an outspoken record of antipathy to the federal judiciary, who has vowed to "fight the judicial despotism that stands like a behemoth over this great land," can honestly, faithfully and respectfully discharge his role and responsibilities before the federal courts.¹³

Moreover, as Attorney General, Ashcroft will have significant responsibility for recommending and screening federal judges for the President. If, as we fear, he undertakes this role in a manner designed to "fight" what he views as "judicial despotism," there is little reason to doubt that he will place his own extreme ideological stamp – his own read of the Constitution – on the federal judiciary. In the process, he will surely undermine the independence of the courts and threaten a half century of progress toward equal justice for all.

III. ASHCROFT'S OPPOSITION TO BASIC WORKER PROTECTIONS FURTHER UNDERSCORES AN IDEOLOGICAL EXTREMISM THAT DISQUALIFIES HIM TO BE ATTORNEY GENERAL

Finally, Mr. Ashcroft's consistent opposition to worker protections, including some designed to protect those who most need the government's protection, again bespeaks a disqualifying ideological extremism and insensitivity inappropriate to one who would become Attorney General of the United States.

As a Senator and former Governor, Mr. Ashcroft opposed and rejected some of the most basic and fundamental of worker protections. For five of his six years as a U.S. Senator, his record on issues of importance to America's working families and their unions earned him a "zero" voting record rating from the AFL-CIO and its affiliates. Over the course of his entire term in the Senate, his overall AFL-CIO voting record was only two percent.

On the other hand, the American Conservative Union (ACU) has ranked Mr. Ashcroft as

one of their “best and brightest.” In four of the last six years, he received a 100 percent ACU rating, and in the other two years, his rating exceeded 90 percent. Similarly, the Associated Builders and Contractors gave Mr. Ashcroft a 100 percent rating in 1999.

As a United States Senator, Mr. Ashcroft led the fight to gut overtime pay protections, sponsoring unsuccessful legislation that would have replaced the 40-hour work week with an 80-hours-over-two-weeks frame for computing overtime eligibility. In addition, the bill would have allowed employers to substitute comp time for overtime pay. Ashcroft has also supported so-called paycheck protection proposals and the TEAM Act, which could legitimize company unions, and voted against prevailing wage protections on taxpayer-funded federal construction projects. He voted to raise the caps on the numbers of skilled worker and agricultural guestworker visas. He voted against a universal Medicare prescription drug benefit for the elderly and disabled. He voted to repeal affirmative action programs. And in 1996, he was one of only 24 Senators who ultimately voted against raising the minimum wage.

As Governor of Missouri, Ashcroft vetoed two bills establishing a state minimum wage and finally signed a third only after it became obvious that the legislature would override another veto. Although he justified his vetoes on the basis of language in the earlier bills, the *St. Louis Post-Dispatch* editorialized that “[t]he governor’s objections to the last such bill appeared to be little more than attempts to mask a philosophical opposition to a state minimum wage.”¹⁴ Mr. Ashcroft’s subsequent opposition to a federal minimum wage increase essentially confirmed the *Post-Dispatch*’s overall assessment of the real reasons he opposed the state measures.

In 1990, Ashcroft vetoed a maternity leave law, which would have provided women eight weeks of unpaid leave after the birth of a child or adoption of a baby. Ashcroft justified that veto by asserting that approval of the law would put the state at a competitive disadvantage with its neighbors. The *St. Louis Post-Dispatch*, however, saw things differently:

The veto of this bill pitted the welfare of business against the welfare of the family – and the family lost. ... When babies are small, one of their parents should be with them. The parents should not have to worry about losing their jobs in order to meet their responsibilities to infants. ... Mr. Ashcroft says the state can do little in this matter, but it can do a lot. It could have provided maternity leave for parents and strengthened families in the process.¹⁵

Ashcroft vetoed a 1989 workers’ compensation bill, which would have raised the minimum benefit for workers with temporary disabilities from \$40 dollars to \$100 dollars weekly. The veto took many by surprise. Ashcroft claimed that “many interested parties ha[d] contacted [him] ... to express concerns about the bill’s impact” but the bill’s sponsor had developed the measure with representatives of numerous business interests, including the Associated Industries of Missouri, the state Chamber of Commerce, Ford Motor Co. and General Motors. Duke McVey, former President of the Missouri AFL-CIO, decried the surprise veto: “To speak from the pulpit about God and goodness and then bushwhack the workers is morally

bankrupt,” he said. Given the stealth nature of the veto, the bill’s original sponsor declined to draft another without guidance from the governor – and none was forthcoming.¹⁶

In short, throughout his career as a Senator and as Governor, Ashcroft has shown little compassion for or commitment to America’s working families, sometimes acting single-handedly to block hard-won protections for them. There is little reason to believe that as chief law enforcement officer of the United States, Ashcroft would show any greater commitment to the rights and interests of *all* workers and their families.

CONCLUSION

Few officials, elected or appointed, have as much potential and power to make policy – to make law – as the Attorney General. Few are invested with such a sacred trust, such an awesome responsibility. Few can, through their actions or inaction, affect the lives of so many, for better or for worse. And few are positioned to place such a personal stamp on the nation’s legal institutions and framework and on the lives and fortunes of all Americans, especially our most vulnerable brothers and sisters. Simply put, the Senate considers no more powerful and consequential a nomination than that for Attorney General.

The Senate must apply its strictest scrutiny to the nomination of John Ashcroft for Attorney General, and Mr. Ashcroft, in turn, must meet the highest standard to be confirmed. The touchstone for confirmation is not competence, collegiality or comity to the executive. The touchstone is this: does the whole of Mr. Ashcroft’s public record demonstrate that he will enforce the laws faithfully and evenly, that he will administer justice fairly, that he will remain true to the core values of the Constitution?

Regrettably, the answer is no. John Ashcroft’s public record reflects a fundamental lack of commitment to civil rights, a willingness to distort and disparage for personal political gain, a disdain for the federal courts and federal judges, and an insensitivity to the rights and interests of working families. Whatever other role Mr. Ashcroft might play in this Administration, he should not become Attorney General of the United States, and the Senate should not consent to his nomination.

ENDNOTES

1. *St. Louis Post-Dispatch*, "A Question of Fitness," January 14, 2001.
2. For further information regarding organizations opposing the Ashcroft nomination and analyses of his record, see <http://www.stopashcroftnow.com/index_test.cfm>
3. *The Washington Post*, "Chief Foe as Chief Defender? Ashcroft Critical of Laws, Decisions He Would Enforce," January 13, 2001.
4. The description of the St. Louis school desegregation saga and Mr. Ashcroft's role in it relies on the written testimony concerning the nomination of John Ashcroft to be Attorney General of the United States, submitted to the Senate Judiciary Committee by William L. Taylor, one of the plaintiffs' attorneys in the St. Louis case ("Taylor Testimony"), and The Case Against the Confirmation of John Ashcroft as Attorney General of the United States: Part Two: An Overview of the Missouri Years, People for the American Way, January 13, 2001 ("An Overview of the Missouri Years") <<http://www.pfaw.org>>.
5. Taylor Testimony, at 2; An Overview of the Missouri Years, at 14.
6. *Ibid.*
7. Taylor Testimony, at 3; An Overview of the Missouri Years, at 18.
8. Taylor Testimony at 4-5.
9. *Id.*, at 4-5; An Overview of the Missouri Years, at 17.
10. *St. Louis Post-Dispatch*, "A Question of Fitness," January 14, 2001.
11. Alliance for Justice Report on John Ashcroft and the Federal Judiciary, January 15, 2001, at 2-6; The Case Against the Confirmation of John Ashcroft as Attorney General of the United States: Part One: An Overview of the Senate Years, People for the American Way, January 2001 ("An Overview of the Senate Years") <<http://www.pfaw.org>>, at 4-7.
12. "Courting Disaster: Judicial Despotism in the Age of Russell Clark," Senator John Ashcroft, Heritage Lecture No. 580, The Heritage Foundation, March 18, 1997 <<http://www.heritage.org/library/categories/govern/h1580.html>>
13. *Id.*, at 3.
14. *St. Louis Post-Dispatch*, "Good Compromise on Minimum Wage," April 22, 1990.
15. *St. Louis Post-Dispatch*, "Pro-Family Bills Lose Again," July 16, 1990.
16. *St. Louis Post-Dispatch*, "Veto of Workers Bill Confounds Senator," October 11, 1989.

Statement for the Record
of the
American Federation of State, County and Municipal Employees (AFSCME)
For the
Hearing of the Committee on the Judiciary
on the Nomination of John Ashcroft
for U. S. Attorney General
January 18, 2001

On behalf of the 1.3 million members of the American Federation of State, County and Municipal Employees (AFSCME), we are submitting the following statement for the hearing record of the Committee on the Judiciary in opposition to the nomination of John Ashcroft for Attorney General of the United States. As an organization, we support the President's right to choose his cabinet, but in the case of John Ashcroft, we have little choice but to oppose this nomination. Should John Ashcroft serve in such a critical position of power, he would pose a grave threat to the working men and women we represent, and indeed to all Americans who believe in equality and justice for all.

While serving in the U.S. Senate, Ashcroft demonstrated nothing less than total disdain for America's working families, introducing and supporting several pieces of anti-worker legislation. He sought to change the Fair Labor Standards Act (FLSA) by replacing the 40-hour weekly maximum before overtime with a 160 hour standard every four weeks. Senator Ashcroft said that workers and their employers could reach agreements under which employees could work less than 40 hours one week and more the next, without getting overtime. While debating this legislation, Ashcroft attempted to confuse the issues by asking his colleagues on the floor of the Senate, "Are you on the side of working women who sit at their desk worrying about their sick child because they cannot afford to take the time off from work without pay, while their salaried co-workers leave to go to their son's soccer games? Senators need to decide whether they are on the side of America's working women or in the pocket of the Washington labor lobby."

Throughout his tenure in the Senate, Ashcroft adopted several anti-worker policy positions. Indeed, he compiled one of the lowest voting records on working family issues.

His disregard for working people can be traced back to his days in Missouri where he served as Attorney General and Governor. As Governor, he twice vetoed on a measure that would tie Missouri's minimum wage to the federal minimum wage level. Ashcroft said that he vetoed the bill the first time around because it would have applied the minimum wage to babysitters and the second time because it would have applied the minimum wage to prisoners. He also opposed legislation that would improve the retirement pay for state retirees.

As Governor of Missouri, Ashcroft led a petition drive to obtain signatures for a ballot initiative that would create an independent ethics commission to investigate conflicts of interest by state and local officials. Some state employees reported that they were pressured into helping to secure the necessary signatures for the measure to be included on the ballot. This is a classic example of how a powerful employer can abuse his authority over his employees.

Ashcroft clearly demonstrated his unwillingness to support the rights and needs of women and children. As Governor of Missouri, he vetoed the legislation providing family and medical leave protection for Missouri citizens and vetoed funding for domestic violence programs. Under Ashcroft, the state had more animal shelters than battered women's shelters. Ashcroft also consistently vetoed measures that would assist the disabled, poor, abused and neglected children.

We do not expect that John Ashcroft would necessarily share our views on issues of importance to working men and women. Obviously, we expect President-elect Bush to nominate an individual who clearly shares his policy positions. We are, however, concerned with Ashcroft's extreme views and lack of commitment to working families.

We do not believe that Ashcroft meets the high standard that should be placed on the person serving as U. S. Attorney General. We know that he has in the past opposed the very laws that seek to protect working men and women, the disabled, victims of violence and others in our society. Herein lies our primary reason for opposing the confirmation of Ashcroft. He has been a zealous advocate against the very laws that he would now be asked to uphold and enforce. Can we realistically expect someone who has vigorously opposed important workers' rights, civil rights, and women's rights laws to be the chief enforcer of these laws? Can we place such confidence in a man with such an extreme record?

On behalf of working men and women, AFSCME strongly opposes the nomination of John Ashcroft to be Attorney General. The Attorney General must protect the rights of all Americans and must be committed to enforcing the law of the land. We do not believe that John Ashcroft can put aside his very strongly held personal views to accomplish this goal. We therefore urge members of the Committee to reject the nomination of John Ashcroft.



555 NEW JERSEY AVENUE, N.W.
WASHINGTON, DC 20001-2079
202-879-4400

SANDRA FELDMAN
PRESIDENT

EDWARD J. MCELROY
SECRETARY-TREASURER

NAT LaCOUR
EXECUTIVE VICE PRESIDENT

January 17, 2001

All Members
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Senator:

I am writing on behalf of the members of the American Federation of Teachers who join the AFL-CIO in opposing the nomination of former Senator John Ashcroft to be Attorney General of the United States.

Many of Senator Ashcroft's strongly held and often stated views, including the role of the federal judiciary and the role of the federal government in protecting the rights of all Americans, directly conflict with the very laws that he would be charged with enforcing as Attorney General. We are concerned that Senator Ashcroft would not be able to effectively uphold those laws with which he so strenuously and deeply disagrees.

Moreover, Senator Ashcroft's public statements and actions lead us to question his tolerance for the differences produced by a society as diverse as our own. The office of the Attorney General must protect the rights of all our citizens: it must ensure that all remain equal in the eyes of the law, whatever their beliefs or backgrounds.

The AFT respects the President's right to name his cabinet, and we have never opposed a nominee for the Attorney General's job. Nonetheless the depth of our concern and the concerns of our members about Senator Ashcroft's positions and the potential that they have to conflict with the responsibilities of the chief law enforcement officer of the U.S. have led us to urge you to oppose his nomination.

Sincerely,

Sandra Feldman
President

SF:cmw (Ashcroft Let SF)
Opeiu#2afl-cio

January 30, 2001

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Thomas A. Daschle
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick L. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senators:

We are writing to express our opposition to the nomination of Senator John D. Ashcroft (R-MO) for the position of Attorney General of the United States.

First, we are concerned about Senator Ashcroft's commitment to support the basic protections for children in the Juvenile Justice and Delinquency Prevention Act (JJDP). The JJDP was passed by Congress in 1974 after extensive hearings on abuse of children in adult jails and other problems in the juvenile justice system. It provides funding to the states to support prevention, prosecution, intervention, and rehabilitation programs. Senator Ashcroft proposed amendments to the JJDP that would have weakened protections for children incarcerated with adults in jails, and would have required states and the federal government to prosecute those as young as 14 years old as adults. He made these proposals in the face of numerous reports on the dangers from suicide and assault to children incarcerated in adult facilities, and extensive research demonstrating that prosecution of young people in adult criminal court is counterproductive, leading to increases in recidivism rather than decreases.

We are also concerned that Senator Ashcroft supported efforts to weaken provisions of the JJDP that direct states to address disproportionate confinement of minority youth. Research over the past twenty years shows that race is a factor in decisions throughout the juvenile justice system, from arrest to incarceration. The most recent comprehensive report, by the National Council on Crime and Delinquency, reveals that youth of color receive more severe treatment than white youth at every stage of the system, even when charged with the same offenses. The JJDP directs states to "address" this issue, without requiring release of juveniles or incarceration quotas or any other specific change of policy or practice. Nevertheless, Senator Ashcroft supported amendments to the JJDP that would have gutted even this minimal provision by deleting any reference to "minority" or "race." Such a change would have minimized glaring inequities in the nation's juvenile justice system and hindered efforts to

remedy the disparate treatment of minority youth. Senator Ashcroft's obstruction of Justice Ronnie White's nomination to be a federal judge, and his praise for the racially-divisive journal *Southern Partisan*, further our concerns over his willingness to remedy disparate treatment of youth of color in the juvenile justice system.

Finally, Senator Ashcroft's support for undercutting basic protections for youth in the justice system, as well as his opposition to basic civil rights laws (detailed in letters to you from many other organizations and groups), raise serious concerns about how he would handle the Justice Department's Civil Rights Division. One function of the Division is of particular importance to youth in the juvenile justice system. Through enforcement under the Civil Rights of Institutionalized Persons Act, the Civil Rights Division has played a critical role in protecting incarcerated youth from abuse and dangerous conditions in states around the country. Senator Ashcroft has stated that he believes the current juvenile justice system "hugs the juvenile terrorist." Accordingly, we have serious concerns whether, as Attorney General, he would support activities within the Department of Justice to effectively protect the civil rights of confined youth.

Although these issues were not addressed directly during the hearings regarding Senator Ashcroft's nomination as Attorney General, based on his answers to questions on similar issues we believe he is not the appropriate choice at this time for the position of Attorney General and therefore we strongly urge you to withhold support for Senator Ashcroft.

Thank you for your consideration. We look forward to working with the Judiciary Committee and individual Senators during this process.

Sincerely,

American Indian Development Associates – New Mexico
Brennan Center for Justice at NYU School of Law
Children's Defense Fund
Children's Law Center of Massachusetts
Family Watch
Justice Policy Institute
Juvenile Justice Project of Louisiana
Juvenile Rights Advocacy Project at Boston College Law School
League of United Latin American Citizens (LULAC)
National Association of Criminal Defense Lawyers
National Association of School Psychologists
National Center on Institutions and Alternatives
National Community Education Association
Public Justice Center – Baltimore, Maryland
School Social Work Association of America
Youth Law Center

cc: Members of the Senate



American Insurance Association

January 12, 2001

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Bldg.
Washington, DC 20510-0001

Dear Senator Leahy:

On behalf of the American Insurance Association (AIA), I am writing in support of the nomination of Senator John Ashcroft to be Attorney General of the United States. AIA is the leading property/casualty insurance trade organization, representing more than 370 insurers that write more than \$70 billion in premiums each year. Our member companies provide insurance coverage that enables consumers to protect their families and property, and allow businesses to provide products, services, and jobs vital to America's economic health.

We believe that Senator Ashcroft is eminently qualified to be confirmed to this position. During his public service career, he has shown himself to be a man of integrity and his service as Attorney General, Governor and Senator for the State of Missouri have given him a wealth of experience. AIA urges you to vote for his confirmation as Attorney General of the United States.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Vagley".

Robert E. Vagley
President

Judie Brown, President
American Life League Inc.
PO Box 1350
Stafford, VA 22555

January 15, 2001

Re: Senator John Ashcroft
Nominee
Office of Attorney General of the United States

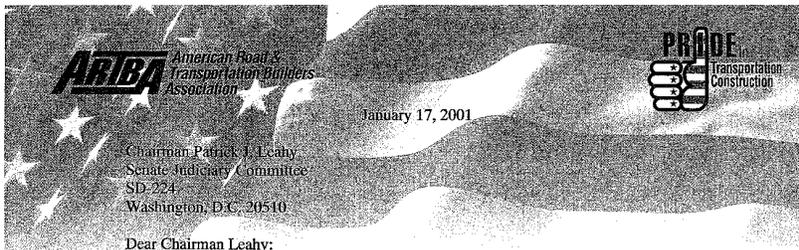
On behalf of the 375,000 families supporting American Life League, Inc., I write in support of the nomination of Senator John Ashcroft for the office of Attorney General of the United States. Senator Ashcroft has a long and distinguished record of service, not only to the people of Missouri as that state's Attorney General and Governor, but also as a United States Senator.

Senator Ashcroft has distinguished himself among his colleagues, both Democrat and Republican, as a man of integrity. If one considers exactly what that word means, it is clear that it alone describes the character of this great American.

INTEGRITY: the quality or state of being of sound moral principle; uprightness, honesty and sincerity.

Senator Ashcroft has a steadfast respect for the law, and its appropriate application to all those who are to be protected by it in every situation and circumstance. The fact that he may or may not agree with a specific law has never, in his long and illustrious career, gotten in the way of his ability to enunciate the law correctly and defend it appropriately. He is, first and foremost, an upright man whose commitment to fair and equitable law enforcement is not colored by personal opinion.

We encourage the members of the United States Senate to confirm their former fellow Senator, not based on a particular ideology or fabricated claims about the Senator and his views, but based upon the undeniable fact that he is a man who is above all else reasonable, honest and principled. His record is the only measuring stick worthy of examination prior to his confirmation. Senator Ashcroft will handle the tasks of the office of Attorney General of United States in a manner consistent with his past record of public service.



Chairman Patrick J. Leahy
Senate Judiciary Committee
SD-224
Washington, D.C. 20510

Dear Chairman Leahy:

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I am writing in support of Senator John Ashcroft's nomination to become the U.S. Attorney General.

ARTBA and its members had the pleasure of working with Senator Ashcroft during enactment of both the Transportation Equity Act for the 21st Century (TEA-21) and the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21). On both of these historic public works bills, Senator Ashcroft consistently worked to unite members of the Senate on both sides of the aisle in support of safe, efficient transportation systems. Our industry is reliant on strict enforcement of the law, particularly safety measures that affect workers in transportation construction. We are convinced Senator Ashcroft would enforce such laws fairly and consistently.

In our view, integrity, leadership, consensus building abilities and the conviction to do what is right, are qualities an Attorney General must possess. Senator Ashcroft has them in abundance.

We respectfully request that you support the nomination of Senator Ashcroft to become the U.S. Attorney General.

Sincerely,

T. Peter Ruane
President & CEO

cc: Senator Edward Kennedy	Senator Orrin Hatch
Senator Joseph R. Biden	Senator Strom Thurmond
Senator Herbert H. Kohl	Senator Charles E. Grassley
Senator Dianne Feinstein	Senator Arlen Specter
Senator Russ Feingold	Senator Jon L. Kyl
Senator Robert G. Torricelli	Senator Mike DeWine
Senator Charles E. Schumer	Senator Jeff Sessions
Senator Richard J. Durbin	Senator Robert C. Smith
Senator Maria Cantwell	

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THE ARTBA BUILDING, 1010 MASSACHUSETTS AVENUE, N.W., WASHINGTON, D.C. 20001
Phone: (202) 289-4434 Fax: (202) 289-4435 Internet: www.artba.org E-mail: artbadc@aol.com

TESTIMONY OF
BARRY W. LYNNEXECUTIVE DIRECTOR
AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE

Mr. Chairman, Ranking Member Hatch, thank you for this opportunity to present testimony on behalf of Americans United for Separation of Church and State on the nomination of former Senator John Ashcroft for U.S. Attorney General. Americans United is a religious liberty watchdog group founded in 1947, representing 60,000 members and allied houses of worship in all 50 states.

After closely examining Senator Ashcroft's record and stated views on core constitutional rights and principles, we at Americans United have come to the conclusion that Senator Ashcroft's policy positions and legal opinions are so far outside the mainstream that it is doubtful he could enforce the very laws and rights that the Attorney General must protect and uphold. We call on this committee to reject his confirmation.

While Senator Ashcroft's record and views on a number of constitutional and statutory rights are extremely troubling, of foremost concern to our organization is his record on the First Amendment and its religious liberty clauses. We are gravely concerned that if confirmed as Attorney General, John Ashcroft will use his office to further a reckless mixing of religion and government.

In the area of church-state separation and individual religious liberty, the U.S. Supreme Court has developed a body of case law that protects against an unconstitutional entanglement of religion and government and promotes the right of each American to worship as he or she pleases without government interference or coercion.

Mr. Chairman, as you know, the primary job of the Attorney General is to enforce the laws and constitutional principles of the United States. However, the record and statements of Senator Ashcroft regarding the First Amendment's religion clauses put his ability to follow this case law in doubt. In fact Senator Ashcroft has openly expressed his disdain for the U.S. Supreme Court's church-state decisions. In a 1998 address before the Christian Coalition, Senator Ashcroft openly mocked the U.S. Supreme Court and its religious liberty legal decisions. Said Senator Ashcroft:

"A robed elite have taken the wall of separation designed to protect the church and they have made it a wall of religious oppression. They may try to take prayer from our schools, but they can never steal God from our hearts."

Ashcroft's characterization of the Supreme Court as a "robed elite" shows a lack of respect unbecoming a candidate for Attorney General. It is a phrase more commonly associated with religious extremists and anti-government militias than our nation's chief law enforcer and protector of civil rights and liberties.

Senator Ashcroft's contempt for First Amendment case law is not merely rhetorical, but also took legislative form. During his sole Senate term, Ashcroft developed legislation called "charitable choice," a plan that allows religious groups to receive taxpayer funds to perform government services and then discriminate in the

employment of staff people to run the program. Ashcroft's charitable choice provisions allow a government funded-program to hang a sign that says "Catholics Need Not Apply" or "Unwed Mothers Need Not Apply." Such a scheme amounts to no less than unconstitutional government-funded employment discrimination.

Although Title VII of the Federal Civil Rights Act exempts religious organizations from the prohibition against religious in private employment, this exemption has never been extended to employees who work on, and are paid through public funds such as government grants or contracts. Nevertheless, Senator Ashcroft's "charitable choice" allows religious organizations to exclude non-believers from government-funded employment, and to advance religious doctrines with taxpayer money.

Senator Ashcroft's disregard for our constitutional separation of church and state and his attacks on the Supreme Court raise serious questions about his fitness to hold the office of attorney general. In that office, he would be expected to uphold the religious neutrality of the public schools and protect the rights of religious minorities. Given his poor record and dismissive statements about the U.S. Supreme Court's religious liberty cases, it is extremely doubtful he could fairly enforce these standards as U.S. Attorney General.

The recent release of Senator Ashcroft's speech at Bob Jones University in 1999 lends more evidence to these conclusions. In the 1999 speech, Senator Ashcroft states that America has "no king but Jesus." Such a statement shows a total lack of regard for the principle that it is the U.S. Constitution that serves as the basis for our laws and national life, not one faith tradition. Our Constitution guarantees unqualified religious liberties for each of us, regardless of our beliefs.

Also troubling was Senator Ashcroft's remarks praising Bob Jones University, a school with a history of religious and racial bigotry. The university, which up until last year banned interracial dating, has called Roman Catholicism a "cult." During Ashcroft's speech, he praises the university, thanking God for its very existence, and then lauds the school's commitment to the principles they share.

The rhetoric John Ashcroft uses to discuss the interplay of personal religious conviction and public policy is profoundly disturbing. He told *Charisma* magazine, "I think all we should legislate is morality." Similarly, in an interview in the *Virginian Pilot* he lamented, "Would that our government got closer to the heart of God." There is little doubt that in his legislative activities, he has tried to promote legislation which he believes would move the nation toward that "heart" of God. That alone is problematic. However, when he is called to enforce laws which by his own standards are immoral or run against God's will, it seems inconceivable that he could be faithful to his constitutional responsibility to enforce such laws and remain committed to the "kingship" of Jesus. That conflict alone should be fatal to his appointment.

As the nation's top law enforcement officer, the Attorney General must represent all Americans. He must stand for the rights of Christians, Jews, Muslims, Buddhists and Hindus. He must advocate for those who are completely devout about religion as well as those who are totally indifferent toward it. He must understand certain things about America – that the nation was not founded on any one particular set of religious beliefs but rather was deliberately designed to extend freedom to them all. Our nation guarantees this freedom to all faiths by erecting a wall of separation between church and state.

Senator Ashcroft views this wall as one that fosters oppression, not freedom. By taking this position, he puts himself at odds with both the early American statesmen who built that wall – men like Thomas Jefferson and James Madison – and more importantly, the decisions of the U.S. Supreme Court.

For these reasons, we respectfully ask this committee to reject John Ashcroft's confirmation as Attorney General of the United States.

Thank you Mr. Chairman.

mc



RECEIVED AUG 27 1999

D.W. ANCELL
SHERIFF of RANDOLPH COUNTY

223 NORTH WILLIAMS
MOBERLY, MISSOURI 65270-1593
MOBERLY OFFICE: 660 263-0095
HUNTSVILLE OFFICE: 660 277-4515

8-23-99

Honorable John Ashcroft
United State Senate
Washington, D.C. 20510-2504

Re: Ronnie White's appointment to the Federal Bench

Judge White's past decisions clearly indicate that he is strongly opposed to the death penalty.

Judge White's decision in the attached Moniteau County case clearly implies that White did not review the case on the facts; he simply opposed the death penalty.

It is my opinion that White can sufficiently demoralize law enforcement while being a state judge.

Sincerely,

D.W. Ansell
Randolph County Sheriff

7164212
2421934
10/5 ✓

cc: Senator Kit Bond
Representative Kenny Hulshof

P.S. Rep. Hulshof:
Please review the enclosed information. Perhaps you could have some influence with the Senators.



On Judicial Despotism

by Sen. John Ashcroft

Sen. Ashcroft, Chairman of Senate Subcommittee on the Constitution, "On Judicial Despotism" Courting Disaster: Judicial Despotism in the Age of Russell Clark CPAC Annual Meeting March 6, 1997

Senator John Ashcroft, Chairman of the Senate Subcommittee on the Constitution, offers a sober analysis in a speech given in March to on America's need to curb the activities of judges who legislate from the Bench.

Thank you, Bill Pascoe, for that warm introduction. And, David (Keene) thank you for all that you and the American Conservative Union have done for movement politics.

Let me begin by welcoming you to Washington. I want to welcome you not just in terms of hospitality, but also in terms of what you represent, and the values that you bring: the values of industry and commerce; integrity and faith; love of family and of country. And, perhaps most of all, a recognition that America's best days lie ahead.

All too often, the Congress thinks there is no end to the good they can do with your money and their brains It is time for us to put an end to this misguided belief. The Founding Father's vision was for a constitutional republic where the will of the people would be imposed on Washington, not the views of Washington imposed on the people.

So, for those of us who toil under the dark cloud of this capital city, your presence here this morning is an inspiration.

Part of the mythology surrounding our Constitution is the idea that its adoption was inevitable. Time and distance have made it difficult to imagine that the wisdom and insight that is our founding document could have been tossed on the ash heap of history.

Our forefathers, however, suffered no such delusions. They understood that the ratification debate was about first things, fundamental principles, ideas purchased with patriots' blood. Alexander Hamilton predicted that a "torrent of angry and malignant passions" would be awakened by the debate. He was not disappointed.

In Virginia, Patrick Henry decried the new Constitution, calling it a "resolution as radical as that which separated us from [the Crown]." In New England, opponents worried aloud about liberties lost, rights eroded, judicial power left like, quote, "a boundless ocean."

But Hamilton and his allies would not yield to these sharply expressed fears of judicial despotism. Rejecting such concerns, Hamilton offered his now famous phrase, "Here, Sir, the people govern."

But "here" in America today, can it still be said that "the people govern"? Can it still be said that citizens control that which matters most? Or have people's lives and fortunes been relinquished to renegade judges, a robed, contemptuous intellectual elite fulfilling Patrick Henry's prophecy, that of turning the courts into, quote, "nurs[er]ies of vice and the bane of liberty"?

Consider just how far the federal judiciary has strayed. In 1987, the federal courts assumed the right to tax the American people. District Judge Russell Clark ordered a tax increase to "remedy vestiges of segregation" in the Kansas City, Missouri school system. The decree -- and two billion tax dollars -- turned the city's school district into a gold-plated Taj Mahal complete with editing and animation labs, vivariums and greenhouses, temperature-controlled art galleries, and a model UN wired for language translation.

While satiating the judge's thirst for educational intermeddling, the reforms left student achievement unchanged. And so today, the planetariums, pools, and pay increases stand only as a testament to tyranny, an appalling judicial activism that is contrary to all that the Framers held dear. As Supreme Court Justice Clarence Thomas indignantly opined, "[Clark] has trampled upon the principles of federalism" and in turn the Constitution itself.

Or, consider 1992 when the court challenged God's ability to mark when life begins and ends. Three Reagan appointees joined the majority in *Planned Parenthood of Southeastern Pennsylvania v. Casey* to uphold a "woman's right to choose." So much for recapturing the Court. Together, *Roe*, *Casey* and their illegitimate progeny have occasioned the slaughter of thirty-five million children, thirty-five million innocents denied standing before the law.

My friends, when the Court intervenes in such matters, debate in the public square does not end. The divide only deepens. Who among us would suggest that abortion is less divisive today than when the Court wrested control from the fifty states and the people? As Judge Bork asserts, the abortion rulings represent "nothing more than the decision of a Court majority to enlist on one side of the culture war."

In 1995, the Supreme Court stole the right of self-determination from the people, throwing out Arkansas' congressional term limit law. No matter your thinking on term limits, consider only this: the Constitution is "silent" on limited tenure. And, as Justice Thomas recognized, "where the Constitution is silent it raises no bar to action by the states or the people."

In recalling the term limits decision, I am always reminded of Ed Jaksha, a retired telephone company manager. Jaksha canvassed the state of Nebraska -- in authentic colonial garb -- imploring voters to Turnout for Term Limits. A year later, Jaksha's time and treasure were deemed ill-spent by five ruffians in robes who were kind enough to save him from himself.

In 1996, the courts removed from the people the ability to establish equality under the law. District Court Judge Thelton Henderson prohibited the state of California from implementing Prop. 209. A Carter appointee who served on the ACLU's Board of Directors, Henderson held that if the California Civil Rights Initiative (CCRT) were implemented, minorities would "face an immediate possibility of irreparable harm." But, Judge Henderson, what of the "irreparable harm" racial preference programs are inflicting right now? What of the Asian high school students routinely rejected at Berkeley based solely on the color of their skin? And, what of the "irreparable harm" activist judges have visited upon the U.S. Constitution?

Perhaps someone should remind Judge Henderson that the constituting doctrine of all truly free societies is that rights belong to individuals, not groups. This was the essence of Justice Harlan's dissent in *Plessy v. Ferguson* just over a century ago. "The Constitution is color-blind," wrote Harlan, "and neither knows nor tolerates classes among citizens."

Tragically, the courts have turned your individual rights into group rights as the aggrieved rush to our least representative branch in search of entitlement.

These cases are but a page of snapshots in an album of the liberties lost. Over the last half century, the federal courts have usurped from school boards the power to determine what a child can learn; removed from the people the ability to establish equality under the law; and challenged God's ability to mark when life begins and ends. The courts have made liars of Hamilton, Madison, and Morris, confirming our forefathers' worst fears. For what the Framers intended to be the weakest branch of government, the judiciary, has become the most powerful.

What, then, can we do to put an end to judicial tyranny? We can begin by asking ourselves why modern judicial activism exists in the first place. Could it be that we have been lax in demanding that judges place our constitutional rights before their policy objectives? Could it be we have failed to reject judges who are willing to place their private preferences above the people's will? Could it be that we have populated the courts with judges who believe their intellect to be superior to that of the Framers? Could it be all of the above?

It is time to heed the counsel of Ed Meese by scrutinizing fully the nominees who come before the Senate for "advice and consent." Meese is right: there must be a dialogue between the President and the Senate regarding judicial nominees. And, if the White House fails to solicit our "advice," perhaps we should withhold our "consent."

What of the current crop of would-be judges? Consider William Fletcher nominated by the President to the Ninth Circuit Court of Appeals. What has Mr. Fletcher done with himself since his Rhodes Scholar days with the President? Tenure at Berkeley's Boalt Hall School of Law has provided Fletcher a forum to outline a judicial vision as bold as it is misguided.

It seems Mr. Fletcher feels judges should be able to use what he calls "discretionary" powers to achieve desired policy goals. In other words, Mr. Fletcher wants to use a court appointment as a license to legislate.

Americans have always believed efforts by the judiciary to legislate from the bench are illegitimate. To which Fletcher responds, "The presumption of illegitimacy may be overcome when the political bodies that should ordinarily exercise such discretion are seriously and chronically in default." Judge Russell Clark, meet "Willy" Fletcher; you two are sure to be fast friends. Frankly, the only thing "seriously and chronically in default," Mr. Fletcher, is your thinking on the United States Constitution.

And then there is Margaret McKeown, another nominee for the Ninth Circuit Court of Appeals. It was McKeown, her ACLU marching orders in hand, who led the fight to disallow a Washington state ballot initiative denying special rights to homosexuals.

Now, if McKeown's opposition had been confined to lobbying against the measure, so be it.

That is her constitutionally protected right. But her efforts were far more sinister. She attempted to keep Washington voters from deciding on the measure at all. McKeown argued that the initiative process itself was unconstitutional and represented an "immediate and irreparable harm." The mere act of collecting signatures, it seems, would cause suffering, suicides, and substance abuse. Please! It's time to expose Mrs. McKeown and her ACLU friends for the liberal elitists that they are.

Let me be clear: this is not about personality, it's not about ideology. It's about preserving our rights as they were indelibly inscribed in the Constitution. It is about not wanting more Russell Clarks on the federal bench. It is about a judicial legacy forged by the President and the Senate that will live well beyond the year 2000.

We need nominees who care more about preserving and restoring the Constitution than running schools, parks, and prisons; more about the ACU than the ACLU.

That is the essence of the pledge that my friend Paul Weyrich is circulating in the Senate. Paul's pledge simply and clearly offers the words of Senate Judiciary Chairman Orrin Hatch. It says, "Those nominees who are or will be judicial activists should not be nominated by the President or confirmed by the Senate, and I personally will do my best to see to it that they are not."

What a tragic state of affairs when conservatives feel compelled to circulate a pledge to safeguard a constitution that every Senator was sworn to "preserve, protect, and defend." Nonetheless, let me talk to this issue, speaking for no individual save myself. When I laid my hand on the Bible to take the Oath of Office, I made my pledge to our Constitution. And as long as I have a voice and a vote in the U.S. Senate, I will fight the judicial despotism that stands like a behemoth over this great land.

At its best, the Court is the guardian of the Constitution, a body to which all Americans look for the ultimate protection of their rights. At its worst, it is home to a "let-them-eat-cake elite" who hold the people in the deepest disdain. By guiding the judicial selection process, we can begin to reestablish the constitutional balance envisioned by the Framers.

It is also time for us to take a broader, comprehensive look at the alarming increase in activism on the Court. As Chairman of the Senate Subcommittee on the Constitution, I intend to convene hearings in the months ahead to examine this disturbing trend. Americans should not sit idly by as our individual rights are surrendered. We should enlist the American people in an effort to rein in an out-of-control Court.

Our forefathers who warned of judicial power left like "a boundless ocean" were right. A half-century of unbridled judicial activism has made that danger clear to all but the intentionally ignorant. Experience is both the best and most expensive teacher. So, now that the costly lesson has been learned, "why stand we here idle" while the precious jewel of liberty is lost? Let us lend our voice to this cause. So that one day, in the not so distant future, we might once again say, "Here, Sir, the people govern."

Thank you very much.

To Comment: john-ashcroft@ashcroft.senate.gov

**TESTIMONY
OF**

**ASIAN PACIFIC AMERICAN LABOR ALLIANCE, AFL-CIO
JAPANESE AMERICAN CITIZENS LEAGUE
NATIONAL FEDERATION OF FILIPINO AMERICAN ASSOCIATIONS
ORGANIZATION OF CHINESE AMERICANS**

REGARDING

**THE NOMINATION OF
JOHN ASHCROFT
FOR U.S. ATTORNEY GENERAL**

**SUBMITTED TO THE JUDICIARY COMMITTEE
JANUARY 22, 2001**

We, the Asian Pacific American Labor Alliance, AFL-CIO; Japanese American Citizens League; National Federation of Filipino American Associations; and the Organization of Chinese Americans, representing the interests of over 11 million Asian Pacific Americans nationwide, strongly oppose the nomination of former Missouri Senator John Ashcroft to the position of United States Attorney General.

We recognize that a President should have the prerogative of nominating his own candidates for executive branch positions. Therefore, we take this extraordinary step of publicly stating for the record our opposition to Mr. Ashcroft. Our opposition to his nomination is not based on his conservatism. We base our opposition on the fact that throughout his career, he has expressed strong opinions on issues we believe would prevent him from enforcing many federal laws that are of great importance to our community. In addition, he opposed qualified executive and judicial nominees who aimed to fully support and swore under oath to protect the rights of our community.

Below is a list of reasons why we in the APA community oppose Mr. Ashcroft's nomination:

- 1. Mr. Ashcroft opposed Bill Lann Lee's nomination for Assistant Attorney General for Civil Rights for upholding the law on affirmative action.**

A. Advocate

Mr. Ashcroft opposed the nomination of Bill Lann Lee; the APA community strongly supported Mr. Lee who was extremely qualified for the position. We object to Mr. Ashcroft's "standard" for which he opposed Mr. Lee. During Mr. Lee's hearings, Senator Ashcroft stated:

He has, obviously, the incredibly strong capacities to be an advocate, but I think his pursuit of specific objectives that are important to him limit his capacity to have a balanced view of making judgments that will be necessary for the person who runs the division.

Mr. Ashcroft believes a person would continue to be an advocate of opposite positions despite the law. Mr. Lee testified at his confirmation hearings under oath that he would uphold the laws of the land. In the affirmative action areas of concern, Mr. Lee would have been enforcing the laws dictated by the U.S. Congress and the courts.

As a United States Senator, Mr. Ashcroft developed a "standard" by which the fitness of presidential nominees were judged. The "Ashcroft standard" maintains that if a nominee holds views that are out of step with the law of the land, and said nominee's past demonstrates that he or she might be an activist instead of an administrator, then the nominee is not fit to serve in that position.

B. Racial Reconciliation

December 19, 1997 U.S. Newswire Senator Ashcroft stated after a meeting with President Clinton and opponents of racial preference:

When he [President Clinton] decided earlier this week to name Bill Lann Lee as Acting Assistant Attorney General for Civil Rights, the President did considerable damage to efforts to achieve racial reconciliation in this country . . . President Clinton favors racial preferences that award academic admissions, employment, and public contracts on the basis of skin color. It is his intention that Congress, the Supreme Court and the Constitution should not stand in the way of classifying Americans by race, and treating Americans differently on the basis of race . . . the policy of Bill Clinton and Bill Lee is that the government continue treating people differently on the basis of race.

The APA community did not see "damage to efforts to achieve racial reconciliation in this country" with Mr. Lee's nomination. Quite the contrary. We saw incredible racial bridging opportunities with Mr. Lee as this nation's top civil rights law enforcer. Civil rights would be a much more inclusive issue with an Asian Pacific American Assistant Attorney General for Civil Rights with a proven track record of bringing people together.

C. Quotas

December 15, 1997 Senator Ashcroft's statement on Bill Lann Lee:

America deserves a chief enforcement officer for civil rights who is willing to treat Americans fairly based on merit and character, not racial preferences and quotas.

On his *October 22, 1997* confirmation hearing, Bill Lann Lee – in response to questioning from Senator Ashcroft – stated under oath, “Quotas are illegal and wrong . . . Flat out wrong and illegal.”

D. The Adarand Decision

During his first day of Senate confirmation hearings, Mr. Ashcroft stated that he had opposed Mr. Lee’s nomination because he had “serious concerns” whether Mr. Lee fully understood and would enforce the standard set in the *Adarand* decision. Mr. Ashcroft testified that Mr. Lee did not “repeat the strict scrutiny standard.”

In the *October 22, 1997* Senate Judiciary hearings for Bill Lann Lee, the following exchange between Chairman Orrin Hatch and Mr. Lee took place:

The Chairman. These cases [*Crosen* and *Adarand*] would also stand for the proposition, wouldn’t they, that strict scrutiny would be required in all governmental racial classification matters?

Mr. Lee. Yes, that is correct, that strict scrutiny is required and that properly designed and properly implemented affirmative action programs are consistent with the strict scrutiny test under the Fourteenth Amendment and Fifth Amendment.

The Chairman. Would you agree that *Adarand* stands for the proposition – the Supreme Court case of *Adarand* – stands for the proposition that State-imposed racial distinctions are presumptively unconstitutional, that that presumption can be overcome only by a strong basis in evidence of a compelling interest and should be narrowly tailored?

Have I stated that pretty correctly?

Mr. Lee. Yes, and I agree with that.

Under oath, Mr. Lee stated his understanding of the *Adarand* decision, contrary to Mr. Ashcroft’s claims.

On *November 10, 1997*, President Bill Clinton said:

It is wrong to deny this man [this] job because he agrees with the policies of the President . . . It is wrong. If I have to appoint a head of the office of Civil Rights who is against affirmative action it’s going to be vacant a long time . . . We need somebody to enforce the laws, and Bill Lee should be confirmed.

By so fervently opposing Bill Lann Lee’s nomination over affirmative action, we are concerned that Mr. Ashcroft and the next Assistant Attorney General for Civil Rights may not be supportive of the issues that still impact APAs primarily due to our race as discrimination based on race,

ethnicity, gender, national origin, religion, sexual orientation, and disability are still alive and well in this society.

2. Mr. Ashcroft opposed the nomination of qualified minority and women judges.

We are concerned with the number of qualified minority and female nominees for judgeships opposed by Mr. Ashcroft while Senator.

Mr. Ashcroft voted against the nomination of Susan Oki Mollway to the District Court of Hawaii but she was confirmed by the U.S. Senate and became the first APA woman federal judge.

Mr. Ashcroft also led the campaign that defeated the nomination of Missouri Supreme Court Judge Ronnie White, an African American, to the federal District Court of Missouri. The point of concern for the APA community is the misrepresentation of Judge White's record by the Mr. Ashcroft. He charged Judge White with being "procriminal" with a "serious bias against a willingness to impose the death penalty" although Judge White had affirmed 41 of the 59 capital cases he had heard in his career. Moreover, three of the judges Mr. Ashcroft had appointed as governor to the Missouri Supreme Court had voted to reverse the death penalty more often than Judge White.

Mr. Ashcroft also opposed and voted against the judicial nominations of Margaret Morrow to the Ninth Circuit Court of Appeals; Richard Paez to the Ninth Circuit Court of Appeals, Sonia Sotomayor to the Second Circuit Court of Appeals, Ann Aiken to the District Court in Oregon, and Marsha Berzon to the Ninth Circuit Court of Appeals.

3. Mr. Ashcroft voted against the Hate Crimes Prevention Act.

In April 2000, Anil Thaku, Thao Pham, and Ji-Ye Sun – three APAs – were shot and killed in two separate locations on the same day by Richard Baumhammers. Sandip Patel, another APA, was paralyzed from the neck down. A Jewish woman, Anita Gordon, and an African American man, Gary Lee, were also killed.

In August 1999, Joseph Iletto, a Filipino-American postal carrier, was shot and killed by Buford Furrow, a white supremacist who had earlier went on a shooting spree at a Jewish community center. Iletto was killed because he was a government employee and he was "not white."

Hate crimes are nothing new to the APA community, from Fermin Tobera in 1930, to Vincent Chin in 1982, to Navrose Mody in 1987, to Naoki Kamijima in 1999, APAs have constantly been reminded by violence, murder, and hatred that we look different from the "typical American."

The elimination of hate crimes and the full punishment for hate crimes are top priority issues for APAs. It is the one issue that binds us all together because people cannot tell a Japanese American from a Vietnamese American from a Chinese American from almost any other Asian ethnicity. We are all equal targets in the eyes of hate.

The Hate Crimes Prevention Act (HCPA) aimed to expand the definition of a hate crime and give the federal government considerably more power to investigate and prosecute hate crimes. We strongly supported the immediate passage and strengthening of the hate crimes statute.

Currently, an act of crime cannot be classified as a hate crime unless the victim is targeted because of his or her status in one of four federally protected categories (i.e. race, religion) and said victim is engaged in one of six federally protected activities (i.e. voting, pursuing an education). The HCPA would have expanded the categories to include gender, sexual orientation, and disability; it also would have done away with the federally protected activity clause.

The HCPA would also have allowed the federal government to investigate and prosecute hate crimes if local law enforcement lacked the resources to handle such cases.

We supported the HCPA, as did hundreds of other civil rights, law enforcement, religious, and labor organizations, the president, the vice president, a majority of both the House of Representatives and the Senate, and countless individuals.

Mr. Ashcroft opposed the HCPA, a bill that would have moved this nation forward in stomping out intolerance.

4. Mr. Ashcroft has vigorously opposed legislation aimed to aid underserved communities, including the APA community.

This nation needs to continue making progress in eliminating any disparities based on race, gender, and other differences. We should not be moving backwards with the dismantling of programs. Some of the issues of concern to APAs include:

- Mr. Ashcroft's vote in favor of an effort to eliminate the Disadvantaged Business Enterprise program, which requires recipients of federal transportation money to have affirmative action programs for women and people of color.
- Mr. Ashcroft's vote to weaken the 1977 Community Reinvestment Act, a federal law to promote economic opportunity and economic growth in low-income neighborhoods by discouraging banks from "redlining" minority areas in inner cities.
- Mr. Ashcroft's vote in 1997 against extending Supplemental Security Income and Food Stamp benefits for legal immigrants from August to September to give those legal immigrants a chance to find alternative forms of subsistence before being removed from government assistance due to the Personal Responsibility and Work Opportunity Act of 1995. Mr. Ashcroft also voted for prohibiting the restoration of Food Stamps for certain legal immigrants in 1998 as a result of the same act. Mr. Ashcroft's treatment of legal immigrants raises severe questions as to whether he would adequately serve populations largely made up of foreign-born people, specifically the APA community, of which approximately two-thirds are born outside of the United States.

Conclusion

We recognize that the power of cabinet appointments should be done by the President of the United States. There is, however, a reason why these positions must be confirmed by the Senate; for any senator to simply vote to confirm a nominee without giving it serious consideration – whether it be for reasons of deference to the president or courtesy to former colleagues – is unwise.

We believe that an impartial look over Mr. Ashcroft's record as state attorney general, governor, and senator at the very least raises serious concerns over his fitness to be the United States Attorney General, the top law enforcement post in the federal government and thus, the country.

Mr. Ashcroft's insensitivity to the needs and interests of the APA community as outlined in this testimony and the American community at-large makes it difficult for us to believe that he would fairly enforce the laws of our land and continue making progress in eliminating racial disparities.

We urge all senators to reject Mr. Ashcroft's nomination.



KHU HỘI CỤ TÙ NHÂN CHÍNH TRỊ VIỆT NAM
WASHINGTON DC-MD & VA

Association of Former Vietnamese Political Prisoners of Washington DC-MD&VA
203 Midsummer Drive, Gaithersburg, MD 20878 . Tel : (301) 948-1662

January 16, 2001

Senator Patrick J. Leahy, Chairman
US Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

Re: Confirmation hearing

Dear Senator Leahy:

As an organization of Vietnamese torture survivors, we would like to commend Senator John Ashcroft for his principled stance with regard to the protection of Vietnamese refugees.

Thanks to his strong support in Congress, almost twenty thousand Vietnamese refugees have been rescued from communist persecution after their repatriation to Vietnam from Hong Kong and Southeast Asian first-asylum camps. Not only these rescued refugees are grateful to Senator Ashcroft but the Vietnamese-American community at large is appreciative of his support for this humanitarian cause.

From what we know, Senator Ashcroft did not act on the basis of racism and he was most sensitive to the plight of refugees living in another part of the world. We hope that you will bring this fact to the attention of your colleagues on the Committee on the Judiciary.

Sincerely,


Quyên Cao Nguyễn
Chairman

Cc: Senator Orin Hatch, Ranking Minority Member



John S. Baker, Jr.
Eale E. Rennell Professor of Law

January 16, 2001

The Honorable Orrin Hatch
The United States Senate
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of John Ashcroft for Attorney General

Dear Senator Hatch:

The hearings on the nomination of John Ashcroft are expected to inquire into his disagreement with Judge White of the Missouri Supreme Court over the Judge's dissenting opinion in a capital-murder case, *State v. Johnson*, 968 S.W. 2d 123 (1998). I have previously written a letter in support of Mr. Ashcroft's nomination and would like to supplement that with some observations about the *Johnson* case. These comments reflect my twenty-five years experience teaching and writing about criminal law and my prior service as a state prosecutor.

In the *Johnson* case, the defendant confessed to the killings. At trial, his attorney used the only possible defense, insanity. That defense fell apart at trial for a number of reasons discussed in the majority opinion, including mistakes by defense counsel and the proof offered by the prosecution. On appeal, with a different lawyer, the defendant relied primarily on the last refuge of guilty defendants: a claim that his trial attorney was incompetent.

It is clear from Judge White's opinion, especially his "Conclusion," that in this case at least he was unwilling to follow the Missouri law governing the death penalty and the insanity defense. Under Missouri law, then and now, the defendant is presumed to be sane and has the burden of proving he is legally insane. *Mo. Rev. Stat. Sec. 552.030*. The substantive law applicable at the time of the crimes (1991) basically follows the Model Penal Code. Missouri has since tightened the standard for what constitutes insanity.¹ Even under what was a more liberal insanity standard applicable to this case, Judge White concedes that the defendant may have been legally sane;

¹ By an amendment in 1993, Missouri eliminated from the insanity defense the language recognizing a mental disease or defect resulting in a defendant being "incapable of conforming his conduct to the requirements of law."

nevertheless, he believes the defendant is suffering from "madness." ("While Mr. Johnson may not, as the jury found, have met the legal definition of insanity, whatever drove Mr. Johnson to go from being a law-abiding citizen to being a multiple killer was certainly something akin to madness." 968 S.W. 2d at 138.). Judge White blames the defense attorney by claiming he inadequately represented the defendant. As the majority opinion demonstrates, the mistakes made by the defense attorney would not have altered the outcome of the case. Judge White's sympathy for the defendant and/or his opposition to the death penalty obviously sway his decision to disregard Missouri law and the judgment of the jury.

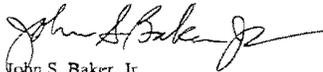
The Missouri legislature has defined and redefined what constitutes insanity. Under none of its definitions would a vague concept of "madness" suffice. Many murderers -- indeed, the most heinous -- are "mad," but guilty nonetheless. It is not surprising that no other judge on the court joined Judge White's view because his view would have greatly expanded a defense the state legislature had recently restricted.

Judge White's further statement that "This [case] is an excellent example of why hard cases make bad law." *id.*, indicates a fundamental confusion between the role of legislators and the role of judges. The maxim that he quotes refers to what happens when a judge makes law based on exceptional facts, which is what Judge White attempted to do. Legislation, because it is prospective, is necessarily based on some general standard. When a judge encounters exceptional facts which the legislature may not have anticipated, he or she is expected to apply generally accepted methods of interpretation. At some point, however, judicial interpretation can become unchecked judicial discretion if exceptional situations are used to change the law as laid down by the legislature.

Sparing convicted criminals from the strictness of the law occurs in a limited number of state and federal criminal cases through an exercise of clemency. Within our system of separation of powers, the power to pardon is not a judicial power; like the power to prosecute, it is a power committed to the Executive branch. Under the Missouri Constitution, the Governor is entrusted with absolute discretion to grant pardons (except in certain cases) for whatever reasons he deems proper. *Mo. Const., Art. 4, Sect. 7; Roll v. Carnahan*, 225 F. 3d 1016 (8th Cir., 2000). If Johnson's killings do not warrant the death penalty, then the late Governor Carnahan could have granted and Governor Holden still can grant a pardon sparing his life for the reasons stated by Judge White.

Whatever one thinks of the death penalty and its application to Mr. Johnson, it is difficult to deny that Judge White demonstrated an unwillingness to follow the law on matters of insanity and the death penalty in the case at issue.

Very truly,



John S. Baker, Jr.
Dale E. Bennett Professor of Law

What Constitutes An Unacceptable Nomination**..... To a Cabinet Position?.....**

Ross K. Baker
Professor of Political Science
Rutgers University

Since 1868, when the United States Senate instituted a rule requiring that presidential nominations be presented to the appropriate committee for hearings, the process of approval has been transformed. Prior to that date, nominees were referred to committee only when the nominee was unknown or when the nominee would be taking an office that involved the spending of public money. In the early days of the Senate, nominations were often taken up on the very day that they were presented. The modification of senate practice in 1868 suggests a desire on the part of the Senate to have nominees scrutinized more closely and a determination to move from the more casual and pro forma procedures of earlier times.

Further evidence of the institutional desire to avoid the possibility of unfit or even controversial nominees from evading the due deliberation of the body was Senate Rule XXXVIII which, among other things, requires the renomination of a candidate if that person has not been approved by the time the Senate adjourns or recesses for more than 30 days.

George B. Galloway, Senior Specialist of the Legislative Reference Service of the Library of Congress observed 40 years ago that "reference to committees of nominations of present or former members of the Senate is usually waived as a matter of senatorial courtesy, and the

president usually receives a free hand in the selection of members of his cabinet." ¹

The standard for rejection of a nominee, initially, was quite stringent and was laid down by Senator George Cabot of Massachusetts who wrote in 1799 that, for the Senate to reject a nominee, "he must be positively *unfit* for office and the public duty not likely to be performed by him."² A respected commentator on the early Senate, Professor Elaine Swift, reflecting on Cabot's assertion, observed that, "Cabot's views are notable not only for the narrow construction of senatorial advice and consent but also for their accurate depiction of the narrow view that the senate in general adopted in Congresses One through Ten."³

The disposition of the Senate to approve without demur most important executive nominations came to an end with the Madison Administration's withdrawal of the nomination of Albert Gallatin as Secretary of State. Gallatin had clashed with a number of senators over his fiscal policies. Gallatin had served briefly as a U.S. Senator and subsequently as a member of the House. Gallatin, moreover, had served both Jefferson and Madison as Secretary of the Treasury. There was no question of his unfitness for the office, but the nature of American politics had changed since the time when the Senate deferred to the president. The close party ties that had united the executive and the Congress during Jefferson's tenure were weakening and the Senate was asserting its institutional prerogatives to challenge important nominations. Madison's decision to leave Gallatin at Treasury and to send to the Senate the name of a man known to be favored by a key senator marked the transition.

The Cabot doctrine that unfitness alone disqualified a nominee received a spectacular setback when the nomination of Secretary of State Martin Van Buren by President Andrew Jackson as ambassador to Great Britain was defeated. The rejection was a purely political one on

¹George B. Galloway, *The Legislative Process in Congress* (New York; Thomas Y. Crowell, 1962), p. 577.

²Quoted in: Elaine K. Swift, *The Making of an American Senate* (Ann Arbor: University of Michigan Press, 1999), p. 66.

³*Ibid.*

the part of Henry Clay, John C. Calhoun, and Daniel Webster, all of whom aspired to the presidency and saw Van Buren as a rival whose defeat by the Senate would end his career. Not only had the Senate previously approved Van Buren to be Secretary of State, but Van Buren was also a former U.S. Senator. This period also saw the first outright rejection of a cabinet nominee when Roger B. Taney, an Andrew Jackson nominee as secretary of the Treasury, was defeated by a vote of 18-28.

The period from the 1830s until the 1870s saw the Senate assert its power over appointments and presidents were forced to bow to senators' demands for patronage appointments. It was during this period, moreover, that the practice of "senatorial courtesy" became firmly established. The most transparently political pretexts were sufficient to cause the Senate block nominations, even when those nominations were of Senate colleagues.

The Senate did not even consider the nomination of Senator Stanley Matthews to the Supreme Court in 1881 because of the belief on the part of many senators that President Hayes had made the nomination to reward Matthews for his support in the disputed Hayes-Tilden election of 1876 during which Matthews had served as clerk of the Electoral Commission that

awarded three states' disputed electoral votes to Hayes. Later, Matthews' name was submitted by President Garfield and he won confirmation by a single vote.⁴

The rejection of their nominees by the Senate, prompted presidents to turn to the senate itself for nominees on theory that the Senate would be disinclined to turn down one of its own. In Grover Cleveland's second term, two Supreme Court nominees were defeated by the invocation of senatorial courtesy by Senator David B. Hill, a member of Cleveland's own Democratic Party. Cleveland subsequently turned to Sen. Edward Douglas White (D-La.) Who was confirmed.⁵

⁴Robert A. Diamond (ed.) *Powers of Congress* (Washington, D.C.: CQ Press, 1976), p. 212.

⁵*Op. Cit.*, pp. 213-214.

The first time that a senator characterized a nominee as “personally obnoxious” and hence unacceptable as a nominee was in 1916 by Senator Joseph H. Gallinger (R-N.H.) . The nominee was a Woodrow Wilson nominee to the Federal Trade Commission who ultimately served for more than a year on a recess appointment.

Opposition to a nominee of purely ideological grounds also became more common in the 20th Century. Some of the Franklin Roosevelt and Harry Truman nominee were seen as excessively liberal. Both Rexford Tugwell at Agriculture and Harry Hopkins at Commerce ran into strong opposition based on ideology. Senatorial courtesy was also invoked successfully on a number of occasions during the New Deal period by conservative Democratic senators displeased with the philosophy of Roosevelt's candidates for sub-cabinet and judicial posts. While conflicts of interest stemming from their backgrounds in business caused problems for some Eisenhower

nominees, Lewis Strauss, the first cabinet-level nominee to be rejected outright by the Senate since 1925 failed of confirmation not merely because of questions relating to his integrity, but also because of what was seen by some senators as his excessively conservative approach to government.

The fate of subsequent judicial and cabinet-level nominees ranging from the two Nixon nominees in the 1970s, Judges Clement Haynesworth and G. Harrold Carswell to Robert Bork in the 1980s and Clarence Thomas in the 1990s suggests that mere unfitness for the job to which a nominee has been chosen no longer serves as much of a guideline for senators.

Almost any cause, from personal pique to ideological opposition to dismay with a candidate's personal habits can be sufficient to cast a cloud on a nominee and, if the opponents are sufficiently determined and politically-skilled can bring a nomination to grief. Fitness to hold office, by itself, is no defense against an effort to deny confirmation.

An executive nomination provides the occasion for a debate, and if the points of contention between a president and the Senate are sufficiently sharp and a consensus emerges in the senate against a presidential nominee for almost any reason, the perfection of a nominee's technical qualifications become just another factor to be weighed, and not in any way dispositive.

THE BAR ASSOCIATION OF SAN FRANCISCO

January 12, 2001

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Dear Senator:

The Bar Association of San Francisco has a long and distinguished history of defending women's right to reproductive freedom and choice; of enforcing the rights of minorities to equal opportunity and equal access to the system of justice; of ensuring the rights of all who live in this nation to be free of the ravages of gun violence; of upholding the rights of gay men and lesbians to be free of discrimination based upon sexual orientation; and of supporting reasonable gun control laws for the safety of all citizens.

It is because of BASF's longstanding and emphatic support for these fundamental rights that the Association's Board of Directors views with great concern President-elect Bush's nomination of former Senator John Ashcroft for the position of United States Attorney General.

In an effort to help ascertain whether Senator Ashcroft, as this nation's chief law enforcement officer, would vigorously and zealously enforce these and other legal protections which lie at the heart of our basic liberties, the BASF Board voted unanimously to respectfully suggest to our own Senatorial representatives, as well as to all members of the Senate Judiciary Committee, a few questions which might be posed to Senator Ashcroft in the context of the upcoming hearings. We hope that our contributions, together with those pouring in from other concerned groups across the country, will be of assistance to you in what promises to be a most difficult and challenging, but ultimately watershed moment in our nation's history.

- **BASF'S SUGGESTED QUESTIONS TO SENATOR ASHCROFT:**

1. You have, throughout your public life, been implacably opposed to a woman's Constitutionally protected right to reproductive freedom and choice, even in cases of rape or incest. You support legislation and even Constitutional amendments that would define life as beginning at fertilization, which would not only criminalize all abortions and take away a woman's right to reproductive freedom and choice, but would also outlaw and criminalize many forms of the most common birth control options. In casting your vote in opposition to the confirmation of Dr. David Satcher for Surgeon General you criticized his pro-choice views and referred to him as "someone who is indifferent to infanticide." 144 Cong. Rec. S540 (daily ed. Feb. 10, 1998). How can you now assure this Committee that you would vigorously and zealously enforce, as Attorney General, these Constitutionally protected freedoms, including instructing your Department to engage in vigorous defense of *Roe v. Wade* and of all current laws which enhance its enforcement, including, most specifically, the Freedom of Access to

 THE BAR ASSOCIATION OF SAN FRANCISCO

Clinic Entrances legislation, which requires the FBI and Federal Marshall's Office to protect against violence clinics and doctors where abortions are performed, and under which 15 of 17 criminal prosecutions have led to pleas or verdicts of guilt?

2. Will you participate in any way in the selection of federal judges and, if so, would you recommend and/or approve of the nomination of federal judicial candidates who have taken pro-choice positions or indicated their support for *Roe v. Wade*? Conversely, in selecting and recommending possible federal judicial candidates would you consider favorably their support for overturning *Roe v. Wade*?
3. As stated in a January 12, 2001 *New York Times* editorial, "On the vital matter of selecting federal judges and Supreme Court justices, an area where the attorney general wields great influence, it seems clear that under [your] leadership, moderate judges would have little chance of appointment. In recent years [you were] a ringleader in the effort to block confirmation of well-qualified moderates whom President Clinton nominated for judicial appointment. [You] succeeded in defeating the nomination of a respected black Missouri Supreme Court justice, Ronnie White, on a party-line vote based on the manufactured charge that Justice White was 'pro criminal' and against law enforcement." Do you agree with the *Times* that during your tenure as Attorney General moderate judges will have little chance of appointment?
4. You have accepted an honorary degree from, and delivered a commencement speech at, Bob Jones University, with respect to which you later denied that you were aware of its racist policies but nevertheless retained the degree; you have stated in a 1998 interview with the *Southern Partisan* (a publication that defends Confederate figures and has sold a T-Shirt featuring a portrait of Abraham Lincoln accompanied by the phrase uttered by his assassin, "Thus always to Tyrants." "Your magazine" (you stated) "also helps set the record straight... You've got a heritage of doing that, of defending Southern patriots like [General Robert E.] Lee, [General Stonewall] Jackson and [Confederate President Jefferson] Davis. ... We've all got to stand up and speak in this respect or else we'll be taught these people were giving their lives, subscribing their sacred fortunes and their honor to some perverted agenda;" you have opposed the Hate Crime Prevention Act, voted to eliminate the Disadvantaged Business Enterprise Program, opposed federal job training money to those who do not complete high school, were one of only two members of a 40-member federal commission on minorities--whose membership included Coretta King and former Presidents Carter and Ford--who refused to endorse the Commission's findings, and have passionately opposed affirmative action for African Americans and other minorities expressly sanctioned by Supreme Court decisions. Given a lifetime of commitment to these principles, how can you convince the racial minorities of this country, all Americans and this Committee, that you will vigorously and zealously support and defend their Constitutionally and statutorily guaranteed rights?

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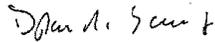
5. As Attorney General, will you be asking the Civil Rights Division of the Department of Justice to review existing desegregation consent decrees? For what purpose?
6. As Attorney General, will you consider instituting lawsuits to attack the constitutionality of state and municipal government affirmative action programs?
7. Do you believe that *naturalized* United States citizens are entitled to federal welfare benefits on a par with United States born citizens?
8. You voted against federal legislation banning assault weapons and have opposed substantially all other legislative enactments intended to meaningfully address the carnage wreaked by assault weapons and other guns in this country. It has also been widely reported that you have received \$300,000 in contributions from the National Rifle Association. In light of this, can you commit, as Attorney General, to vigorous enforcement of the assault weapons ban, and what priority will it have in your administration?
9. How would you advise the President to act when the Assault Weapons legislation comes up for reenactment after it sunsets later in the term?
10. Together with Senator Jesse Helms, you were one of two who voted in the Senate Foreign Relations Committee to oppose James Hormel for Ambassador to Luxemburg on the grounds that he "was gay and a prominent advocate of gay rights" *Time* (May 11, 1998), and you have strongly opposed efforts to revise federal law to include protections against hate crimes which are based upon a victim's sexual orientation. How would you advise the President should renewed efforts to pass such legislation be successful? As the nation's top law enforcement officer, how would you instruct federal law enforcement officers and U.S. attorneys to enforce legal prohibitions against violence based on sexual orientation? What priority will this have in your administration?
11. Senator Ashcroft, you based your attack on, and strenuous opposition to, the nomination of Bill Lann Lee to be Assistant Attorney General on your assertion that "... his pursuit of specific objectives that are important to him limit his capacity to have the balanced view of making the judgments that will be necessary for the person who runs that Division," (Transcript of Proceedings, Senate Judiciary Comm., October 22, 1997, p. 56, lines 1-4) and, "... he never provided a basis for my being able to understand that he would apply these rights as an administrator and an official of Government should with respect to the decisions of the Supreme Court." (ibid, p. 58, lines 9-12). Taking into account your career, including your service as Attorney General of the State of Missouri, of unequivocal opposition to laws relating to choice, gun control, and the rights of minorities and gay men and lesbians, how can we not conclude, with a far more compelling basis than anything adduced with respect to Mr. Lann, that you will be

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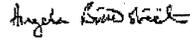
unable to serve as the chief enforcement officer of this country with, to use your own words, the "balanced view of making the judgments that will be necessary for the person who runs [the Department of Justice]?"

We appreciate the opportunity to share with you the concerns of the Bar Association of San Francisco with respect to Senator Ashcroft's nomination for United States Attorney General.

Very truly yours,



Douglas R. Young
President



Angela Bradstreet
President-Elect



BOAT PEOPLE S.O.S.

ỦY BAN CỨ NGƯỜI VƯỢT BIỂN

P.O. Box 2652, Merrifield, VA 22116, USA; tel: (703) 205-3916; fax: (703) 204-2662; email: bpso@aol.com
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January 16, 2001

Senator Patrick J. Leahy, Chairman
 Committee on the Judiciary
 US Senate
 224 Dirksen Setnate Office Building
 Washington, DC 20510-6275

Re: Confirmation hearing of Senator John Ashcroft as Attorney General

Dear Senator Leahy:

Your committee will hold a confirmation hearing today on President-elect George W. Bush's selection of you former colleague John Ashcroft as Attorney General. We understand that some parties have alleged Senator Ashcroft of being racist and insensitive to the interests of minorities. We feel morally obligated to express our highest appreciation for Senator Ashcroft's support for the protection and rescue of tens of thousands of Vietnamese boat people who were repatriated to their place of persecution.

In 1995 the US Department of State voiced its support for the "involuntary" repatriation of Vietnamese boat people in Hong Kong and Southeast Asia despite strong evidence of critical flaws in the refugee status adjudication process conducted by the first-asylum governments. Victims of serious communist persecution were denied refugee status because they could not afford bribes or refused to offer sexual favor to corrupt officials conducting the adjudication. To prevent an impending humanitarian tragedy, Senator Ashcroft and a number of his colleagues in Congress supported Section 2104 Foreign Relations Authorization Act for fiscal years 1996 and 1997, which called for the suspension of forced repatriation until the completion of a thorough review by US officials of would-be returnee's refugee claims.

Although this provision did not survive the Presidential veto, Congressional pressure helped convince the Department of State to establish the Resettlement Opportunity for Vietnamese Returnees (ROVR) program. This program has reviewed the refugee claims of some 20,000 boat people after their repatriation to Vietnam. Approximately 90% of them have been found to qualify as refugees and have been resettled to the U.S.

As your committee will soon start the confirmation hearing, we feel compelled to bring to light a fact that may not have been remembered by your colleagues on the Committee on the Judiciary or known by the general public. It shows Senator Ashcroft's compassion and fairness towards victims of persecution who had already been written off by our own Administration and the international community.

As a national organization with over 20 years of service to Vietnamese refugees and the Vietnamese-American community, we are most appreciative of Senator Ashcroft's defense of the right and dignity of tens of thousands of Vietnamese refugees. We are convinced that the vast majority of Vietnamese-Americans feel the same.

Sincerely,

A handwritten signature in black ink, appearing to read "Nguyen Thang", with a long horizontal flourish extending to the right.

Dr. Nguyen Dinh Thang
Executive Director

cc: Senator Orin Hatch, Ranking Minority Member
Tom Daschle, Senate Majority Leader
Trent Lott, Senate Minority Leader

Written Statement of Pete Busalacchi
on the
Nomination of John Ashcroft for U.S. Attorney General
January 16, 2001

Good morning. I'm here to voice my concern about the nomination of John Ashcroft for Attorney General of the United States. You see, Mr. Ashcroft, while Governor of Missouri in the early 90's, injected his political and religious views into our family's tragedy.

On May 29, 1987, my daughter Christine was in a horrible car accident. She suffered "severe head trauma" which would leave her in a persistent vegetative state until her heart stopped beating almost six years later, March 6, 1993. After more than two years in agony in Missouri courts, we finally were able to remove the feeding tube to allow her to die. The election of Democrat Jay Nixon as attorney general was the key to ending the court appearances.

Before that could happen, Governor Ashcroft's Department of Health initiated a law suit trying to replace me as Chris' guardian. This resulted in two appearances in St. Louis County courts, one before the Missouri Court of Appeals, and two before the Missouri Supreme Court. As the respondent I was forced to prove that I was acting in Chris' best interests. It was as if the state was saying that they had more interest in her life than I did.

Her life nearly ended in 1987 as the pressure in her brain exceeded normal limits for more than two weeks. From the first night to what seemed an eternity, 30 days in intensive care, I was told by several doctors how bad her condition was. There seemed to be no hope. After three hours in the emergency room a doctor emerged after stabilizing Chris to tell me that she "was bad, very bad." He didn't need to say a word – the look on his face as he shook his head told the story. One week later, a neurosurgeon told me that unless he operated on Chris immediately, removing a section of her brain, she would die within an hour. Two weeks later, the head of neurology said to me "if she makes it at all, then there probably would not be much left." It was about this time that another doctor had me sign an authorization to insert a feeding tube so that it would be easier to nourish Chris while she recovered. Little did I know how difficult it would be to have the tube removed.

John Ashcroft wasn't there to help make any medical decisions or to hear what these doctors had said. He didn't watch the monitor of her brain in those 30 days. Yet four years later, under his watch, the state was trying to take Chris away from me.

At the second hospital a team of therapists tried unsuccessfully to improve Chris' condition for almost three months. They then told me that she no longer required acute care, and that she belonged in a nursing home because she didn't respond to their therapy. I wasn't ready to give up, so I asked if there was a hospital that would work with her. The only one that might, I was told, was the state's facility in Mount Vernon, Missouri, and she was admitted there November 4, 1987.

There, another staff of therapists worked with Chris for several weeks before they concluded that Chris was not responding and that she should be in a nursing home. But since I was told that this state facility was a long term care institution, I demanded that she stay there to receive more therapy for as long as possible. This was my mistake. As I learned later, Nancy Cruzan was also a patient there. Her family already was being tormented by the state in court as they sought to remove the feeding tube to allow her to die. Missouri's attorney general, Bill Webster, fought the Cruzans all the way to the U. S. Supreme Court. Finally, back in a lower court, the Cruzans provided the evidence that satisfied the state's standard – clear and convincing evidence that Nancy would not want to remain in her condition.

No matter what one's religion might be, who would want to remain like that? What does it say in your will if you should survive a tragedy and be reduced to the "life" that Nancy and Chris had before them?

Nancy died on December 26, 1990. The doctors there told me that Chris was in the same condition, without hope of recovery. They said that it was "medically appropriate to remove the tube, but that morally they would not do it." As a result, I prepared to take Chris to Minneapolis where six neurologists from six major hospitals would examine her to help me make a final decision. On December 29, I came to the hospital to take Chris to Minnesota. I was met by several highway patrolmen and the director of the hospital. They showed me a court order that appointed the hospital's director guardian ad litem with a ten day restraining order to prevent me from taking her. While I was there that day I wanted to visit Chris and I was told that the patrolmen would have to accompany me in her room!

Some days later we appeared in a lower court. After two days of hearings the court ruled in my favor and I again attempted to take Chris to Minneapolis. Again, I was met by more state patrolmen, who refused my attempt to leave for five hours, while awaiting a stay from the Missouri Court of Appeals. Five hours we waited. The lower court hearing was two days earlier. Why did the state wait to have this done? We were like prisoners in those five hours.

So my attorney, Bill Colby, and I made our case before the Court of Appeals, which resulted in them remanding the case back to the lower court that had ruled in our favor just two months earlier. We appealed to the Missouri Supreme Court, which scheduled a hearing for September 6, 1991, five months later.

It is worthwhile to note that all seven justices on the Missouri Supreme Court had been appointed by John Ashcroft. The Supreme Court remanded the case back to the lower court which was to submit its findings back to them. At this point Chris had been in her condition for over four years!

And so, during Thanksgiving week of 1991, a four-day hearing had each side voicing its opinion about my daughter's condition. By Friday night, the judge announced what he would report to the Missouri Supreme Court, a decision that was overwhelmingly in our favor. While I should have felt some happiness about what seemed to be a finality, there was an equal amount of sadness, too. Was this going to be over? Not even close.

Some revelations during those four days of testimony included far

- the state made a videotape of Chris, without authorization, she was aware of her environment, and that she could respond. They failed to note that they gave Chris amphetamines and another drug, amphetamines for over three weeks before they began taping. They showed this tape to each major television station in the state.
- the state's expert medical witness, Dr. Harvey Cantor, admitted that Chris would receive, if needed, a heart transplant, a new kidney, an operation to amputate a leg, and even any antibiotics should she acquire pneumonia. He would not recommend any treatment like these because of her condition. The judge asked him "on a scale of one to ten with ten being as we are today, in good health, where would Chris fall?" He replied "about one."
- that I had met with several Catholic priests to discuss what ethically I might choose for Chris. Father Kevin O'Rourke, founder and head of the Center for Ethics at St. Louis University Hospital, testified on our behalf. Upon introduction by my attorney I learned that Kevin was on an international commission for ethics, some 20 distinguished individuals who met in Rome. Bill Colby asked him who had appointed him to this group, and he replied "the Pope."

The state really had no case. The judge dismissed their pleas. It was clear that our witnesses stood head and shoulders above the state's. Judge Louis Kohn issued his findings a month later, and we asked the Missouri Supreme Court to expedite our case. They responded to our request by scheduling the hearing ten months later, October 11, 1992. By then Chris lay more than five years in her condition.

During the interim we tried to move Chris to a private nursing home. No facility would take her because they were afraid of repercussions. When we tried to take Chris to a private hospital, the state objected to the Supreme Court, and Chief Justice Chip Robertson sent his order to return her to the state facility. We were trapped in Missouri.

We were bolstered by the fact that the Democratic nominee for attorney general, Jay Nixon, regularly mentioned that he would end the state's intrusion, if elected. The Missouri Supreme Court heard the case, but did not issue a decision prior to the election. And when Nixon did win we sent a motion to the Court along with a certified letter from Nixon to advise the court of his intention. They denied the motion to end the case.

Thirteen days after the inauguration, and Nixon's motion that the state was no longer going to litigate, the Supreme Court announced that the case was void. The Court issued no decision about the findings – it was just over.

I should have felt some happiness, but this was truly double-edged.

Four days later, January 29, 1993, a St. Louis county judge issued another temporary restraining order to a woman, without standing, who wanted to replace me as Chris' guardian. She was going to begin a case just as the state had over two years earlier. This judge was on his first day, having been appointed by John Ashcroft. Luckily he dismissed the case ten days later without any hearing at all.

We moved Chris to Barnes Hospital, the best hospital in St. Louis. We tried to do it without any fanfare, but the state facility felt moved to notify the media, thus notifying any interest groups where she was taken. At Barnes a team of four physicians would examine Chris to determine her condition. They agreed with more than twenty other doctors who had seen her.

There were bomb threats, and threats to kill the doctors. Chris had an entire wing of the hospital, surrounded by security. Six guards were outside her locked room. I parked a mile away where security guards met me to escort me through back entrances. Barnes had 96 entrances to cover. My code name was "Mr. Ajax."

The feeding tube was removed on February 24, about 2:00 p.m., and Chris finally came to rest on March 6, 1993 at about 4:30 a.m.

All of this seemed surreal. I just could not believe all that took place. Why couldn't the state's authorities realize that my intentions were well grounded with the help of sound advice from medical and religious experts. I guess that they chose not to believe us, and that someone else's opinion was more worthy. Surely, the state expended thousands and thousands of dollars to pursue our case. I know that our legal bills were nearly four hundred thousand dollars. What were theirs? They had four attorneys, I just had two.

In the end no one from the state cared about Chris. I did receive a note from Jay Nixon, apologizing for the state's intrusion, but he certainly wasn't responsible. Who was? Governor Ashcroft could have ended this at any time. I would bet that not one of John Ashcroft's staff remembers much detail, and I'd also bet that Ashcroft would not even remember the name Christine Busalacchi.

There are lots of pictures of Chris on walls at my home. I try to think of her when she was well – the happy times. But, I will never forget almost every day of the six year fiasco, the two years in court, and the state's intrusion into our life.



Robert W. Holleyman, II
President & Chief Executive Officer

January 16, 2001

The Honorable Patrick Leahy
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Leahy:

I am writing to voice the support of the Business Software Alliance for the nomination of John Ashcroft to be the next Attorney General based upon his longstanding record of support for issues important to the high-tech community.

Senator Ashcroft has repeatedly demonstrated that he understands the high-tech economy. As you are well aware, with you, Senator Ashcroft introduced S. 2067, E-Privacy Act, in 1998 that was a critical component to the current Administration finally lifting onerous restrictions on the export of technologies with strong encryption capabilities.

As the former Chairman of the Subcommittee on the Constitution, Federalism, and Property Rights, Senator Ashcroft understands the importance of protecting private property. The Business Software Alliance is dedicated to fighting software piracy that has a significant negative impact on the U.S. economy as demonstrated by the Delphi Study released during our 2000 CEO Forum last June. The Department of Justice is responsible for prosecuting copyright theft cases. Based upon his past record as a knowledgeable voice on high-tech issues, we would expect Senator Ashcroft to be a leader in prosecuting software piracy.

I look forward to continuing to work with you and your Committee in the 107th Congress.

Sincerely,

A handwritten signature in black ink that reads "Robert W. Holleyman, II". The signature is written in a cursive style with a large, sweeping initial "R".

1150 18th Street, N.W., Suite 700, Washington, D.C. 20036
DIRECT 202.872.5500 FAX 202.872.5501 EMAIL: roberth@bsa.org


CALIFORNIA TEACHERS ASSOCIATION

 WAYNE JOHNSON
 President

January 17, 2001

 BARBARA E. KERR
 Vice President

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 Senator Leahy (D-VT)
 Room 433 Russell
 The United States Senate
 Washington, DC 20510

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Dear Senator Leahy:

On behalf of the 300,000 members of the California Teachers Association, I write to oppose the confirmation of Sen. John Ashcroft as Attorney General of the United States. Through his actions as Missouri Attorney General, Governor and Senator, Sen. Ashcroft has consistently demonstrated his unfitness to serve as this nation's highest law enforcement officer.

Sen. Ashcroft's record and public statements in regard to civil rights are well below the standard that should be expected of an Attorney General of the United States. Senator Ashcroft's actions in opposing Judge Ronnie White are also troubling. These actions demonstrate a disregard for basic principles of integrity and truth-telling.

I urge you to examine Senator Ashcroft's record carefully. When you do, I am confident that you will agree that he should not be confirmed to this high office.

Sincerely,

 CAROLYN DOGGETT
 Executive Director

 Wayne Johnson
 President

WJ:BC/pil

 c: Barbara E. Kerr
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Testimony of

JANET BENSHOOF

President

Center for Reproductive Law and Policy

I submit this testimony to formally oppose the nomination of John Ashcroft to the position of United States Attorney General. A vote to accept Mr. Ashcroft sends a green light to overturning *Roe v. Wade* and beyond – to an America in which women are second class citizens.

I offer this testimony as a constitutional scholar and as President of the Center for Reproductive Law and Policy, a public interest law group dedicated to guaranteeing reproductive privacy both in the United States and internationally. My expertise is based on 25 years of litigation on constitutional privacy issues in all fifty states and the United States Supreme Court. This includes acting either as counsel for the plaintiffs or *amicus* counsel on over thirty abortion and birth control cases in the United States Supreme Court starting in 1977. Most recently, I was co-counsel in the Supreme Court case, *Stenberg v. Carhart*, a case upholding the principles of *Roe*, in the summer of 2000. In recognition of my pivotal role in shaping privacy law, I have repeatedly been named by the *National Law Journal* as one of America's 100 most influential lawyers.

In 1992, I founded the Center for Reproductive Law and Policy, which has represented millions of women, women whose access to safe abortion and contraception is threatened by this nomination. We also represent doctors and medical professionals who face anti-choice harassment and violence every day in the course of delivering essential health care to women.

I present this testimony against the confirmation of John Ashcroft as Attorney General for the United States for the following reasons:

- I. His judicial philosophy is so extreme that he believes that overturning *Roe v. Wade* is merely a necessary *first step* in establishing full constitutional and civil rights for the unborn from the moment that an egg is fertilized.
 - II. He has utilized his prior public positions as platforms to create legal rights and protections for the "unborn." He has been and continues to be, an important architect and strategist for the "right to life" movement, which would elevate the rights of the unborn to the detriment and subordination of women.
 - III. As the head of the Department of Justice, John Ashcroft would impose his anti-choice agenda, contrary to the rule of law, upon the Department and its offices and divisions.
- I. John Ashcroft's legal philosophy is so extreme that he considers overturning *Roe v. Wade* just a necessary *first step* in establishing full constitutional and civil rights for the unborn from the moment that an egg is fertilized.**

In every public office that he has held, Ashcroft's overarching mission has been to overturn *Roe v. Wade*. As Missouri Attorney General, he testified before the Senate to declare his support for a "human life" bill, stating his view that the "bill would largely place States in a position of again being able to regulate abortions as they did prior to 1973 and the *Roe v. Wade* decision."¹ This bill declared that "human life begins at conception"² and would therefore have had the effect of establishing a legal standard by which abortion and many birth control methods would become illegal.

If this bill had become the law of the land, it would have marked a radical departure from an American tradition and principle that women have a right to plan their families free from government intervention. However, as extreme as the results of this bill would be, Ashcroft wanted the law to go even further. Ashcroft continued: "I regard this bill as an important but insufficient step in the protection of human life. I personally have an opinion and belief that the human life amendment would remain necessary to gain and to provide protection for unborn Americans."³

By creating a fundamental right to life for the unborn, the proposed Human Life Amendment to the Constitution would directly overturn *Roe v. Wade*, which held that the right to privacy guaranteed by the Constitution encompasses a woman's childbearing decisions, including her decision to terminate a pregnancy. Central to *Roe* was the finding that a fetus is not a "person" within the meaning of the Fourteenth Amendment to the Constitution.⁴

Beyond reversing *Roe*, the Human Life Amendment would not simply leave the abortion issue to the states, but would actually require states to criminalize virtually all abortions. Moreover, since this amendment would define pregnancy as beginning at fertilization, it would have banned commonly used methods of contraception, such as oral contraception and IUDs, which may work prior to implantation. By affording the "unborn" – including fertilized eggs – equal protection of the law, the use or prescription of these contraceptives would be considered homicide. Consistent with this, Ashcroft has even opposed legislation that would require the federal health insurance plan to cover the cost of prescription contraceptives based on a belief that contraceptives are abortifacients.⁵

II. John Ashcroft has worked his entire public life to create legal rights and protections for the "unborn."

We oppose this nomination because Mr. Ashcroft's extremist judicial philosophy on rights of the "unborn," as evidenced by a career spent furthering this agenda, makes it impossible for him to enforce laws protecting the political and legal rights of American women.

In his 1981 testimony before the Senate in support of the "human life" bill, as well as in numerous constitutional cases and legislative proposals, he has advocated "mandat[ing] that the unborn child is entitled to due process constitutional protection which would limit the ability of States to provide abortions."⁶ This legal theory would require women to subordinate their lives and health – including decisions about health care, reproduction, and employment – to that of the fetus.

John Ashcroft has been disingenuous when he deflects questions about whether he supports criminal penalties for women seeking abortions or certain contraceptives. First, he attempts to avoid the issue entirely by asserting that all women are "victims" and were never prosecuted for undergoing abortions in this country before *Roe v. Wade*. This is not true. And while women were rarely put in jail, this answer is misleading because pre-*Roe*, there was no independently recognized constitutional right granted to any fetus as Ashcroft's judicial philosophy demands. In fact, if his goal of civil rights for the "unborn" is achieved, all states would be forced to penalize women. Second, Mr. Ashcroft supported a 1999 Missouri ban on most abortions (now

enjoined) which would have made a woman who obtained a proscribed abortion guilty of second degree murder, with penalties up to life imprisonment.⁷

What distinguishes Ashcroft from any previous Attorney General, then, is that his goal of securing constitutional rights to the “unborn” can only be fulfilled by taking away liberty, equality and privacy rights of American women.

III. As the head of the Department of Justice, John Ashcroft would impose an anti-choice agenda, contrary to the rule of law, upon the entire Department and its offices and divisions.

The Attorney General represents the federal government in most legal matters.⁸ The extreme ideological view that has driven Ashcroft’s career promises to color the actions he would take as Attorney General. The powers of the Attorney General include:

- to advise the Executive Branch on all legal matters;
- to influence the selection of federal judiciary vacancies, including those on the Supreme Court;
- to represent and advocate on behalf of the United States, through the Office of the Solicitor General, on select matters pending before the federal judiciary;
- to direct United States Attorneys on U.S. legal policy;
- to determine whether to prosecute offenders of some federal statutes;
- to counsel the United States Congress on pending legislation;
- to advise the President on the constitutionality of federal legislation presented for his signature.

Because he has never been reluctant to go beyond the limits of the law in his previous positions, we fear that, if confirmed, Ashcroft will use his power to defy the Supreme Court and act extra-constitutionally to protect the “life” of a fertilized egg without regard for a woman’s health.

Under the direction and guidance of the Attorney General, the Solicitor General’s office supervises and conducts government litigation in the Supreme Court.⁹ In fact, the Solicitor General, on behalf of the United States, is involved in about two-thirds of all cases the Supreme Court decides on the merits each year.¹⁰ The Solicitor General is thus a very important player in formulating the Supreme Court jurisprudence. At the *certiorari* stage, the Solicitor General sometimes either recommends that the Court hear a case or implicitly suggests that they do not hear a case by filing briefs with the Court.¹¹ Furthermore, when the Solicitor General participates in a case, either by filing an amicus brief or by participating in argument, the Court carefully considers his arguments.

Based on his dedication and devotion to overturning *Roe* and creating legal rights for the “unborn,” Ashcroft, as Attorney General, would likely direct the Solicitor General to carry this message to the Supreme Court and the rest of the federal judiciary. In response to this directive, the Solicitor General under Attorney General Ashcroft would advance an even more extreme agenda than the Solicitors General of the Reagan and Bush Administrations.

Past Solicitors General have been very involved in carrying out their Administrations' goals of dismantling the legal principles enshrined in *Roe*. This involvement has included such activities as filing amicus briefs, participating in oral arguments in cases on behalf of the government, and advising States on how to present to the Court their defense of statutes that restrict the right to abortion.

The Justice Department directly attacked the validity of *Roe* in cases argued before the Supreme Court during the Reagan and Bush Administrations. In 1982, Solicitor General Rex Lee filed a brief for the United States as amicus curiae in support of the State of Ohio and the City of Akron in *Akron v. Akron Center for Reproductive Health*.¹² In that case, the government advocated the use of an undue burden standard as the appropriate level of analysis rather than the compelling state interest standard that *Roe* articulated. Although the Supreme Court rejected this analysis in its 1983 decision, the Court adopted a version of this standard in *Planned Parenthood v. Casey*.¹³

In the 1986 brief by Acting Solicitor General Charles Fried in *Thornburgh v. American College of Obstetricians and Gynecologists*¹⁴ and 1989 brief by Acting Solicitor General William Bryson in *Webster v. Reproductive Health Services*,¹⁵ each argued that *Roe v. Wade* should be overruled by the Court.¹⁶

If Mr. Ashcroft becomes Attorney General, he will likely direct the Solicitor General to promote his judicial philosophy and exert the power of the Solicitor General's office to further an anti-choice agenda in the federal judiciary. This philosophy will so dominate the direction of the Solicitor General's office, and indeed all divisions and offices of the Department of Justice, that the rule of law, as established in *Roe v. Wade*, will be cast aside.

Unlike former Supreme Court nominee Robert Bork or current Justice Antonin Scalia, Ashcroft has dedicated his career to actively advancing, through legislation, litigation and advocacy, an activist doctrine that would grant constitutionally based civil rights to the "unborn" from the moment of conception. Such a philosophy has implications not just for the right to choose abortion, but for the entire domain of privacy rights and reproductive freedoms.

Specific Actions John Ashcroft Could Take as U.S. Attorney General

1. Advice to Congress and the President and Enforcement of Federal Law

- **'Partial-Birth Abortion':** When Congress proposes new legislation to ban so-called "partial-birth abortion," Ashcroft can be expected to defy the Supreme Court and to recommend passage of such a bill, even one that lacks constitutionally adequate protection for the health of the woman. He will also undoubtedly recommend that the President sign such a bill into law. He also would play a major role in the enforcement of a ban on so-called "partial-birth abortion" and can be expected to cast a wide net in interpretation of and prosecutions under any such statute in order to criminalize the largest number of abortion procedures and to give the statute a broad chilling effect.
- **Nationwide Parental Consent Requirement:** As Attorney General, Ashcroft would undoubtedly recommend passage of a federal bill requiring minors seeking abortions in a different to satisfy their own state parental consent requirements, despite the flagrant

violation of individual rights and states' rights that such a bill would entail, and even though state's rights are a hallmark of conservative ideology. As Attorney General, Ashcroft would have broad enforcement powers and could even arrest grandparents seeking to protect minor grandchildren from abusive parents.

- **Creating Constitutional Rights for the "unborn":** As Attorney General, Ashcroft would advise that legislative proposals whose purpose is to create rights for the "unborn" are constitutional even though the Supreme Court has ruled that fetuses are not persons under the Constitution.¹⁷
- **Freedom of Access to Clinic Entrances Act (FACE):** As Attorney General, Ashcroft would have to decide how much of the Department of Justice's resources to commit to the enforcement of FACE. Under the statute, criminal prosecutions may only be brought by the U.S. Attorney General.¹⁸ Attorney General Janet Reno has been vigorous in her enforcement of FACE. In fact, from the enactment of FACE until November 1998, 17 criminal cases had been brought. Defendants pled or were found guilty in 15 of these cases. Janet Reno has also actively defended the constitutionality of FACE. According to the 1998 GAO report, 24 reported cases were brought to challenge the constitutionality of FACE and in all of these cases the courts found FACE to be constitutional. Given his views that abortion is murder, it is unlikely that Ashcroft would dedicate the Justice Department's time, resources, and energy to protect women seeking abortion services.
- **Communications Decency Act:** A provision of the Communications Decency Act of 1996,¹⁹ as amended by section 507 of the Act, prohibited, *inter alia*, transmission of abortion-related information over the internet. Attorney General Janet Reno advised Congress that the abortion provision was unconstitutional and would therefore not be enforced because it violated the First Amendment.²⁰ As Attorney General, John Ashcroft could reverse this position and begin to enforce this statute.
- **Human Life Amendment:** If provisions such as those supported by Ashcroft in the past defining human life as beginning at conception were adopted, abortion would be considered murder and women who obtained abortions could be prosecuted and jailed as murderers. The Human Life Amendment supported by John Ashcroft does not protect the woman herself from punishment.

2. Advice to Federal Administrative Agencies

The Attorney General advises Federal Administrative Agencies, such as the Food and Drug Administration (FDA), and the Department of Health and Human Services (HHS) regarding the meaning and scope of federal statutes they administer. Indeed, the Attorney General is routinely asked to provide interpretations regarding the scope of the statutes that enable administrative agencies to function.

- **Medical Abortion:** Thus, for example, given his views regarding abortion and reproductive rights, Ashcroft would be in a position to advise the FDA that it should not or could not continue to approve new reproductive technologies such as mifepristone, more commonly known as RU-486.

- **Contraception:** In addition, given his view -- one that is contrary to medical fact -- that certain forms of contraception constitute abortifacients, Ashcroft can also be expected to issue restrictive interpretations of the Hyde and Helms Amendments as banning funding for these methods of contraception and to interpret the Global Gag Rule to prohibit advocacy promoting the use of these methods of contraception.

Conclusion

I am dedicated to the American constitutional principles of religious freedom and reproductive choice. I could not perform the duties of Attorney General in a United States where *Roe v. Wade* were not the law of the land. My principles would preclude me from enforcing anti-choice laws against women and doctors. Similarly, as a tireless crusader for obtaining civil rights for fetuses, Ashcroft *cannot* be the Attorney General in a United States where women's rights are governed by the principles embodied in *Roe v. Wade*. His life's work has been the advancement of a legal doctrine antithetical to the present Constitution and dangerous to women.

I implore you to carefully consider the consequences of this appointment to our country and to our Constitution. The extreme judicial philosophy of Mr. Ashcroft sacrifices the civil rights of women and renders him incapable of fulfilling the Attorney General's role as the lawyer for all the people of this country. A vote for John Ashcroft is a vote against the rights of women.

¹ S. 158, *A Bill to Provide that Human Life Shall be Deemed to Exist from Conception Before the Subcommittee on Separation of Powers of the Senate Judiciary Committee*, 97th Cong. 1105-1117, 1107 (1981) (statement of John Ashcroft, Attorney General of the State of Missouri).

² S. 158, 97th Cong. § 1 (1981).

³ S. 158, 97th Cong. 1107 (1981) (statement of John Ashcroft, Attorney General of the State of Missouri).

⁴ *Roe v. Wade*, 410 U.S. 113, 156-57 (1973).

⁵ Steve Neal, Editorial, *Put Lock on Door to Bush's Cabinet*, Chicago-Sun Times, Jan. 3, 2001, at 33. In a letter commenting on the proposal to the federal health insurance plan, Ashcroft was joined by seven other Senators in saying: "[w]e are concerned with what appears to be a loophole in the legislation regarding contraceptives that upon failing to prevent fertilization, act de facto as abortifacients. Therefore, we believe this amendment is a precedent-setting attempt to mandate coverage of other abortifacients." *Id.*

⁶ S. 158, 97th Cong. 1107 (1981) (statement of John Ashcroft, Attorney General of the State of Missouri).

⁷ See Mo. Rev. Stat. § 565.300 (2000).

⁸ 28 C.F.R. § 0.5 (2001).

⁹ <http://www.usdoj.gov/osg/aboutosg/function.html> (last visited Jan. 12, 2001)

¹⁰ *Id.*

¹¹ 28 C.F.R. § 0.20(a) (2000).

¹² 462 U.S. 416 (1983).

¹³ 505 U.S. 833 (1992).

¹⁴ 476 U.S. 747 (1986).

¹⁵ 492 U.S. 490 (1989).

¹⁶ Brief for the United States as Amicus Curiae at 1, *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989).

¹⁷ *Roe v. Wade*, 410 U.S. 113, 156-57 (1973).

¹⁸ 18 U.S.C.A. § 248 (2000).

¹⁹ 18 U.S.C. § 1462(c).

²⁰ See generally *Sanger v. Reno*, 966 F. Supp. 151, 158 (E.D.N.Y. 1997) (pre-enforcement challenge to provision not ripe because of lack of threat of enforcement).

THE
CENTER
FOR
SECURITY
POLICY

Frank J. Gaffney, Jr.
President

10 January 2001

Hon. Orrin Hatch
131 Russell Senate Office Building
Washington, DC 20510

Dear Senator Hatch:

I am writing to express my strong support for the nomination of Senator John Ashcroft to become the next Attorney General of the United States.

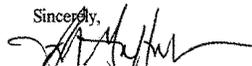
As you know, this position is one that involves responsibilities of considerable importance to the national security -- the principal focus of our Center. The Attorney General's advice is frequently sought in connection with foreign policy matters. That position's oversight of the Federal Bureau of Investigations and its counter-intelligence functions often places the occupant of that office on the front lines of the fight against this country's enemies, foreign and domestic.

I have known and worked with Sen. Ashcroft for much of his time in the Senate and recognize him -- as I am sure you do -- as a man of high integrity, great intellect and unwavering patriotism. While I did not have the privilege of interacting with him during his prior, extensive service as Attorney General and then as Governor of the State of Missouri, I am certain that experience will greatly stand him in good stead in his capacity as the Nation's chief law enforcement officer.

At the end of the day, I am confident that you and the other members of the Senate will judge Senator Ashcroft's nomination by the only standard that is appropriate: Does he bring to the office the temperament, judgment and experiential qualifications to warrant confirmation and, if confirmed, can he be relied upon faithfully to discharge its duties -- in this case, the full and impartial enforcement of the laws of the land?

I believe that, by any measure, the answer is a resounding "Yes." I hope you will act accordingly.

Sincerely,



Frank J. Gaffney, Jr.
President and CEO

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

THOMAS J. DONOHUE
PRESIDENT AND
CHIEF EXECUTIVE OFFICER

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5300 • 202/463-5327 FAX

January 11, 2001

The Honorable Patrick Leahy
Chairman
United States Senate Judiciary Committee
Washington, DC 20510

Dear Chairman Leahy:

I am writing on behalf of the U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region, to strongly urge you to vote to confirm former United States Senator John Ashcroft as Attorney General.

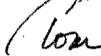
President-elect Bush's decision to nominate Senator Ashcroft to be Attorney General enjoys strong support throughout the entire business community. Senator Ashcroft is a man of exemplary integrity, knowledge, and expertise. He has a lifetime of public service in both academia and government that has made him exceptionally well qualified to serve as our nation's chief law enforcement officer. In fact, he would be the first Attorney General to have previously served as a governor, a state attorney general and a United States Senator. It is important to note that only 6 of the 67 former U.S. Attorney Generals have even served in any of those capacities.

While in the Senate, Senator Ashcroft was an important ally of consumers, workers and business through his support for legal reform and free trade as well as rational tax and immigration systems. For example, he worked to end unfair and unneeded unilateral food and medicine embargoes; worked to balance the federal budget and pay down the national debt; helped impose more accountability on the IRS; worked to end unfair taxes such as the marriage penalty and death taxes; and helped draft comprehensive welfare reform legislation. Overall, he had a strong cumulative 87% voting record on Chamber issues. The Chamber believes that Senator Ashcroft will bring this same pro-free enterprise view with him to the Department of Justice while enforcing the nation's laws in a zealous and fair manner.

Having served as a governor, a state attorney general, and a United States Senator (including chairing the Senate Judiciary Committee's Constitution Subcommittee), Senator John Ashcroft has the executive, legislative and legal experience to guide the United States Department of Justice. The U.S. Chamber believes that he will lead the Department with fairness and integrity and will faithfully enforce the law.

Accordingly, we urge the Committee to report out the nomination of Senator John Ashcroft and request that you insert this letter into the hearing record.

Sincerely,



Thomas J. Donohue



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January 11, 2001

The Honorable Orrin Hatch
United States Senate
Washington, DC 20510

Dear Senator Hatch:

The Christian Legal Society urges you to vote to confirm the nomination of John Ashcroft for the Office of Attorney General of the United States of America.

The question before the U.S. Senate is that posed by the "Advice and Consent" Clause found in Art. II, sec. 2, cl. 2 of the U.S. Constitution. The Clause is a practical working out of the principle of separation of powers. The power of appointment lies principally with the President, subject only to the Senate's reservations as to a nominee's character or fitness for the office. Senators are not being asked to pass on whether they are in political or ideological agreement with the nominee. Importantly, Art. VI, cl. 3, of the Constitution specifically forbids the imposition of a religion test for public office.

The Attorney General is sworn to enforce the laws of the United States. John Ashcroft, if anything, is a man of his word. Indeed, there have been those who, on occasion, have criticized him for being too wed to the letter of the law. For those who have worked with Ashcroft, as many of you have, there can be no genuine doubt that he will enforce the letter of the law—even more so when he disagrees with the law or its underlying policy.

It is well known that John Ashcroft opposes abortion. So do the 4,000 lawyers and judges who are members of the Christian Legal Society. Nevertheless, as attorney general and later governor of Missouri, Ashcroft never acted to disobey state or federal laws legalizing abortion. As U.S. Senator, Ashcroft sought to change the laws concerning reproductive rights, but that was entirely appropriate in the more political role of lawmaker. It would be wrong now to "penalize" a nominee because he accurately reflected the beliefs of a majority of Missourians in his role as federal legislator.

We share Ashcroft's support for "charitable choice." It is an innovative and effective way to help the poor and needy. This promising federal statutory development is consistent with the separation of church and state, as indicated by the U.S. Supreme Court's recent decisions in *Mitchell v. Helms*, 530 U.S. 793 (2000), and *Agostini v. Felton*, 521 U.S. 203 (1997).

John Ashcroft opposed on the merits the judicial nomination of state judge Ronnie White. To vote against Judge White, who coincidentally is an African-American, was not racist. Senators also voted against the nomination of Clarence Thomas to the U.S. Supreme Court. A vote against Thomas, however, did not make a Senator racist.

Hearings before the Judiciary Committee are scheduled to begin on Tuesday, January 16th. I would appreciate a meeting with you or a member of your staff to discuss this important nomination sometime during the week of January 14th.

Cordially,

Samuel B. Casey
CEO and Executive Director



CITIZENS FOR A SOUND ECONOMY

January 11, 2001

Dear Senator:

On behalf of Citizens for a Sound Economy's 280,000 members, I would like to urge your support for two very important cabinet positions; John Ashcroft for Attorney General and Gale Norton for Secretary of the Interior.

A three-time recipient of CSE's Jefferson Award, Ashcroft defended consumers from assault on several fronts during his tenure in the U.S. Senate. As a member of the Senate Judiciary Committee, he co-sponsored several consumer-friendly bills, including the Product Liability Reform Act of 1997 and the Small Business Liability Reform Act of 1999.

He will also reverse the reckless interpretation and enforcement of antitrust law, which has caused significant economic harm to consumers. The Microsoft case, for example, was an unprecedented intrusion into an emerging industry where there was no consumer harm.

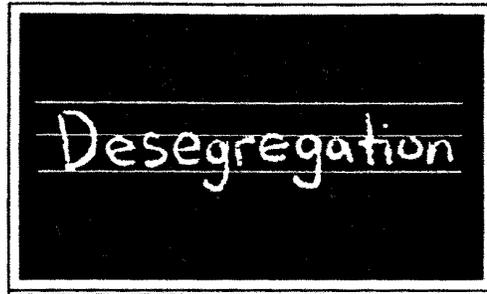
Gale Norton, as a former Attorney General for the State of Colorado, established a strong record of defending property rights. As Secretary of the Interior, she will be a sorely needed advocate of individual freedom and the rights of property owners. Norton has also taken innovative approaches to environmental stewardship and land management.

These two nominees are consistent with CSE's mission of less government, lower taxes, and more freedom. They will both serve the country well and will benefit the citizens of this country positively.

Citizens for a Sound Economy has started to distribute the attached documents to our members and activists around the country. The support for these nominees is strong among our members and we encourage you to support their confirmation.

Sincerely,

Paul Beckner
President



A Report from the Civic Progress Task Force
on Desegregation of the St. Louis Public School System

PART I

(Background and Recommendations)



December 1995

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EXHIBIT 4



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November 27, 1995

TO: William E. Maritz
President, Civic Progress

FROM: Task Force on Desegregation of the St. Louis Public School System

Robert Bartman
William Danforth
James De Clue

David Mahan
John Mason
Gwendolyn Stephenson

We submit to Civic Progress the first report of the Task Force appointed to study the court-ordered desegregation of the St. Louis Public Schools. As requested we have done our best to put the needs of children first.

This initial report deals with the background and most aspects of the case. Financial issues, however, are covered in outline only, for we are continuing our studies of the financing of the SLPSS and of cost-effective ways of managing the district. The results of these studies will be forthcoming. In addition, we are ready to answer questions and to add what we can to the public debate.

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We began our task with certain assumptions.

1. We have faith that education is the best path to both personal and social advancement. We note as evidence that an educated America has led the world in business, industry, science, technology and culture. In addition, the United States, despite its acknowledged problems, has, thanks in part to education, created the most successful multi-ethnic, multi-racial society in the world.
2. We believe that providing first-rate education to children in an urban setting is a major national, as well as local challenge.
3. We believe that all children, including specifically minority children and poor children, will learn when provided with appropriate goals and the proper educational environment.
4. We believe that few, if any, issues are more important to our community.

We in St. Louis and we in America are now faced with a national problem of major proportions. Children in large urban centers are not doing well. Many grow up in single parent homes; they suffer from poverty; crime is endemic; drugs are available; positive role models are scarce. We note that a recent federal study showed differences in the performance of poor children going to school with other poor children and those going to school with the non-poor. Not surprisingly, the public school systems are in crisis. St. Louis is no exception.

St. Louis has been, however, exceptional in its response. In 1983, the District Court, the State of Missouri, the St. Louis Public School System and the school districts of St. Louis County implemented the largest voluntary school choice plan in the nation. There is much to learn from it and from the experiences of the children involved.

This 12-year-old arrangement is now being challenged by the Attorney General of Missouri, who asks that the program be ended. Whatever the outcome of this legal test, we in the greater St. Louis community and the State of Missouri are presented with a challenge to our vision, to our wisdom, and to our generosity of spirit.

Over 51,000 young people who live in the City of St. Louis are now receiving public education. Many come from the most economically depressed sections of our community. They and the thousands who drop out before finishing high school will have a major impact on our region and our state. We are convinced that the greater St. Louis community and the State of Missouri must provide adequate educational opportunities for these young people. It is in everyone's interest.

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**A REPORT FROM THE
CIVIC PROGRESS TASK FORCE ON
DESEGREGATION
OF THE
ST. LOUIS PUBLIC SCHOOL SYSTEM**

PART I

(Background and Recommendations)

December 1995

EXECUTIVE SUMMARY

This is the first report of the Desegregation Task Force appointed by Civic Progress to make recommendations about the St. Louis Public School System (SLPSS), which is operating under a court-ordered desegregation plan. We will report subsequently in more depth on financial matters.

The SLPSS, along with other urban school districts of the nation, shares in the issues brought about by middle class flight, poverty and crime.

The desegregation plan decided by the Federal District Court includes the following:

1. Improvement of the physical facilities of the SLPSS. \$377 million has been or will be spent for this purpose.
2. The development of magnet schools. Twenty-five have been instituted, thus far.
3. An Inter-District Voluntary Transfer Plan that allows parents of African-American students to apply to have their children enrolled in one of 15 school districts in St. Louis County. Currently, 12,724 students -- 28.5 percent of African-American students in the SLPSS -- are enrolled in St. Louis County.
4. Lowering of the pupil-teacher ratios in the non-integrated schools. Pupil-teacher ratios in the elementary and middle schools have been lowered from 30:1 to 20:1.
5. Integration of the teaching staffs of the districts in St. Louis County. This goal has not been accomplished.
6. Requiring the State of Missouri to pay for much of the costs of the desegregation plan. In 1994-95, the state spent \$139.3 million for this purpose.
7. The monitoring of compliance with the court order.

To date, considerable desegregation has been achieved. The number of St. Louis African-American students attending integrated schools have risen from 18 percent to 59 percent. 56,000 white students in St. Louis County are in integrated settings who would otherwise not be.

Graduation rates are considerably higher for those students attending magnet schools and schools in St. Louis County than for those in the regular schools in the city. In the city, graduation rates are similar for African-American and white students. Success rates in the County schools vary considerably.

There is no agreed-upon plan for ending court supervision. Sudden ending would result in chaos within the SLPSS and the City of St. Louis. Phased ending without a plan would lead to the same eventual result.

The Task Force recommends:

1. The appointment by the court of an individual who would be an officer of the court charged with bringing the parties together to develop a new plan that will preserve the gains of the present plan and allow the court to withdraw from the management of the SLPSS.
2. The continuation of the present plan while a new plan is being developed.
3. The phasing in of a new plan.
4. Changes designed to improve operations of the present plan.
5. State policies to pave the way for the success of the new plan.

The members of the Task Force believe that the citizens of the community have the vision, goodwill, generosity and wisdom to meet this challenge.

BACKGROUND

The Task Force

Civic Progress appointed a Desegregation Task Force to study the St. Louis School Desegregation case and make recommendations to Civic Progress members, the U.S. District Federal Court, Eastern District of Missouri, and the community. Our charge specified giving first priority to the children involved and their needs. We are not agents of the court. We were not asked to negotiate a settlement, nor have we attempted to do so.

We set out to understand -- not so much the legal issues which will be debated and decided by others -- but rather the context of the court orders, the economic and social challenges facing the St. Louis Public School System (SLPSS), the financing of the desegregation plan and the effects of the plan on the children. Finally, we explored ways of preserving the benefits of the plan.

The Case

The Desegregation Plan, operating under the direction of the Federal District Court, has the goal of correcting 1) a long history of segregation and 2) inadequate education for African-Americans resulting from segregation. The case was brought to court in 1972. The present arrangement dates from court orders in 1980 and an approved settlement agreement that went into effect in the summer of 1983. The court found both the SLPSS and the State of Missouri guilty of violating the Constitution of the United States. School districts in St. Louis County avoided trial by agreeing to accept students from the city under a consent decree (see below).

Demographic, Economic and Social Issues

Demographic, economic and social factors pose unique challenges for the SLPSS. Since 1950, St. Louis has lost more than half its population (from 857,000 to 397,000). Since 1975-76, the number of white children enrolled in the SLPSS has fallen by 68 percent -- from 25,510 to 8,160. In 1975-76, 62,947 African-American students enrolled in SLPSS compared to 31,570 last year. Adding in those transported to the county, one comes up with 44,163 African-American students from St. Louis City attending public schools in

the city and county combined, a drop of 30 percent in 19 years. This constant change makes it difficult to compare.

Since 1990, 28,437 people (7 percent of the population) moved out of the city. Fifty-two percent of these individuals were white and 48 percent African-Americans, which closely reflects the population of the city. The exodus of predominantly middle class families from the city has led to a median family income in the county that is almost twice that of the city -- \$38,500, compared with \$19,458.

Other Urban School Districts

In many respects, the SLPSS is similar to other large urban districts in the United States that are wrestling with serious difficulties in educating their young. No community has found effective remedies. Since the problem is general, it is not sensible to place the blame on individual school boards, superintendents or teachers. Nor, would it be right to say that Americans are not trying to provide better education for their children. Many ideas for improvement have been put forward, and a number of programs have been instituted here and elsewhere with some success. Viewed from an overall perspective, however, the problems have been very stubborn; successful system-wide remedies have not been forthcoming.

Among the more popular ideas today include: more independence and authority for individual schools, more parental involvement in the schools and in the lives of children, magnet schools, community schools, caring communities, clearer objectives for schools and teachers, and up-to-date facilities.

Missouri has been at the forefront of testing and implementing some of these innovative efforts. The St. Louis School Board is to be commended for incorporating some of the best national thinking into the plan it has recently made public and intends formally to present to the court (for further information see page 16). At this time, however, there is insufficient experience nationally to know how effective these remedies will be when applied to any particular school system.

THE COURT-ORDERED PLAN

Key elements of the plan are:

1. To improve the badly run-down physical facilities of the SLPSS.
2. To institute magnet schools designed to attract African-American students from the city and white students from both the city and the county. The racial composition of these schools is targeted to be within five percentage points of 55 percent African-American and 45 percent white.
3. To promote integration and widen choice for African-American families by an Inter-district Voluntary Transfer Plan. Under this plan, African-American parents may apply to have their children transfer to one of 15 districts in the county. Under a consent decree, the districts in the county have agreed to accept city students up to a minimum of 15 percent of their student body or to a student body total of 25 percent African-Americans. Under this part of the plan, the state of Missouri pays to the receiving district the per pupil cost of educating the students in that district and contributes to the cost of needed additions to the physical plant.
4. To strengthen schools that remain non-integrated by lowering pupil-teacher ratios and implementing various programs in these schools.
5. To integrate the teaching staffs. County districts are to seek to achieve a goal of 15.8 percent black teachers and 13.4 percent black administrators.
6. The State of Missouri has been required to pay for much of the desegregation effort. The state pays the county districts a fee for each pupil accepted equal to the per pupil cost of that district. St. Louis City Public Schools also can count each student attending school in the county as if the student were continuing in the city schools and receive one-half of the normal state aid from the Foundation formula. In addition, the state pays all transportation costs both to the county, from the county to the city and for vocational education. For the 1994-95 school year and for FY81-FY95, the costs to the state in millions of dollars were as follows:

<u>Expenditure</u>	<u>1994-95</u>	<u>FY81-FY95</u>
County Tuition	\$ 58.5	\$ 452.8
County Capital Improvements	2.6	36.0
SLPSS Tuition	2.4	17.4
SLPSS Capital Improvements	7.0	99.2
SLPSS Programs	39.7	439.5
Transportation	27.0	227.9
Committee/Other Expenses	2.1	20.3
Total	\$139.3	\$1293.1

7. To monitor compliance. The court has set up groups to monitor compliance. The court approves such things as annual operating budgets for the SLPSS, capital expenditures, pupil assignments, desegregation programs, staff ratios and the closing of unneeded schools.

RESULTS

Physical Facilities

\$377 million has been, or will be, spent to improve the physical plant of the SLPSS and to build new schools. \$98.8 million has come from the state and the remaining \$278 million has been provided by SLPSS through general obligation bonds, lease purchase bonds, and general operating funds. The facilities are much improved and generally satisfactory. In order to conserve resources, 24 schools have been closed.

The SLPSS has incorporated into its annual operating budget funds to maintain the buildings in good repair.

\$36 million of state money has been spent to enlarge the facilities in County School Districts to accommodate the transfer students.

Student Choice and Distribution

Choice has been widened. St. Louis now has the largest voluntary-choice program in the nation. Educational choices are made by families, rather than political leaders or school administrators.

1. African-American parents from the city can choose to apply to one of 15 districts in St. Louis County, one of 24 magnet schools, or regular neighborhood schools. African-American children attending public schools are currently distributed:

	<u>Number</u>	<u>Percent</u>
St. Louis County	12,593	28.5%
Magnet Schools	6,646	15.0%
Regular Schools		
Integrated	7,009	15.9%
Non-Integrated	17,915	40.6%
Total	44,163	100%

(It is worth noting that those who choose to go to the county do so despite long bus rides and often moving into a new and different environment.)

2. White students in the county districts have been given opportunities to go to schools in the city. Last year 1,158 white students (1.2% of the 96,000, K-12 white students who are enrolled in public schools and reside in the 18 county districts eligible to transfer) took advantage of this opportunity.
3. White students in the city can apply to go to a magnet school. The white students residing in the city attending public schools are distributed as follows:

	<u>Number</u>	<u>Percent</u>
Magnet School	3,527	46%
Regular Schools (Integrated)	4,052	54%

Desegregation

Significant desegregation of students has been achieved. 59 percent of St. Louis African-American students are now being educated in city and county public, integrated schools (as defined by the Court), as opposed to 18 percent before 1980. All but three of the districts in St. Louis County now have at least 15 percent African-Americans. Prior to 1982, eight districts were 3 percent African-American or less. 61,000 white students residing in the county now attend the 10 county school districts that were more than 90 percent white before the 1983 agreement. Since the white resident, student population of nine of these 10 county districts remains above 90 percent, the transfer program is effectively responsible for providing 56,000 students education in a desegregated environment. If one believes that education in such a setting helps prepare a student to live in the modern world, this amount of desegregation is a considerable accomplishment, achieved not without problems, but with minimal disruption. (Table 1 attached includes district-by-district enrollment ratios.)

Pupil-Teacher Ratios in the SLPSS

Pupil-teacher ratios in those elementary and middle schools that remain non-integrated have been lowered from 30:1 to 20:1. The ratio in the regular high schools is 28:1 and in the magnet schools 24:1.

Educational Outcomes**General Comments**

Ideally, one would like to know the effect of schooling on the entire life of the student. Perhaps 10 or 20 years from now follow-up studies will provide the answer, but today, unfortunately, such knowledge is not available. In the meantime, one must study the information at hand, knowing that it is at best a rough approximation of what one would like to know. In our assessments we have relied on standardized tests, graduation rates, statements by students, parents and teachers, and importantly, our best judgment. A special problem is that data have been collected by different groups for various purposes. Much information is not collected either for comparative purposes or for managers and teachers to use in improving education. Moreover, important groups do not fully trust the data collected by others.

Standardized Scores

Standardized test scores are quite helpful as measures of an individual's academic achievement and of progress. However, the problems of over-relying on their results are well known. The most comprehensive study of test scores among transfer students to St. Louis County was commissioned by Voluntary Inter-district Court Council (VICC) and overseen by Robert Lissitz of the Maryland School of Education. Lissitz found that although the differences between school types were often small and explained -- at most 13 percent of the variation in test performance -- magnet students had the highest scores at all grades. The transfer students scored higher than students in regular schools in the tenth grade but had similar scores in grades four, six and eight. The higher 10th grade scores of the transfer students, compared to students in regular schools, reflected in part the greater improvement over their eighth grade Stanford scores than was experienced by students in either the magnet or regular schools over the same two-year period. Lissitz also noted that correcting scores for background ability and prior achievement further minimizes differences among school type as magnet students come into the program with the highest scores generally followed by the transfer students.

Graduation Rates

Graduation from high school is a very desirable goal. We used as an indicator the percent of ninth graders who graduated from high school in the same system. Graduation rates for the SLPSS Class of 1993 cohort are attached in Table 2.

We have drawn several conclusions from these data.

1. Graduation rates for African-American students from the city are highest in the magnet schools (52 percent); next in the county schools (50 percent); next in the non-integrated regular schools (24 percent); and lowest in the integrated regular schools (16 percent).
2. The completion rates of African-American and white students are not significantly different. The graduation rate of white students from the magnet schools and from the regular high schools is lower than that of African-American students in the same school. Of those who failed to graduate, white students were more likely to transfer out of SLPSS and less likely to drop out than their African-American cohorts.
3. With both African-American and white students, the graduation rate for young women is higher than that for young men, about 14 percentage points for African-Americans and about six percentage points for whites.

Graduation rates among city students who attended different county districts varied considerably, from 65 percent in Clayton to 23 percent in Valley Park. The overall rate of graduation was 50 percent. The two best numerical predictors of graduation rate in the county were attendance (the better the attendance record, the greater the chance of graduating) and the college-going rate of resident students (the greater the college-going rate of resident students, the greater the rate of transfer student graduation from high school). (Please see attached Table 3 for district-by-district results.) These data suggest that the educational setting and the expectations of the majority of students are related to graduation rates. However, undoubtedly such factors as commitment of the organization, school climate, peer influences and self-selection on the part of the family and the school also affect the outcomes.

It is difficult to tell from the above data how much of the effects on graduation rates depend on the school and how much on the motivation of the students and their families. It is likely that many families select what they consider the best education because of personal and family goals.

Educational Success and Socio-Economic Background

The percentage of students whose family incomes are high enough that they are ineligible for either free or reduced lunches is as follows:

Magnet Schools (white and black students)	36%
County Transfer Students (black students only)	24%
Integrated Schools (white and black students)	10%
Non-integrated Schools (black students only)	6%

Not surprisingly, higher graduation rates are found in the schools whose student population comes from higher-income families.

Other Evidence Regarding Educational Outcomes

A good deal of anecdotal evidence has been obtained from focus groups and from discussions with students, teachers and parents about students who transfer from the city to the county. We were privileged to have access to the draft of a book on the St. Louis desegregation case by Amy Stuart Wells, a UCLA professor specializing in urban education. She reports the following:

1. The county districts have gone through a learning period and do a better job with transfer students now than in the early years.
2. There have been tensions and feelings of racism on both sides, but serious problems between students, or between the transfer students and the county district, have been few.
3. While African-American students and white students have tended to form their own separate groups, there has been considerable cooperation in school activities and many friendships between city and county residents.
4. Transfer students and their parents generally believe that they are doing better educationally than if they had stayed in the city, and that they have better college guidance and more opportunities for scholarships, hence improved opportunities for future success.

5. Parents who send their children to the county are more involved in the lives of their children and more confident that they can have a positive effect than the parents of those who stay in the regular city schools.

Staff Integration

The county districts have made efforts to recruit black teachers but remain some distance from the goal of 15.8 percent (see Table 1).

CONCLUSIONS

Successes and Failures

1. Accomplishments of the desegregation plan include:
 - a. It has provided increased opportunities for desegregated education for both African-American and white students.
 - b. It has provided vastly improved choices for African-American parents.
 - c. Graduation rates are higher in the county and the magnet schools than in the regular city schools.
 - d. The plan has been generally accepted by those directly involved.
 - e. If one measures success by the number of parents and students making choices other than their neighborhood school, the magnet schools and the inter-district transfer plan have both been successful.
 - f. The physical facilities of the SLPSS are being modernized.
 - g. The results compare favorably with other large urban areas both in the amount of choice given to poor, African-American parents and in the extent to which county schools have been integrated without white flight from the county.
2. The plan has not been totally successful:
 - a. Approximately 18,000 city students remain in non-integrated schools.
 - b. Performance of the students on standardized tests has been disappointing.
 - c. Graduation rates in the SLPSS, especially from the non-magnet high schools, are disappointing. These graduation rates make one wonder if the non-magnet schools are designed to meet the needs of the young people in these schools.
 - d. Integration of teaching staffs has not been fully accomplished.

- e. The costs to the State of Missouri have generated opposition.
- f. Lower socio-economic status of families and many other factors negatively influence the average child, thus pointing out the importance of the child's total environment.
- g. Continued strenuous efforts are required to provide hope through high- quality education for the children.

Ending of the Court Supervision

1. The plan cannot be ended abruptly without serious disruption to the system, which has been built up in the last 12 years.
 - a. Students in the SLPSS would increase by 29 percent. The per pupil expenditures would thereby be decreased by 15 percent. There would be major effects on pupil-teacher ratios and financial support for other educational essentials. Furthermore, there are inadequate facilities to handle all of the returning students. The cost of providing these new facilities is estimated by the SLPSS to be approximately \$245 million. Deterioration in the SLPSS would be expected.
 - b. Each of the 15 county school districts accepting city transfer students would lose at least 140 students. Parkway alone would have 3,300 fewer students. The schools would have to be downsized and a number of teachers released.
 - c. The desegregation gains would be reversed. The SLPSS would go from 78 percent to 85 percent African-American if all students were to return to the district. The St. Louis School Board Report notes that "virtually all" of the 13,000 returning students would be assigned to non-integrated schools. 56,000 students in St. Louis County would no longer have an integrated educational experience.

2. A phaseout of the plan over several years would give time for the SLPSS and the county districts to adjust. However, without a well-conceived plan to maintain the gains and to strengthen the SLPSS, the end results would be similar to those if the plan were ended abruptly.
3. The interested parties have no agreed-upon plan for returning control back to the affected school districts and the State of Missouri.

Financing

1. Per Pupil Expenditures

The expenditures per pupil of the SLPSS, as calculated by the U.S. Department of Education, are consistent with those of school districts in comparable cities (see Table 4).

2. Expenditures for Teachers

The average teacher salary in the SLPSS is lower than all but two (Jennings, Wellston) of the 23 districts in St. Louis County. The teachers' pension plan of the SLPSS is inadequately funded, either to be competitive with other school systems, or to make it easy for those teachers who wish to take early retirement.

3. Expenditures, General

It is more expensive to operate a large urban system than a suburban system or rural system.

It is important that the SLPSS operate in an efficient and effective manner, and that the citizens have confidence that it is doing so.

The SLPSS, like other large urban school districts, cannot successfully educate young people at reasonable cost without major restructuring. Such restructuring will require a well-conceived plan that should include decentralization and a review of all aspects of operation and governance.

4. We are continuing our study of SLPSS financing.

RECOMMENDATIONS

A New Plan

1. We recommend the court mandate that the parties come together to develop a new plan for preserving the gains and benefits of the current Desegregation Plan, while reducing or eliminating the court's involvement in the direct operation of schools. We believe that a court-appointed individual given authority by the court to bring the parties together to achieve a settlement would increase the chances of success. Such an individual is commonly called a master.
2. The new plan should put the needs of children first. It should provide quality education at reasonable cost with opportunities for parents whose neighborhood schools are segregated to have desegregated education for their children.
3. The new plan should set forth a vision for education in St. Louis and St. Louis County. It is important that the various parties strive for a common vision that will be accepted fully by the larger community. The main points and details would have to be thought through carefully.
4. The new plan should maintain the following specific gains of the Desegregation Plan:
 - a. The desegregation achieved by offering opportunity for African-American students to be educated in county districts.
 - b. The magnet schools.
 - c. Adequate funding for the SLPSS to operate quality and equitable education programs, keeping in mind both the added expenses required by urban school systems and the need to contain costs.
 - d. Adequate funding to maintain the physical facilities of the SLPSS.
 - e. Adequate funding of the pension plan.
 - f. The collection and dissemination of appropriate data and information so that the court and public can assess the programs.
5. The plan should include a detailed operational plan for decentralizing and restructuring the SLPSS to achieve the following goals: (See Appendix A for further discussion of decentralization.)

- a. School-based management with decision-making moved to the individual schools.
 - b. Involvement of parents in governance of individual schools.
 - c. Cost savings.
6. The new plan should be developed in a period of three years or less with a realistic schedule for phasing it into operation.
 7. Necessary financing will be covered in Part II of this report.

Changes in Current Plan

1. The management of the program by the Court can be simplified even as the new plan is being developed.
 - a. Each year the state should negotiate with the SLPSS a single desegregation budget rather than negotiating on a school-by-school basis.
 - b. A new and simplified method of reporting results be developed (see #9 below) so the court and public can judge:
 - the educational results
 - the results of the desegregation efforts
 - the appropriateness of the costs

2. The inter-district transfer plan.

Areas of the city might be linked with districts in the county in clusters so as to lower transportation costs and to make it more likely that city children being educated in the county might have friends with whom to share their experience. Any new system should be phased in gradually so the education of children currently in the system is not disrupted. Under such a system, county schools should be encouraged to expend more effort to be in regular contact with the parents of their city children.

A mechanism should be developed to work with the teachers in St. Louis County to help them prepare for and handle the children coming from the city. One goal should be to transfer the best and most successful practices from one school district to another.

3. The magnet schools.

White students from the city should be given the same opportunity as white students from the county to attend magnet schools.

Considerable caution should be used in expanding the number of magnet schools. Indefinite expansion of the magnet schools is not likely to strengthen the educational system any further. Also, it is important to concentrate now on the mission of the neighborhood schools.

4. Continued efforts should be expended on strengthening the non-magnet schools in the city.

All schools, integrated as well as non-integrated, should be included in the effort. It is neither sensible nor fair to the African-American or white students who attend integrated schools to receive less financial support than those in non-integrated schools.

5. The mandatory intra-district busing within the city should be ended as the goals of desegregation are being met without mandatory busing.

6. Authority should be returned to the school board of the SLPSS over pupil placement, facilities and transfer assignment as long as court-set desegregation goals are met.

7. Improvements to the SLPSS should continue.

The Task Force endorses many of the recommendations in the plan submitted by the school board to the court, including specifically, in addition to those listed above:

- a. Enhancement of parental involvement in school-based decisions.
- b. Expansion of neighborhoods set aside for magnet schools.
- c. Safe school buildings.
- d. Establishment of a career educational school in the City of St. Louis.
- e. Expansion of caring communities and community education centers.
- f. Implementation of a school-based management system.

- g. The establishment of multi-assessment measures.
 - h. Comprehensive staff development programs.
 - i. Implementation of a preventive maintenance program.
8. The SLPSS and the school board should examine other ways of meeting the needs of some of the young people of St. Louis.

When the graduation rate, as we have defined it, is under 25 percent in the non-magnet schools (17 percent for young men), the system is not meeting the needs of the young people. Just doing more of the same better seems unlikely to produce great improvements.

9. The collection of educational data for students from St. Louis and St. Louis County should be reorganized with two purposes in mind:
- a. To provide comparative data from which the various educational experiences could be judged in order to learn what is working and what is not.
 - b. To provide information for better management.

To achieve these goals:

- a. A single entity should be established to accomplish the above goals.
- b. The governing committee consisting of one or more representatives of the court, the State of Missouri, the SLPSS, the school districts of St. Louis County, and the plaintiffs should oversee the data collection. It is important that the court representatives be individuals knowledgeable about both school systems and the collection and interpretation of data so as to allow for better decisions.
- c. There should be an annual report of this committee to the school systems, the public and the court.

10. Any dramatic changes in the current status of the court-supervised desegregation program should be phased in. To facilitate any phase-in of changes, the court should appoint a master to work with the parties in order to come to an appropriate resolution of the issue.

Recommendations to State Policy-Makers

1. State officials should adopt policies to encourage and support education choice in the metropolitan St. Louis area. In addition to the advantages to city and county students, the cost of providing facilities in the city for 13,000 students is significant.
2. State officials should provide legislation authorizing school districts or umbrella districts to create revenue streams from additional sources. Such revenue streams, if approved by the voters, should be equated to an additional property tax rate so that SLPSS can maximize its participation in the distribution of money from the State's Foundation formula.

BRIEF SUMMARY

All parties to the desegregation suit and, indeed, all citizens of the region and state, are faced with the challenge of providing quality education to our poorest and least advantaged children. Only through education can these young people be prepared for productive lives in the 21st Century.

Progress has been made under the direction of the court. It is now time for all to come together to develop a plan to preserve the gains of the past 12 years, continue progress and allow the court to return the operation of the educational systems to those appointed for that task.

We believe that the citizens of this community have the vision, goodwill, generosity and wisdom to meet this challenge.

Table 1: Staff and Student Plan Ratio Achievement

<u>District</u>	Blacks as % of Students (Black FY82)	Plan Ratio Black Goal	Blacks as % of Resident Students	Blacks as % of Teachers
Receives Transfers:				
Afton	15.5% (2%)	15.2%	1.5%	2.8%
Bayless	13.1% (0%)	15.2%	.7%	4.1%
Brentwood	26.6% (24%)	25.0%	7.9%	9.2%
Clayton	19.7% (6%)	16.3%	2.9%	8.1%
Hancock Place	20.4% (3%)	15.3%	2.7%	1.2%
Kirkwood	25.1% (19%)	25.0%	14.4%	10.9%
Ladue	24.7% (16%)	25.0%	15.6%	8.5%
Lindbergh	19.7% (2%)	15.8%	.8%	3.7%
Mehlville	13.1% (0%)	15.3%	1.0%	1.1%
Parkway	18.6% (3%)	17.0%	3.4%	3.1%
Pattonville	24.2% (5%)	18.7%	10.2%	7.9%
Ritenour	27.3% (15%)	25.0%	23.1%	7.8%
Rockwood	15.0% (1%)	16.0%	1.5%	3.2%
Valley Park	22.6% (0%)	15.5%	7.1%	0.0%
Webster Groves	25.7% (20%)	25.0%	17.2%	8.3%
Does Not Receive Transfers:				
Ferguson	49.0%	NA	48.5%	17.2%
Hazelwood	34.5% (17%)	25.0%	33.7%	7.1%
Jennings	83.7%	NA	83.7%	28.7%
Maplewood	38.8%	NA	32.8%	12.4%
Normandy	96.9%	NA	96.9%	47.0%
Riverview	70.5%	NA	70.5%	13.9%
University City	84.5%	NA	84.5%	49.0%
Wellston	100.0%	NA	100.0%	66.0%
St. Louis City	80.5%	NA	86.0%	64.0%

Sources: 1) All Teacher Percentages are from State of Missouri; 2) For districts accepting transfers, student data is from NCC; 3) For districts not accepting transfers data from State of Missouri; 4) For St. Louis City, student data from SLPSS

Notes: To obtain blacks as a % of all students in 1995 for districts receiving transfers, the overall black percentages from September of the school years 1994-5 and 1995-6 are averaged. Resident black percentage is blacks as % of residents of that school system who attend public schools in 1994-5. For any district this means that transfer students are subtracted out and magnets are added in. As of June 30, 1995, Bayless (12.2%), Mehlville (12.7%) and Rockwood (14.2%) were below 15%.

Table 2: Class of 1993 Cohort Graduation Data (Beginning School)

Black Females:

<u>School Attended</u>	<u>Total</u>	<u>Graduate</u>	<u>Transfer</u>	<u>Drop Out</u>	<u>Other</u>
Magnet	285	167 (59%)	51 (18%)	58 (15%)	9 (3%)
Integrated	264	52 (20%)	56 (21%)	117 (44%)	39 (15%)
Non-Integrated	449	147 (33%)	59 (13%)	190 (42%)	53 (12%)
Switch to Magnet	21	13 (62%)	1 (5%)	5 (24%)	2 (10%)
Closed Magnet to Regular	71	30 (43%)	4 (6%)	24 (34%)	13 (18%)
Other	2	0 (0%)	1 (50%)	0 (0%)	1 (50%)
Totals	1092	409 (37%)	172 (16%)	394 (36%)	117 (11%)
Left an Open Magnet (Counted Already in Magnet)	69	22 (32%)	8 (12%)	35 (51%)	4 (6%)

White Females:

<u>School Attended</u>	<u>Total</u>	<u>Graduate</u>	<u>Transfer</u>	<u>Drop Out</u>	<u>Other</u>
Magnet	178	78 (44%)	37 (21%)	39 (22%)	24 (13%)
Integrated	119	18 (15%)	39 (33%)	43 (36%)	19 (16%)
Switch to Magnet	14	4 (29%)	1 (7%)	6 (43%)	3 (21%)
Closed Magnet to Regular	29	11 (38%)	5 (17%)	10 (34%)	3 (10%)
Other	3	0 (0%)	1 (33%)	0 (0%)	2 (67%)
Totals	343	111 (32%)	83 (24%)	98 (29%)	51 (15%)
Left an Open Magnet (Counted Already in Magnet)	18	3 (17%)	3 (17%)	10 (56%)	2 (11%)

Note: Type of school is based on the school the student started in as a 9th grader. Magnet students started in a magnet that they could have graduated from or started in a magnet that closed and finished in another magnet. (Non)Integrated start in an (non)integrated and did not transfer to a magnet. Closed Magnet to regular students start in magnet that closed and finished in a regular (integrated or non-integrated school).

Black Males:

<u>School Attended</u>	<u>Total</u>	<u>Graduate</u>	<u>Transfer</u>	<u>Drop Out</u>	<u>Other</u>
Magnet	244	108 (44%)	52 (21%)	58 (24%)	26 (11%)
Integrated	290	34 (12%)	42 (14%)	140 (48%)	74 (26%)
Non-Integrated	624	112 (18%)	61 (10%)	292 (47%)	159 (25%)
Switch to Magnet	19	12 (63%)	0 (0%)	4 (21%)	3 (16%)
Closed Magnet to Regular	71	23 (32%)	2 (3%)	32 (45%)	14 (20%)
Other	3	0 (0%)	1 (33%)	1 (33%)	1 (33%)
Totals	1251	289 (23%)	158 (13%)	527 (42%)	277 (22%)
Left an Open Magnet (Counted Already in Magnet)	72	11 (15%)	13 (18%)	33 (46%)	15 (21%)

White Males:

<u>School Attended</u>	<u>Total</u>	<u>Graduate</u>	<u>Transfer</u>	<u>Drop Out</u>	<u>Other</u>
Magnet	192	79 (41%)	40 (21%)	47 (24%)	26 (14%)
Integrated	155	17 (11%)	38 (25%)	67 (43%)	33 (21%)
Switch to Magnet	11	1 (9%)	1 (9%)	7 (64%)	2 (18%)
Closed Magnet to Regular	38	7 (18%)	10 (26%)	11 (29%)	10 (26%)
Other	6	0 (0%)	1 (17%)	2 (33%)	3 (50%)
Totals	402	104 (26%)	90 (22%)	134 (33%)	74 (19%)
Left an Open Magnet (Counted Already in Magnet)	26	1 (4%)	7 (27%)	12 (50%)	5 (19%)

Note: Type of school is based on the school the student started in as a 9th grader. Magnet students started in a magnet that they could have graduated from or started in a magnet that closed and finished in another magnet. (Non)integrated start in an (non)integrated and did not transfer to a magnet. Closed Magnet to regular students start in magnet that closed and finished in a regular (integrated or non-integrated school).

Table 3: Basic Statistics by District of Transfer Students

<u>District</u>	<u>Grad Rate</u>	<u>Test Score</u>	<u>Free Lunch Ineligible</u>	<u>Tran+Reside P Pupil Exp</u>	<u>Good Attend</u>	<u>Tran+Res College-C</u>
Affton	33% (13)	1194 (9T)	17% (11T)	4851 (10)	38% (10)	65%
Bayless	46% (10T)	1181 (13)	21% (9)	4073 (14)	41% (8T)	60%
Brentwood	50% (6T)	1231 (1)	41% (3)	8005 (3)	74% (1)	78%
Clayton	65% (1)	1228 (2)	48% (1)	9068 (1)	70% (2)	95%
Hancock Place	27% (14)	1180 (14T)	17% (11T)	3347 (15)	27% (14)	46%
Kirkwood	53% (5)	1199 (6)	25% (7)	5358 (7)	45% (5T)	84%
Ladue	50% (6T)	1209 (3)	43% (2)	8126 (2)	41% (8T)	90%
Lindbergh	41% (12)	1194 (9T)	14% (13)	5323 (8)	28% (12T)	86%
Mehlville	50% (6T)	1196 (8)	20% (10)	4290 (13)	43% (7)	71%
Parkway	48% (9)	1198 (7)	31% (5T)	5761 (5)	35% (11)	93%
Pattonville	60% (2)	1193 (11)	24% (8)	7044 (4)	54% (3)	85%
Ritenour	46% (10T)	1189 (12)	31% (5T)	4593 (12)	28% (12T)	70%
Rockwood	54% (4)	1202 (5)	12% (14)	4737 (11)	51% (4)	91%
Valley Park	23% (15)	1180 (14T)	8% (15)	5548 (6)	1% (15)	50%
Webster Groves	57% (3)	1206 (4)	37% (4)	4999 (9)	45% (5T)	86%

Note: Graduation Rate refers only to the 1992 cohort while the other statistics characterize transfer students in the entire district. Thus, members of the 1992 cohort are not the same students who constitute the other statistics. Statistics other than graduation rate are district level characterizations. Statistics marked (Tran + Reside) are statistics representing the entire district and not just the transfer students within that particular district.

Sources: 1) Graduation Rate for 1992 Cohort (VICC 1995 Report to Court)

2) Test Scores - "Assessment of Student Performance and Attitude 1994," VICC G(1442)95. As calculated, the Stanford score is the mean score (reading+math) of all transfer students who took the test when the mean score for each Grade (4,6,8,10) is scaled to 1200.

3) Free Lunch ineligible % is from VICC Free Lunch report (with corrections for errors in Parkway district).

4) Per Pupil expenditures are 1992-3 Missouri data.

5) Good Attendance Percentage is from VICC 1995 Report to Court

6) College Going Rate of all Seniors in district is from VICC brochure (district reported).

Correlations: All variables are correlated (Pearson) positively with each other. The four paired variables with the highest correlations are: Grad Rate-College (.827), Attend-Test Score (.821), P Pupil Exp-Test Score (.788), Grad Rate-Attend (.783). The four with the lowest are: Ineligible-College (.543), P Pupil Exp-Attend (.573), College-P Pupil Exp (.585), College-Attend (.587).

Table 4: Comparable School Districts in Demographically Similar Cities

<u>School District</u>	<u>Expenditures Per Pupil '92</u>	<u>Enrollment of District</u>	<u>% Minority of District</u>
Atlanta	6141	59,741	91.0%
Boston	7413	62,407	79.8%
Buffalo	7149	48,294	61.5%
Cincinnati	5336	51,520	65.2%
Cleveland	6593	70,933	77.7%
Kansas City	8656	35,806	75.1%
Norfolk	4822	37,065	65.2%
Pittsburgh	8186	40,445	54.4%
Rochester	8614	35,073	75.2%
Average of 9 Districts	6990	49,032	71.7%
St. Louis	6852	40,857	80.1%

Note: There are ten city school districts that serve a medium-large (200,000-600,000) city having a population that is more than 25% black and is the central city of a large (1+ million) metropolitan area. Source is Government Publications (*Digest of Education Statistics 1994* and *Statistical Abstract of the United States*).

Notes and Sources for Tables

Graduation Data Summary:

Entire Cohort (Finishing School):

<u>School Attended</u>	<u>Total</u>	<u>Graduate</u>	<u>Transfer</u>	<u>Drop Out</u>	<u>Other</u>
Magnet	779	425 (55%)	152 (20%)	133 (17%)	69 (9%)
Integrated	881	166 (19%)	200 (23%)	413 (47%)	102 (12%)
Non-Integrated	1128	318 (28%)	137 (12%)	544 (48%)	129 (11%)
Alternative-Vocational	300	4 (1%)	14 (5%)	63 (21%)	219 (73%)
Totals	3088	913 (30%)	503 (16%)	1153 (37%)	519 (17%)

Entire Cohort (Beginning School):

<u>School Attended</u>	<u>Total</u>	<u>Graduate</u>	<u>Transfer</u>	<u>Drop Out</u>	<u>Other</u>
Magnet	899	432 (48%)	180 (20%)	202 (22%)	85 (9%)
Integrated	828	121 (15%)	175 (21%)	367 (44%)	165 (20%)
Non-Integrated	1073	259 (24%)	120 (11%)	482 (45%)	212 (20%)
Switch to Magnet	65	30 (46%)	3 (5%)	22 (34%)	10 (15%)
Closed Magnet to Regular	209	71 (34%)	21 (10%)	77 (37%)	40 (19%)
Other	14	0 (0%)	4 (29%)	3 (21%)	7 (50%)
Totals	3088	913 (30%)	503 (16%)	1153 (37%)	519 (17%)

Left an Open Magnet (Counted Already in Magnet)	185	37 (20%)	31 (17%)	91 (49%)	26 (14%)
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Note: SLPSS typically reports graduation rates based on finishing school. Using the beginning school is more consistent with VICC methods. If a student attended briefly one SLPSS school type in 9th grade, the beginning school may be misleading. An inconsistency with VICC methods is included as SLPSS figures are for five years while transfer students are for four years. 82 students (3%) graduated from SLPSS in the 5th year. Also, VICC figures are for the 1992 cohort while SLPSS is for 1993. Since VICC is not a school district from whom records must be obtained, it cannot provide a reliable equivalent of categories other than graduation for transfer students.

Enrollment Figures: SLPSS enrollment figures are from the Report to the Court on 3/30/95 (excluding special schools). Integrated refers to Court designation. No integrated school is more than 90.8% black. Race of kindergartners is assumed to be of the same racial proportion as the remainder of the elementary school, except for magnets which have the proportion reported. 65 white students (<1%) attend non-integrated schools. Historical SLPSS figures are from "St. Louis Public Schools Enrollment and Facility Data" - Enrollment 3/30/80. Non-integrated black schools are those that are over 90.8% black. VICC enrollment figures are from VICC report to the Court 2/21/95.

Teacher Information: Both salary and racial composition of teaching staff are from the State of Missouri.

School Lunch Data: SLPSS school lunch data is from March 30, 1995, SLPSS free lunch report disaggregated by school type (M.I.N) as characterized on SLPSS 1994-5 School Building Location Codes. Data for transfer students is from analysis of February 1995 VICC free lunch report. For Parkway district, VICC figures are reconfigured based on previous free lunch data for that cohort to correct for obvious errors and missing cases in the 5th, 6th, 8th, 11th, and 12th grades. The 4% of missing cases of transfer students across all 16 districts is allocated as if the ineligibility rate for the missing cases was the same as for the 96% known cases.

Transmittal Letter Cites: *National Assessment of the Chapter 1 Programs: The Interim Report 1992* (Dept. of Ed.).

APPENDIX A.

**DECENTRALIZATION
AND
SCHOOL-BASED MANAGEMENT**

The SLPSS School Board plans further development of school-based management. However, decentralization by itself is likely to do little good and may lead to further confusion, fragmentation and duplication.

Decentralization and effective school-based management requires at a minimum:

1. Total commitment from the superintendent and the school board, combined with a willingness to make time and money expenditures to get the system in place.
2. Placing authority in individual schools for making important decisions about selecting staff, teaching styles and methods and budgets.
3. Involvement of parents and the community in the decision-making of individual schools and a willingness to work with school principals.
4. A strong, efficient, central administration can help communicate from the schools to the center so that the schools can be held properly accountable to agreed upon standards. There must also be rapid flow of information from the center to the schools that will be helpful to the schools and give clear expression of the goals of the leadership and the school board.
5. Effective training programs must be initiated to bring along future school leaders.
6. Excellent communication throughout area schools so that the schools can learn "best practices" from each other.
7. Schools have a significant degree of autonomy from central administration and the school board.

Changing from a centralized to a decentralized system is costly and unsettling. The benefits can be worth all of the time and money, but it is not worth starting without total commitment.

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TESTIMONIAL SUMMARIES
of St. Louis Parents and Students
Participating in Voluntary Desegregation Programs

(filed by Caldwell – NAACP plaintiffs, *Lidell v. Board of Education*, G(2034)96, March
22, 1996)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 72-0100C(6)
)	
THE BOARD OF EDUCATION OF THE)	
CITY OF ST. LOUIS, MISSOURI,)	
et al.,)	
)	
Defendants.)	

TESTIMONIAL SUMMARY OF GLORIA BARNES

STATE OF MISSOURI)
) ss
CITY OF SAINT LOUIS)

1. My name is Gloria Barnes, and I reside at 10050 Elba Lane in St. Louis, Missouri. I am the grandmother of three girls who live in the City of St. Louis and who attend school in the Pattonville School District. The oldest, Alexis, is 9 years old, Robin is 7 and Fallon is 6.

2. I have been very involved in my grandchildren's education, and I have visited their schools, sat in on their classes, and talked with their teachers. I am very happy with the education they are receiving, and they are doing very well academically. I believe that Pattonville has a good, strong emphasis on the basics of education, that they teach good moral values, and that they are very responsive to any concern I may have. The children at the school are well behaved, have a good deal of self control, and have been taught problem-solving skills.



I don't worry about my grandchildren when they are at school, because I know that are getting a good education in a safe environment.

3. I was impressed by how soon and how well my grandchildren were reading when they went to the Pattonville schools, and they have also developed a good vocabulary. I like the fact that the teachers in Pattonville seem to have a great deal of hands-on experience in their fields, and I am very pleased to know that my grandchildren have access to the good facilities and supplies in Pattonville, like computers, phones and TV's. My grandchildren have also been able to participate in a counseling program to help them deal with some family matters, and that was very helpful to them.

4. I am very worried that the transfer program might end, and I have been praying to the Lord about it every day. If the program ends, we will have to do what we have to do, but we cannot afford to send the girls to a private school. If the girls have to go to public schools in the city, I will stay very involved in their education and stay on top of things so that they get the best education they can.

Gloria Barnes
Gloria Barnes

Subscribed and sworn to before me this 13th day of February, 1996.

Ann Lynn Schaffer
Notary Public

My commission expires _____
Ann Lynn Schaffer Notary Public
St. Louis County State of Missouri
My Commission Expires Feb 8, 1999

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	No. 72-0100C(6)
)	
THE BOARD OF EDUCATION OF THE)	
CITY OF ST. LOUIS, MISSOURI,)	
<i>et al.</i> ,)	
)	
Defendants.)	

TESTIMONIAL SUMMARY OF LORA CARD

STATE OF MISSOURI)
) ss
CITY OF SAINT LOUIS)

1. My name is Lora Card, and I live in the City of St. Louis, Missouri. My husband and I have three daughters and the oldest two, Elizabeth and Sabrina, attend school at Carrolton Oaks in the Pattonville School District under the voluntary transfer program.

2. We have had nothing but good experiences with the transfer program, and it has made a big difference in our daughters educations. Our oldest daughter, Elizabeth, attended kindergarten in the city school and every day she would come home miserable. The classes were too big, there were too many students for the teacher to really be able to watch the class, and other children teased my daughter. Last year was her first year in the Pattonville school, and every day she tells me "thank you" for sending her there. She just loves her school now. The teachers are good, the discipline is strong, and the children are



not allowed to be hostile towards each other in class. Elizabeth's reading skills improved immediately when she went to Carrolton Oaks, and she is doing so much better academically than she was in the city schools.

3. My second daughter, Sabrina, attends kindergarten for half-days, and she is doing fine at Carrolton Oaks. She is able to learn under a new curriculum, one that the city schools do not have, and she is really benefiting from the hands-on learning they practice in her classroom. All the grades get to use computers every week, and there is free access to them for the students. In the city schools, computers were not so accessible, and you had to take a special class just to use them. Plus, they weren't available to kids until fifth grade. At Carrolton Oaks, even Sabrina gets to use a computer in kindergarten.

4. My youngest attends a Head Start program in the city currently, and the situation there is very bad. I told her teacher that if my daughter had to go to that school next year, I was not going to bring her back. The teacher is very sweet, and she takes a real interest in the kids, but there are simply too many kids in the classroom and she cannot control them all.

5. If the transfer program ended, I could not put my kids back into the city schools. We will just have to come up with the money to send our girls to a Catholic school. If the program ended, it would really mess up my children's education, because they are used to such a good environment and they are getting such a solid education. They've made friends, and they should not have to switch schools in mid-stream.


Lora Card

Subscribed and sworn to before me this 15th day of February, 1996.


Notary Public

My commission expires Feb 8, 1999
Ava Lynn Schaffer Notary Public
St. Louis County State of Missouri
My Commission Expires Feb 8, 1999

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
vs.)	No. 72-0100C(6)
)	
THE BOARD OF EDUCATION OF THE)	
CITY OF ST. LOUIS, MISSOURI,)	
<u>et al.</u> ,)	
)	
Defendants.)	

TESTIMONIAL SUMMARY OF JOSEPH AND RICHELLE CLARK

STATE OF MISSOURI)
) ss
CITY OF SAINT LOUIS)

1. Our names are Joseph and Richelle Clark, and we live at 6049 W. Cabanne Place in the City of Saint Louis. We have three children who have attended school in St. Louis County school districts as part of the voluntary transfer program.

2. Our oldest daughter, Trina Dyan Clark, began her education in Jefferson Elementary School in the Saint Louis school district. When the magnet programs started in 1984, Trina's second grade teacher recommended that she attend the Classical Junior Academy, and she attended school there until seventh grade. When we began to plan for her entering high school, we reviewed our options of continuing her education at Senior Classical Academy, Metro High School, a private school, or at a suburban district. We chose the Clayton School District, where she had been in eighth grade, in part because it had the strongest academic program available to our daughter. She did very well in the



Clayton district, and she went on to receive advanced degrees in mechanical engineering. She now works as an engineer in California.

2. Our second daughter, Shameem Sadese Clark, attended school in the city until the third grade, when she was accepted into the Clayton school district and attended Captain Elementary School. She later attended Wydown Middle School and Clayton High School for her freshman year. She then decided to pursue a career in cosmetology, and she attended South County Technical School for her sophomore, junior, and senior years. Through that program, she was able to complete all the requirements for her high school diploma and her cosmetology license by the time she graduated. She is now working as a cosmetologist.

3. Our youngest, Josef Anwar Clark, is a freshman at Clayton High School, and he has been in the Clayton district since kindergarten. We are very satisfied with the quality of his education, as we were with our two daughters.

4. We believe very strongly that children should receive an integrated education, and that they should learn at an early age the skills necessary to work and live together with people who are different from themselves. Our children have learned these skills as part of their education, and we believe that every child should have this opportunity.

5. Josef will continue to attend Clayton High School and will finish with his friends even if the transfer program were to end. However, even though we would no longer have school-age children, we strongly believe that the program must continue for the benefit of other children who deserve the same education, both academic and social, that our children received.

~~Joseph Clark~~ *ALS*

Richelle Clark
Richelle Clark

Subscribed and sworn to before me this 21st day of February, 1996.

Ava Lynn Schaffer
Notary Public

My commission expires Ava Lynn Schaffer Notary Public
St. Louis County State of Missouri
My Commission Expires Feb. 8, 1999

Joseph Clark

Subscribed and sworn to before me this 21st day of February, 1996.

Ava Lynn Schaffer
Notary Public

My commission expires Ava Lynn Schaffer Notary Public
St. Louis County State of Missouri
My Commission Expires Feb. 8, 1999

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
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CRATON LIDDELL, et al.,)	
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THE BOARD OF EDUCATION OF THE)	
CITY OF ST. LOUIS, MISSOURI,)	
et al.,)	
)	
Defendants.)	

TESTIMONIAL SUMMARY OF CHESTER HINES, JR.

STATE OF MISSOURI)
) ss
CITY OF SAINT LOUIS)

1. My name is Chester Hines, Jr., and I live at 5723 Washington in the City of Saint Louis, Missouri. I am the father of twin boys, 12 years old, who attend seventh grade in the Wydown Middle School in the Clayton School District. My children have attended Clayton schools since kindergarten.

2. My children's experiences have been very positive. Academically they have been very successful, in part because the teachers and administrators have high expectations for children in the district. Socially, my children have made many friends at school, and my wife and I have also formed lasting friendships with other parents in the district.

3. For several reasons, I am opposed to the State of Missouri's attempts to end the transfer program. I don't believe that the state sees the benefit of the program, in that it

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develops a community of people, both adult and children, who have a regard and respect for other races. Second, I believe that 12 years is not a long enough period of time to remedy the effects of so many years of segregation. The remedy has yet to be fully realized, and this program is a vital part of that remedy. Third, I do not believe that financial concerns are a valid issue with regard to this program. All of these children must be educated, and the state must fund their education, regardless of where the children attend school. The cost of this program is only a drop in the bucket of state spending. Further, it is a grave and great disservice to all the transfer students to ask them to change their schools and educational programs in mid-stream. And lastly, the program should not be ended until all five parts of the settlement agreement are achieved, especially the part five relating to hiring minority staff.

4. I do not believe that the city schools can provide my children with the same quality of education that they have received in Clayton. I believe that the city schools cannot provide the individual focus my children have received, nor can they provide the same quality of instruction, curriculum, or materials and supplies. There is also comparatively little diversity by race, culture, religion or social practices in the city schools, and this diversity has been a critical component of my children's education. I do not believe that I could place my children in city schools if the transfer program were ended.

5. Any child who is educated in a separate environment and then placed in a world environment is at a disadvantage, and I believe this is what will happen to my children and to all children who are denied access to an integrated education. I urge this Court to continue the transfer program


Chester Hines, Jr.

Subscribed and sworn to before me this 16th day of February, 1996.

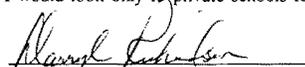

Notary Public

Ann Lynn Schaffer Notary Public
St. Louis County State of Missouri
My Commission Expires Feb. 6, 1999

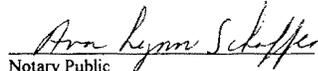
My commission expires _____

3. My wife and I believe that children learn when they are very young how to relate to others, and that a multicultural background is necessary for children to later succeed in the world and in the job market. I believe Darius is learning these valuable skills now as a result of the transfer program. From my own experience, I know that attending separate schools leads only to culture shock later.

4. I am a strong supporter of the transfer program, and I urge this Court to continue it. The program is a great benefit to the community as a whole, forging relationships and creating an environment where people with different backgrounds work together and learn to see people for who they are. I have written to a number of people to encourage them to support this program, and I often recommend the transfer program to others who are looking for better schools for their children. If the program were to end, I would do all I could to avoid placing Darius in the city schools, where I believe he would suffer educationally and socially. If it were not possible to continue his education at Spoede, in the environment he loves, then I would look only to private schools for his education.


Darryl Richardson

Subscribed and sworn to before me this 21st day of February, 1996.


Notary Public

My commission expires Ava Lynn Schaffler Notary Public
St. Louis County State of Missouri
My Commission Expires Feb 8 1997

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	No. 72-0100C(6)
)	
THE BOARD OF EDUCATION OF THE)	
CITY OF ST. LOUIS, MISSOURI,)	
<i>et al.</i> ,)	
)	
Defendants.)	

TESTIMONIAL SUMMARY OF LORRAINE SLOAN

STATE OF MISSOURI)
) ss
CITY OF SAINT LOUIS)

1. My name is Lorraine Sloan, and I reside at 5820 Etzel Avenue, #9, in the City of St. Louis, Missouri. I am the parent of two children who attend school in the Lindbergh School District as part of the voluntary interdistrict transfer program. My oldest son, Alpha, is a high school ^{*Sophomore*} ~~junior~~ and my youngest son, Gerald, is in second grade.

2. I have been very pleased with the educational opportunities my children have received. Alpha takes part in the international baccalaureate program at Lindbergh High School, where he earns college credit for advanced-level courses. The program prepares him to go on to college and to be successful there. The program, which is one of only a few in the nation, is to my knowledge unavailable in the St. Louis city schools.

3. I have been very involved in my children's education, and I have a very good relationship with my children's teachers. Whenever any problem has arisen, I have been able to



communicate my concerns to the teacher or to the principal, and I have always received a good response.

4. It is extremely important to me that my children receive a good education in a diverse, multicultural environment. The Lindbergh district has been able to provide this for my children. I don not believe that the St. Louis city schools could meet these goals if the transfer program ended. I believe that the city schools tend to be much less diverse, are less sensitive to multicultural issues, and are simply overcrowded. For many reasons, it would be impossible for me to send my children to the city schools if the transfer program ended.

5. I feel very strongly that my children should have a choice in the schools they attend, and they have that choice now. If the transfer program were to end, my only options would be to move out of the city or to find the money to send Gerald to a private school. Neither option appeals to me.

6. I urge this Court to continue the transfer program, not only for the sake of my children but for the sake of all children in the program, who are each entitled to receive a good education, in a diverse, safe environment.

Lorraine Sloan
Lorraine Sloan

Subscribed and sworn to before me this 13 day of February, 1996.

Kristine M. Immekus
Notary Public

My commission expires May 2, 1997



PROPOSED WITNESSES' DECLARATIONS TO COUNSEL

(attachment to Caldwell-NAACP
Plaintiffs' Offer of Proof, filed March 22, 1996)

Derrick Brooks

Derrick Brooks is a graduate of the Voluntary Interdistrict Transfer Program. He currently resides at 6515 Wydown, Clayton, MO 63105, on the campus of Washington University in St. Louis. If called to testify, Mr. Brooks would state the following:

"I am a full-time, first-year student at Washington University, majoring in chemical engineering. I will have an internship at Monsanto in the summer of 1996. I decided while in middle school in the Kirkwood School District that I wanted to attend college. I wanted to attend college because I believed that only a college education could enable me to live both comfortably and honestly. I did not want to live like my neighbors in North St. Louis, who survived from paycheck to paycheck.

"I grew up on the North Side, which is an entirely black neighborhood in the city of St. Louis. My family began living there in 1981.

"My mother works as a seamstress. She did not graduate from high school. My twin brother, who also went to Kirkwood schools, is a student at Central Missouri State in Warrensburg. He and I are the first people in our family to attend four-year colleges.

"I attended a Head Start program in Jennings, which is a predominantly black suburb of St. Louis, and kindergarten at Gundlach, a non-integrated public school in St. Louis. My kindergarten teacher encouraged my mother to apply for transfer to a suburban school through the Voluntary Interdistrict Transfer

Program. I was working above grade level and my teacher said I would become stagnated if I remained at Gundlach. I attended first through 5th grade at Westchester Elementary School in the Kirkwood School District.

"I attended 6th grade at Pruitt Military Middle School, a magnet school in the city of St. Louis. My mother wanted to try sending me back to city schools in the hope that they had improved. I found that I had already covered Pruitt's 6th grade curriculum in my 5th grade class in Kirkwood. I learned very little new material that year. The teachers at Pruitt spent the first 10 to 15 minutes of each class period settling the students down, which took time away from learning. In Kirkwood, the students came into class and sat down immediately.

"I had never wanted to leave the Kirkwood schools and complained to my mother that I wanted to go back. My mother also saw the difference between the Kirkwood schools and the Pruitt school. I entered North Kirkwood Middle School for 7th grade. Initially I found 7th grade difficult because my year at Pruitt had put me behind my Kirkwood classmates. I got my first C grade that quarter. After the first quarter, I was able to catch up. I completed middle school in Kirkwood and then entered Kirkwood High School, from which I graduated in June, 1995.

"I took two years of honors English while in high school. There were 4 black students in my first honors English class, and 2 or 3 in my second honors English class, in classes of approximately 25 students each. I contracted for honors in chemistry by doing extra projects in the regular chemistry class.

I also took calculus. There were 4 black students in my calculus class of 21 or 22 students. I did not take Advanced Placement courses, although they were offered. I held part-time jobs through all four years of high school, and worked 20 hours a week during my senior year. I felt that it would be too difficult to do AP work and keep up this schedule. I earned a cumulative 3.9 GPA in high school. My honors English classes enabled me to test out of my English requirements when I entered Washington University. I am currently enrolled in an accelerated calculus course, which is required for my major. Without the good foundation I received in my high school calculus course, I would not be doing as well as I am now.

"At Kirkwood High School, I was the captain of the varsity basketball team during my junior year. I also was the vice president of my freshman and senior classes, the treasurer of my junior class, and the treasurer of the school's chapter of the National Honor Society. I was the first African-American male in the school's history to hold an office in the Honor Society chapter. I look back on high school as the best part of my life so far because I enjoyed so many extracurricular activities and made many friends among both African-American and white students.

"I rode a school bus for an hour and fifteen minutes each way to attend high school. On a typical school day I woke up at 5:00 AM, caught a bus at 6:10 AM, and arrived at school at 7:25 AM. The deseg students arrived between 7:15 and 7:30 AM, and classes began at 7:50. I arrived home from school at 6:30 PM during my freshman, sophomore, and junior years, because I played basketball.

During my senior year, I drove to and from school.

"My mother considered moving from St. Louis to the suburbs. I objected because she would not have moved to Kirkwood, and I wanted to continue to attend school in the Kirkwood district. I didn't mind the sacrifice of having to travel for two and a half hours each day.

"I received help from 2 or 3 guidance counselors when I was applying to college. I saw the guidance counselors as often as I needed to. I had a regular counselor, but if the regular counselor was not available or did not have information I needed, I would go to another. The counselors helped me fill out financial aid forms, and sent me messages about scholarship information as it became available. They helped me apply for a number of private scholarships.

"It would be a tragedy if the Voluntary Interdistrict Transfer Program were to end because of all the benefits that are and are not visible. It is impossible to place a dollar figure on the value of learning to understand racial and cultural differences and not to see them as something bad. I came into school thinking one way about the opposite race, and my way of thinking turned completely around during my years in the Kirkwood School District. I had been told that the white man doesn't want the black man to succeed, and white people can't be trusted. Through my relationships with other students and with teachers at the Kirkwood schools, I learned this was not true. The learning process really began for me in fourth grade, when I first spent the night at a white friend's house. My friend's household was different from

mine, but I realized that it was not better or worse, just different. I also realized that another black child's house would have been different from mine, too. How is it possible to assess the value of being able to see that you can be friends with and trust someone of another race? If I had attended an all black school, I would never have had this opportunity. If the deseg program did nothing but that, it succeeded, no matter what dollar amount was spent on the program. It is a real blow that the Court is not allowing this testimony. This case isn't just about issues on paper. It's about people."

Kristopher Lueron Clouch

Kristopher Lueron Clouch is a graduate of the Voluntary Interdistrict Transfer Program. He currently resides at 4000 Hyde Park Apt. 68, Columbia, MO 65201. If called to testify, Mr. Clouch would state the following:

"I am now in my junior year at the University of Missouri, Columbia. I am a biology premed major with a sociology minor, and I plan to add a second major in psychology. I am a Conley Scholar and a Bright Flight scholar, and I was accepted to the University of Missouri Medical School while I was still in high school. I plan to enter medical school in 1998.

"I graduated from Parkway West High School in the Parkway School District in June 1993. Prior to transferring to the county school in my sophomore year, I attended Northwest High School in the city of St. Louis.

"There was only one white student in the entire school at Northwest. I was at the top of my class and had a 4.0 grade point average. I was in the College Prep program, but I was concerned that it was not providing adequate preparation for college. A few slow students in my classes would keep the whole class back. In general, the students were not interested in learning and looked down on students who tried to study and work hard.

"During my first year at Parkway West, I did not take honors classes. The school was concerned that I was not adequately prepared, although I had taken College Prep classes and had a 4.0

average at Northwest. I found that the ordinary (non-honors) classes at Parkway West were more difficult than the College Prep classes at Northwest. I earned a 4.0 grade point average in my sophomore year at Parkway West, and the following year I was permitted to enroll in honors classes. I took four honors classes during my junior year and two during my senior year. I graduated with a cumulative 3.7 grade point average, and ranked 51st in a class of 471 students.

"I first decided that I wanted to attend college when I was in second or third grade. I decided I wanted to become a doctor after my freshman year of high school, when I attended the Mark Twain Summer Institute at Clayton High School. I had a scholarship that paid two thirds of the Institute's \$300 tuition. I took an anatomy class at the institute that was taught by a Parkway West teacher. This class made me want to attend Parkway West, study anatomy, and later attend medical school and become a doctor.

"When I was applying to colleges, I saw my counselor, Ms. Edwards, at least four times a week. She was always available when I needed counseling. She helped me get fee waivers for my college applications and also helped me apply for a number of scholarships. I received a George C. Brooks Minority Scholarship and a Bright Flight scholarship. I am blind in one eye, and Ms. Edwards helped me obtain additional time to take the ACT because of my disability. I scored a 31 out of 36 and was accepted at Stanford, UMKC, MIT, and Craton, in addition to the University of Missouri. I chose the University of Missouri because it provided me with a full tuition scholarship and acceptance to the medical school.

"I would not be where I am today without Parkway West High School. My honors and advanced placement coursework at Parkway West enabled me to test out of a number of requirements at the University of Missouri. In addition, Parkway West helped me to develop the work ethic and study habits I need to succeed in college. At Parkway West, college was the main objective of the majority of students. The Parkway West faculty gave students the message that we had to work in order to achieve. At Northwest, the students didn't care about achieving and didn't believe they could go to college. I believe that I could have gone to college even if I had continued at Northwest, because my parents, who are both teachers, would have helped and encouraged me. However, I consider myself an exception and believe that most students at Northwest have parents who did not attend college, and do not think they can succeed. I also believe that I would not have received the scholarships I have now if I had not attended Parkway West. When I went on college interviews, I found that the interviewers were familiar with Parkway, and were confident that I would succeed in college because of the preparation I had received at Parkway. If I had continued at Northwest, I would have applied to less competitive colleges. I would not have been able to survive once in college because I did not have to study to be at the top of my class at Northwest, and I would not have developed a work ethic.

"I had friends among both white county students and black transfer students while at Parkway West. I was often the only black student or one of two black students in my classes. I played soccer, and my brothers and I were the only black students on the

soccer teams. Some of my best friends were soccer team members, and I spent time with them outside of school and slept over at their houses. I did not experience any racial prejudice while I was at Parkway West. Being in a predominantly white environment was good preparation for the University of Missouri, which is also predominantly white. I am currently the only black member of an otherwise all white fraternity.

"I also formed friendships with the other transfer students, whom I met during the 45 minute bus ride to and from school and also spent time with outside of school. I was involved in several clubs and always took the "activity bus," which left later in the afternoon. I did not mind the bus ride. I read or socialized on the bus. I also believe that the long bus ride helps to keep kids out of trouble.

"I strongly believe that the transfer program should continue. Without the program, black city students would get involved in drug dealing, skipping school, and using alcohol and drugs. Parkway West teaches students that they can succeed and instills a work ethic. At Northwest, the students did not believe they could go to college."

Christy Gregory

Christy Gregory is a graduate of the Voluntary Interdistrict Transfer Program. She currently resides at 101 Brownstone Apts., #15, in West Lafayette, Indiana 47907. If called to testify in this matter, Ms. Gregory would state the following:

"I am a student at Purdue University, majoring in accounting, and I graduated from Eureka Senior High School in 1994 under the voluntary transfer program. I attended school in the city through middle school, then went to Eureka, in the Rockwood School District, for junior and senior high school. My mother believed that there were more opportunities for me in the suburban districts, and we had neighbors who went to Eureka and had good things to say about it, so we chose that district.

"I received a good education and learned good study habits in Eureka. My perception of the teachers was different, and I felt that they were there to help the students as much as possible. They always made me feel welcome. My classes were challenging, including my college prep courses, and the teachers were always there to push me. I was on the honor roll there, and was very involved in leadership programs at my school. Plus, Eureka had computers and advanced calculators available that helped me learn a great deal.

"I found that bigger colleges and universities recruited at the suburban schools, and they recruited me while I was at Eureka. Two colleges other than Purdue offered me full scholarships for

four years, but I decided to accept Purdue's offer of enrollment in a summer business opportunities program which started just after my high school graduation. My performance in that program earned me a generous scholarship, and I began as a full-time student that fall.

"I believe that the opportunities I received while I was a student at Eureka made the difference in my plans for the future and my chances for the future. I plan on becoming an accountant, and I have worked my summers at various accounting firms. Plus, the diversity of education I learned at Eureka has helped me at Purdue, where I feel fully comfortable among many different people. It wasn't a culture shock for me when I came here."

Marvin, Jackie and Krystal Joiner

Marvin and Jackie Joiner are the parents of Krystal Joiner and Tiffany Joiner. Krystal Joiner is currently a third-grade student and Tiffany Joiner is a kindergarten student in the Voluntary Interdistrict Transfer Program. The Joiners reside at 4959 Lexington in Saint Louis, Missouri.

If called to testify in this matter, Jackie Joiner would state the following:

"Krystal is in the third grade at Bridgeway Elementary and Tiffany is in kindergarten there. Their neighborhood school is Lexington School across the street from where we live. I went to Lexington School in the 60's and graduated from Beaumont High School in 1981. I saw what happened there, and I don't want that for my kids. We were in overcrowded class rooms, with the fifth and sixth grade in one room with one teacher for both grades. I graduated with people who could barely read, and I see people in the store today who have trouble reading. That's what happened in the Saint Louis schools when I went there, and if they send the transfer students back, it will happen again. I don't want that for my children.

"When I got to college, I was shocked at how little I knew. There was no emphasis at Lexington or Beaumont on attending college or preparing for it. At Bridgeway, things are very different -- they expect you to go to college and they expect you to study and read and do well. If my children have to return to the city

schools, it will cripple them, because they already know more than the city kids."

If called to testify in this matter, Marvin Joiner would state the following:

"We have had nothing but great experiences with the transfer program for our children. We chose Pattonville because of its high quality of education, and because we could not find that quality in the city schools. You can talk to my daughters and tell they are getting a good education -- they talk differently than the neighborhood kids, they are smarter than them, they have a great vocabulary, and Krystal was reading in the first grade. Krystal knows all the state capitals, and she loves math and science.

"I attended parochial schools through the eighth grade, and then attended O'Fallon High School in the St. Louis Public School district. When I went to O'Fallon in 1979 for the ninth grade, I was shocked. They were teaching sixth grade material in the ninth grade, there was no discipline, and there were supply shortages. Plus, there was no diversity like I had been used to -- there were no white students, nor any Hispanic students.

"The transfer program provides culture and diversity to my children. If they were not bussed out, they would not receive that diversity in the city.

"The State's proposal to end the program has caused a lot of uncertainty for us. We are worried about whether our kids can finish their education in Pattonville. We were planning on buying

a house in the city, but once we learned about the proposals to end the program, we decided to wait. If the program ends, we would want to buy a house in Pattonville, but that would cost us more. Right now, we are just waiting and saving as much as we can so that if we have to go to Pattonville, we can afford it."

If she were called to testify, Krystal Joiner would state the following:

"I go to school at Bridgeway in Pattonville. I get on the bus at 7:36, and I get to talk to my friends on the bus. One of them is Ambria. She wears glasses and is kind of shy, but I help her with that and get her to talk to other people. I started reading when I was six years old, and I'm on the honor roll. When I grow up, I want to be a weather reporter, like Trish Brown. She is really good and sounds nice, and she tells you if you need to wear a big coat or a light jacket. I might want to be a journalist, or Vanna White because I like the letters.

"I am in third grade, and I read on the fourth grade level. I like mystery books, and I collect the Nancy Drew and Goose Bumps books. Once, I got to go to lunch with my principal, Dr. Tubineau, and we had ice cream for dessert.

"At my school, we went to see the symphony, and we all wanted to know where the harp was because there wasn't a harp. Before we went we studied all the instruments, like the strings and the winds. We tried out the violin, the double bass, the cello, the viola, and the flute and the piccolo at school, and we also got to

play a harp.

"If I had the choice between getting up early to go to Bridgeway or sleep later and go to Lexington school across the street, I would want to go to Bridgeway because I don't want to miss a minute of school."

Brian Griffin

Brian Griffin is a graduate of the Voluntary Interdistrict Transfer Program. He currently resides at Fisher Hall, Room 4, in Notre Dame, Indiana 46556. If called to testify, Mr. Griffin would state the following:

"I am currently attending Notre Dame on several different scholarships. I graduated from Ladue Horton Watkins High School as part of the voluntary transfer program, and I attended Ladue schools for seven years.

"My experiences in the transfer program taught me a lot - including to get up early, to work hard and make sacrifices, and to apply myself in school. I learned not to expect that anything would be given to me. These were important lessons that I still use today."

Wm. LACY CLAY
1ST DISTRICT, MISSOURI

Congress of the United States
House of Representatives
Washington, DC 20515-2501

January 12, 2001

Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
152 Dirksen SOB
Washington, DC 20010

Dear Chairman Leahy:

I am deeply troubled by President-elect George Bush's nomination of Senator John D. Ashcroft to the office of U.S. Attorney General. Senator Ashcroft's record as a Missouri elected official for the past 23 years reflects far more than a commitment to conservative principles. What is most disturbing about Mr. Ashcroft's nomination to the highest law enforcement office in the nation is his long public record of refuting the U.S. Constitution's mandate for equal education.

As Missouri Attorney General John Ashcroft crusaded against the desegregation of both the Kansas City and the St. Louis public schools. He demonstrated no interest in the State's constitutional obligation to ensure equal educational opportunity for all the children of Missouri. He emphatically denounced federal court ordered remedies to eradicate all vestiges of the deeply entrenched racism that lingered in Missouri's public schools and left primarily poor, black children in crumbling structures that U.S. District Judge Clark described as "*literally rotted*." Despite the obvious and desperate need to address pitiful conditions in Missouri's largely minority urban school districts Attorney General Ashcroft marshaled the State's resources for legal battle and charged that the court ordered school desegregation plans would not improve public education "*one iota*." His commitment to stopping school desegregation was so strong he even denounced the voluntary desegregation efforts in St. Louis County. Perhaps no other single elected official in the history of the State of Missouri has ever done so much to deny education to black and minority children as John Ashcroft.

During the 1980's Attorney General John Ashcroft spared no expense in a litigious crusade to maintain the tradition of racism and segregation in Missouri's public school systems. Ashcroft did not battle for segregation in the schools but rallied against desegregating the schools on the premise that to do so would be too costly to the taxpayer. Under his direction, in a form of fiscal lunacy, Attorney General John Ashcroft used millions of dollars in state revenues in an effort to prevent budget resources from being spent on public school desegregation. Time and time again Missouri taxpayers footed the costs as Attorney General Ashcroft went to court again and again only to have the State's appeals repeatedly rejected.

As Attorney General, and later as Governor, John Ashcroft neither proposed nor supported any constructive remedy to bring the state of Missouri into compliance with the U.S. Constitution on the issue of equal educational opportunity. Missouri lost round after round in District and Federal

Chairman Leahy
 January 12, 2001
 Page 2

Court, and the U.S. Supreme Court refused even to hear its appeals. John Ashcroft expressed hostility toward the federal court system. Disappointed by the 8th Circuit Court of Appeals decision to uphold the Kansas City school desegregation program Attorney General Ashcroft decried the ruling as "*One more step toward the day when federal judges control more and more institutions in our society.*"

I am concerned that John Ashcroft has demonstrated a dubious commitment to equal educational opportunity and a hostile regard for civil rights and the federal court system. Senator Ashcroft must explain his position on school desegregation. **Does he continue to believe that the school desegregation programs implemented over his protestations in Missouri failed to improve public education? If so, would he, as U.S. Attorney General, work to remove the State's responsibility to provide equal educational opportunity?**

Further, as Missouri Attorney General, John Ashcroft opposed the Federal Court ordered school desegregation as "nothing more than an invasion of the state's treasury." In response to one U.S. District Judge's order requiring Missouri to pay a portion of the St. Louis' public school desegregation program Attorney General Ashcroft balked because "*there was no requirement for the federal government to shoulder its burden.*" **If a state attorney general appealed a similar federal court ruling requiring the state to contribute to the cost of eliminating racial discrimination would John Ashcroft, as the U.S. Attorney General, support the expenditure of federal dollars to help the state eradicate racial injustice?**

Finally, does John Ashcroft continue to view a State's commitment to equal educational opportunity as somehow limited by fiscal constraint or budgetary priorities or does he view the right to a public education, as provided through the U.S. Constitution, as a matter to be upheld by the U.S. federal courts when a state fails to meet its obligations?

Throughout his career in public office, John Ashcroft has advocated public policies that undermine the civil rights of minorities and fan the flames of racial divisiveness. I have grave concerns that the Senator's demonstrated hostility toward the equal protections guaranteed under the 14th amendment to the Constitution suggests that he does not have the capacity to effectively pursue equal justice under law for minority citizens. I urge the Committee to reject his appointment.

Sincerely,



Wm. Lacy Clay
 Member of Congress

cc: Democratic Committee Members

Teresa Stanton Collett

43 W. Knightsbridge Drive
The Woodlands, TX 77385
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January 12, 2001

Senator Orrin G. Hatch
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510
via (202) 228-1698 FAX

Re: Nomination of Senator John Ashcroft

Dear Senator Hatch:

I am writing in support of Senator John Ashcroft's nomination to be United States Attorney General. I am a professor of law at South Texas College of Law in Houston, Texas, where I have taught Professional Responsibility since 1989. I am also immediate past chair of the Section on Professional Responsibility of the Association of American Law Schools. Legal ethics and professional responsibility are among my primary areas of scholarly research. Many of my articles have specifically addressed the responsibilities of religiously devout lawyers, including the conflicting duties that may arise from a lawyer's moral commitments and the content of the positive law.

I am deeply concerned by the recurring claim of various groups that Senator Ashcroft's religious and moral beliefs may render him unfit to serve as Attorney General. The effect of this claim on the confirmation process is evidenced by the increasing number of public statements similar to that made recently by Senator Charles Schumer on ABC's "This Week." He stated "The question is, will Senator Ashcroft enforce the law of the land on things that he's morally opposed to." I believe the answer to this question is a resounding "yes" based upon Senator Ashcroft's political philosophy expressed in his writings and public statements.

Senator Ashcroft has a strong commitment to the constitutional structure of American government. A true believer in the citizens' right to self-governance through their elected representatives, he has been a fierce opponent of judicial activism. His sense of constitutional role is offended by judges who, in his words, "believe that they can legislate from the bench, disregarding our time-tested, carefully constructed, constitutional system."

This strong sense of constitutional structure also embraces the executive branch. In his book, *LESSONS FROM A FATHER TO HIS SON*, Senator Ashcroft describes his

understanding of a governor's responsibility to enforce the law. In his discussion of the death penalty, he wrote:

My guiding philosophy was fairly simple: state law had given me powers as governor for a particular purpose. If the people had somehow convicted someone who did not warrant conviction, I was to step in and correct it. It was *not* my responsibility to second-guess the people; it would have been arrogant and irresponsible for me to commute every death sentence, or the death sentences passed on newly converted Christians, arguing, "The law says this is to happen, but I'm going to replace that law with my own opinion."

There is every reason to believe that if confirmed Attorney General Ashcroft's position would be, "Federal law has given me powers as Attorney General for a particular purpose. It is not my responsibility to second-guess the people; it would be arrogant and irresponsible for me to disregard the law, arguing "The law says this is to happen, but I'm going to replace that law with my own opinion."

Some may argue that Senator Ashcroft's abiding respect for constitutional role and structure is merely a politically astute method of enforcing politically popular laws and attacking results he disagrees with. To those, I would merely say, where is the evidence? Where is the evidence that, as a public servant, he has ever intentionally disregarded the law in order to serve a purpose he defines as more morally compelling? The failure of opponents to bring forth such evidence suggests its nonexistence.

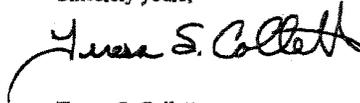
There is, however, a question that should be answered. It seems fair to ask how a morally upright individual can accept a position which requires that he protect the legal rights of others to engage in actions he believes are fundamentally unjust. Elsewhere I have written, "No religious believer should accept cases requiring the lawyer to advocate evil acts, or the total disregard of religious obligations, or the irrelevance of religious beliefs." Some may suggest that, under this standard, John Ashcroft should not accept the position of Attorney General, since it will require him to advocate the right of women to seek abortion free of the acts of others defined as criminal interference under the Free Access to Clinic Entrances Act. I reach a different conclusion.

Unlike lawyers in private practice, the Attorney General of the United States does not have the freedom to choose the causes he represents. There is no general warrant to decline to enforce the law. Instead, a person agreeing to serve as Attorney General agrees to enforce all the laws. If a person believes he or she can not, in good conscience, enforce the laws of the United States, he should decline to be nominated. Like Senator Ashcroft's ideal judicial candidate, the Attorney General's job is to defend the laws and Constitution of the United States, not amend them. Senator Ashcroft understands this, and it seems clear that he will fulfill his responsibilities.

In closing, I would urge you to support vigorously the confirmation of Senator Ashcroft. In a case involving the religious liberty of those seeking to be lawyers, Justice

Hugo Black wrote, "I am not ready to say that a mere profession of belief in that [Christian] Gospel is a sufficient reason to keep otherwise well qualified men out of the legal profession, or to drive law-abiding lawyers of that belief out of the profession, which would be the next logical development." *In re Summers*, 325 U.S. 561, 572 (1945). Similarly, Senator Ashcroft's religious and moral beliefs are not a sufficient reason to keep him from holding the office of Attorney General of the United States. As a devout man, whose deeds establish his commitment to honoring his word, and whose political life testifies to his profound respect for our constitutional structure, he is eminently qualified to be Attorney General. Please support his nomination.

Sincerely yours,



Teresa S. Collett

Cc: Senator Phil Gramm via email
Senator Kay Bailey Hutchison via fax (202) 224-0776



January 11, 2001

Hon. Orrin Hatch
Chairman, Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

We are writing in connection with the consideration by the Judiciary Committee of the nomination of former Senator John Ashcroft as Attorney General of the United States. The Commercial Internet eXchange Association (CIX) is a trade association that represents 125 Internet Service Provider (ISP) networks representing local, regional, national, and global Internet networks. CIX members handle approximately 75 percent of the United States' Internet traffic as well as much of the world's backbone Internet traffic. CIX is the world's oldest trade association of ISPs and Internet-related businesses, having been established in 1991 to provide the first commercial access point to the Internet backbone.

Senator Ashcroft has a very strong understanding of Internet issues. He has demonstrated significant leadership on these issues while he was in the Senate, for example, his integral role in supporting your efforts and those of Senator Leahy in the enactment and crafting of Title II of the Digital Millennium Copyright Act. He understood the balance between the rights of individuals in copyright and privacy, and the need to permit the full flow of information and ideas on the Internet.

We also believe that Senator Ashcroft will provide important leadership at the Department of Justice in connection with issues related to access by law enforcement to the Internet for law enforcement purposes. In particular, we are heartened by his interest and concern with the "Carnivore" program and other activities that potentially invade the privacy of individuals who use electronic communications and the Internet. We hope that under his leadership, the Carnivore program will be reconsidered.

On issues related to the Internet, and in particular on issues that impact Internet service providers, we believe that Senator Ashcroft will provide important leadership as Attorney General of the United States of America.

Please feel free to contact me with any further questions that you may have.

Sincerely,

Barbara A. Dooley, President
Commercial Internet eXchange Association

cc: Senator Patrick Leahy
Senator John Ashcroft

Mailing: P.O. BOX 1726, Herndon, VA 20172-1726
1301 K Street N.W., East Tower, Suite 325
Washington, D.C. 20005
Phone: 703.709.8200 Fax: 703.709.8200



CONCERNED CHRISTIAN CITIZENS

655 FRONT ST., P.O. BOX 444, LYNDEN, WA 98264-0444. (360) 354-5656

January 15, 2001

Dear Members of the Senate Judiciary Committee:

Concerned Christian Citizens, with 700+ members in Whatcom County Washington, strongly supports John Ashcroft for Attorney General of the United States. He is eminently qualified – by character, by experience, and by outstanding competence. Seldom in U. S. history has a nominee brought such complete qualifications to the office, far more, for example, than Janet Reno, who was confirmed with no problems eight years ago.

Please vote for Ashcroft without delay and get on with the important business of governing.

Respectfully,
The Board of Directors of Concerned Christian Citizens

Gary Hardaway, Ph. D.
Executive Director



January 16, 2001

Senator Orrin Hatch
Senate Judiciary Committee
224 Senate Dirksen Office Building
Washington, DC 20510

Senator Patrick Leahy
Senate Judiciary Committee
224 Senate Dirksen Office Building
Washington, DC 20510

Dear Senators:

We are writing in reference to the confirmation hearing of Senator John Ashcroft for the position of United States Attorney General.

We strongly encourage you to support the nomination of John Ashcroft who served as Missouri Attorney General from 1977-1985. Senator Ashcroft is a principled man with considerable skills. Throughout Senator Ashcroft's two terms as the Missouri Attorney General he discharged the duties of his office with honor and distinction. He was also elected by his peers as President of the National Association of Attorneys General (NAAG) and received the Wyman Award which NAAG presents to outstanding members of the organization.

We are proud to have had one of our own nominated to this important position. Senator Ashcroft understands the law enforcement issues we face everyday and he will respect the appropriate relationship between the Justice Department and our offices.

Handwritten signature of John Cornyn in black ink.

Honorable John Cornyn
Attorney General of Texas

Sincerely,

Handwritten signature of Don Stenberg in black ink.

Honorable Don Stenberg
Attorney General of Nebraska

cc: United States Senate Judiciary Committee

Bill Pryor
Honorable Bill Pryor
Attorney General of Alabama

M. Jane Brady
Honorable M. Jane Brady
Attorney General of Delaware

Alan Lance
Honorable Alan Lance
Attorney General of Idaho

Jim Ryan
Honorable Jim Ryan
Attorney General of Illinois

Steve Carter
Honorable Steve Carter
Attorney General of Indiana

Carla J. Stovall
Honorable Carla J. Stovall
Attorney General of Kansas

Wayne Stenehjem
Honorable Wayne Stenehjem
Attorney General of North Dakota

Betty D. Montgomery
Honorable Betty D. Montgomery
Attorney General of Ohio

Mike Fisher
Honorable Mike Fisher
Attorney General of Pennsylvania

Charlie Condon
Honorable Charlie Condon
Attorney General of South Carolina

Mark Barnett
Honorable Mark Barnett
Attorney General of South Dakota

Mark L. Shurtleff
Honorable Mark Shurtleff
Attorney General of Utah

Mark Earley
Honorable Mark Earley
Attorney General of Virginia

Gay Woodhouse
Honorable Gay Woodhouse
Attorney General of Wyoming

Toetagata Albert Mailo
Honorable Toetagata Albert Mailo
Attorney General
of American Samoa

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
CONFIRMATION HEARINGS OF THE HONORABLE JOHN ASHCROFT
FOR THE OFFICE OF ATTORNEY GENERAL OF THE UNITED STATES

Statement of Robert A. Destro

Thursday, January 18, 2001

Mr. Chairman and members of the Committee:

Fundamental to the concept of American citizenship is the right and duty of every American to participate in the workings of our government without regard to our religious beliefs. That principle is enshrined in Article VI, cl. 3 of the Constitution, the Religious Test Clause. Its words speak directly to the Senate – and, in particular, to this Committee: "*no religious test shall ever be required as a Qualification to any Office or public Trust under the United States.*"¹

As a citizen, a legal educator, and civil rights advocate, I am shocked and saddened by the attacks on John Ashcroft's religious beliefs. It is one thing to attack his record. It is quite another to demonize his deeply held religious convictions. Whether targeted at believers or non-believers, such attacks are the essence of a religious test. As such, they are one of the purest examples of intentional religious discrimination that we have seen in this country for many years. Friends of religious liberty had hoped that sanctimonious bigotry about the religious beliefs of public servants dissipated after John F. Kennedy's election, and welcomed the nomination of Joseph Lieberman's as evidence that we were "beyond all that." Apparently we are not.

The attacks on John Ashcroft remind us that we must remain vigilant if we are to preserve and extend our more than two hundred years of religious liberty under the Constitution. Senator

¹ Interim Dean, Columbus School of Law, The Catholic University of America, Washington, D.C. Commissioner, United States Commission on Civil Rights, 1983-1989. Affiliation is for identification purposes only. These remarks are made in my own name, and do not necessarily reflect the opinions of the University, its faculty, or students.

directly: "Will your religion keep you from being able to perform your duties in office?" Senator Leahy should not have been surprised. When those who have vowed to kill this nomination decided to base their attack on his religious beliefs and opinions, the question was inevitable. The entire enterprise reeks of hypocrisy and religious bigotry. They should be ashamed.

When, I ask you, was the last time that the religion of any member of this Committee was the subject of a feature story on ABC's *World News Tonight*? Just the other night Mr. Ashcroft's was, and it was no accident. Does Mr. Jennings really believe that the ABC News staff is qualified to tell us whether John Ashcroft's beliefs are "outside the mainstream" of American religious belief? What does it matter? Why is it relevant? The Constitution tells us that the Senate may not consider it.

The framers of our Constitution understood that the essence of self-government is the right and duty of every American to participate in the community's efforts to "establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity."¹ Though they were unable to reach agreement on the injustice of slavery, and did not speak to the issue of women's suffrage, they did make it clear that all American citizens have the right to participate in the workings of their government, to peaceably assemble, and to petition their government for a redress of grievances.

Most of us carry out the duties of citizenship when we cast an informed vote at the polls, or take time from our daily routines to participate in a neighborhood or community activity. Others

¹ U.S. CONST. art. VI, cl. 3 (1787).

military, as a prosecutor or public defender, school board member, legislator or judge.

John Ashcroft has served the citizens of Missouri both honorably and well. His pro-life views are deeply held and reflect the views of millions of American citizens, whose views are, by any stretch of the imagination “in the mainstream.” The First Amendment protects not only their right to hold those views, but also the right to have their voices and grievances on this issue heard here in Washington.

Let me be clear. To be pro-life is to take human life seriously – all human life, from conception until natural death. Though people may differ on the details of the protection that should be offered to life at the very beginning or end, all agree that it is not to be taken lightly. People of strong religious faith, including Jews, Catholics, Protestants, and Muslims, believe that life is a gift from God. Persons of no religion at all value life for its intrinsic worth and the uniqueness of every human individual.

These are *mainstream* views. They are the views that animate the Virginia Declaration of Rights, the Declaration of Independence, the Constitution, and the Universal Declaration of Human Rights. The words “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness” are not the work of zealots, or “right-wing crazies.” They are the words of our founding documents. Americans rightly take them seriously,

² United States Constitution, Preamble (1787)

unborn, should not be disenfranchised or stigmatized for it.

Americans who are pro-choice are entitled to their views. So too are those of us who are proudly pro-life. We can agree to disagree, and work through the political process to resolve our differences and petition for redress of our grievances.

The spectacle we have been witnessing is an attempt to demonize of the political opposition. It is a claim that there is only one political Truth, one political Orthodoxy, and one politically "Correct" view of what the Supreme Court in *Roe v. Wade* called "the difficult question of when life begins." It is, pure and simple, the very sort of political "litmus test" that the pro-choice forces themselves so loudly decry.

Both the Religious Test Clause and the First Amendment declare that the test of an American citizen's right to be heard or serve in public office cannot be the acceptability of his or her opinions in "polite society" -- however one might understand that term. By wrapping themselves in the mantle of the First Amendment while attacking Mr. Ashcroft's religious beliefs, they strike at the heart of what "mainstream" Americans hold dear. The late Justice Robert Jackson's words in ringing affirmation of freedom of conscience and religion in *West Virginia Board of Education v. Barnette* apply to Senators. They are worth quoting here:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.³

³ 319 U.S. 624, 642 (1943).

commitment to equal justice under law, the First Amendment and Religious Test Clause are but words inscribed on a piece of paper, worthless in the face of a screaming mob.

That, Mr. Chairman, is what we have here: A mob, aided and abetted by unthinking journalists, whose livelihoods and professional integrity make them such fervent defenders of the First Amendment. Religion is the "First Freedom" mentioned in the Amendment, and the Religious Test Clause is our Nation's first civil rights statute. Their placement is no accident.

Our founders knew the terror of religious persecution. James Madison witnessed the beating of an itinerant preacher and was inspired. Today, the self-styled civil libertarians attacking Mr. Ashcroft administer those beatings electronically, and I am inspired to come to his defense. They warn us about hate speech fanning the fires of bigotry, and yet they attack his beliefs without mercy. Why now? Why here?

The issue, Mr. Chairman, is power. The fires of religious bigotry burn deep in the American psyche. Our history teaches us that control over beliefs we do not share is the essence of tyranny. Just as in other areas of civil rights, we have yet to internalize the full meaning of that knowledge. Of all of our civil liberties, religious liberty remains the most controversial and least understood. Citizens, legislators and judges are ill informed. They do not understand that "equal justice under law" is the basis of our Nation's "First Freedom".

I support John Ashcroft because he has been a champion of religious liberty, and, hence, of equal justice for all. He has supported equal treatment for all Americans without regard to religious belief, affiliation, or association. If confirmed as Attorney General of the United States,

he will enforce the law just as he envisioned it as Attorney General and Governor of Missouri, and as a Senator: *with justice for all*.

As he has always done, John Ashcroft will lead by example. He will see to it that our Nation's law enforcement officers understand, as my late father did throughout his long career as a policeman, that they too must lead by example. If we want Justice, if we want domestic tranquility, if we want concern for common defense and the general welfare, we must give more than lip service to the principle of "equal justice under law." We must abide by it.

Mr. Chairman, I call on you, and all of the members of this Committee, to do the same. It is your sworn duty as Senators to resist the passions of the moment. You have sworn on your honor to resist those who would silence those with whom they disagree. You must teach by example. I respectfully urge you to confirm John Ashcroft as the next Attorney General of the United States.

Thank you for your attention, and for giving me the opportunity to participate in the process.



GEORGETOWN UNIVERSITY LAW CENTER

Viet D. Dinh
Professor of Law

January 11, 2001

Hon. Orrin Hatch
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Hatch:

I write to urge that the Senate confirm Senator John Ashcroft to be Attorney General.

As his former colleagues, you and other Senators know much better than I that Senator Ashcroft is a man of character, integrity and principle. I have heard no suggestions to the contrary, even from those who would oppose his confirmation. Indeed, such opposition seems to stem precisely from the fact that he holds deep principles, has the integrity to be true to them, and possesses the character to fight for them.

To the extent that opposition to his confirmation stems from fear that his principles would hinder Senator Ashcroft's ability to execute the laws faithfully, those fears are unfounded. Among his abiding principles is a deep respect for the rule of law (evidenced by his public service record and specifically his stewardship of the Subcommittee on the Constitution) and the democratic process (amply illustrated by his gracious concession to the late Governor Mel Carnahan). Those who would challenge his willingness to honor his oath of office and faithfully discharge the duties of the Attorney General, it seems to me, have an exceedingly high burden to carry.

That leaves the substance of Senator Ashcroft's principles. Although I may disagree with Senator Ashcroft's views on some issues, I do not think such disagreement reason enough for the Senate to withhold consent to the President's choice. First, the Attorney General's primary duty is to enforce the laws, and thus the primary inquiry should be about a nominee's integrity, character, and fitness to execute faithfully the laws enacted by Congress. Second, as the Framers saw it, the role of Senate confirmation of executive officers is "to prevent[] the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity." THE FEDERALIST NO. 76 (Alexander Hamilton). As Jefferson explained the criteria Senators should use in evaluating nominees for executive positions, "They are only to see that no unfit person be employed." 16 THE PAPERS OF THOMAS JEFFERSON 379 (Julian Boyd, ed. 1961).

Hon. Orrin Hatch
January 11, 2001
Page 2

The confirmation process, of course, is political in nature. And interest groups of all stripes will try (and often have tried) to use this opportunity to press their private agendas. Such vigorous participation in the political process is to be expected. But, at the same time, it would be a shame—to the country and to the Framers' vision of our government—if the Senate yielded to such ideological pressure and judged Senator Ashcroft on criteria other than his unquestioned ability to discharge the duties of his office.

Thank you, and please contact me at 202-662-9324 if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "V. Dinh", with a stylized flourish at the end.

Viet D. Dinh



PHONE: 417-451-8300
FAX: 417-451-8351
417-451-8352

NEWTON COUNTY SHERIFF'S DEPARTMENT AND JAIL
208 WEST COLER
NEOSHO, MISSOURI 64850

RON DOERGE
SHERIFF

January 12, 2001

VIA FAX: 202-224-9516

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
Washington, DC 20515

Dear Sir:

In August of 1999 at the Missouri Sheriff's Annual Training School in Kansas City, 72 sheriffs signed a petition urging legislators to oppose the nomination of Judge Ron White to the federal bench. In particular, the petition was to be forwarded to Senator John Ashcroft and Senator Kit Bond.

The requests by the Missouri sheriffs were based solely on Judge Ronnie White's dismal record as an Appeal Courts Judge. Judge White's dissenting opinions lacked the judgement needed for this high office. The most visible case in point was his lone, dissenting opinion on the appeal of James Johnson, who was convicted of the cold blooded murder of the wife of Sheriff Kenny Jones, Moniteau County, Missouri, who was shot to death in her home. The suspect then traveled to the Courthouse where he gunned down two deputies, Leslie Roark from Moniteau County and Sandra Wilson from Miller County. James Johnson then shot Sheriff Charles Smith from Cooper County four times in the back. Judge White, in his solitary, dissenting opinion on the high court, criticized the prosecution, the defense, the sentence, questioned expert witnesses, stating in part,

"Whatever drove Mr. Johnson to go from being a law-abiding citizen to being a multiple killer was certainly something akin to madness. I am not convinced that the performance of his counsel did not rob Mr. Johnson from any opportunity he might have had to convince a jury that he was not responsible for his action. This is an excellent example of why hard cases make bad law."

For a Judge on the high court to assume James Johnson was a law-abiding citizen prior to these shootings is a serious error in judgement as Johnson was under investigation for other crimes at the time he retaliated against law enforcement.

Judge White also questioned the judgement of expert witnesses as to the mental health of the suspect. Many believe Judge White did not have the knowledge or education to make such a judgement.

The bottom line is the majority of law enforcement in the state of Missouri do not trust Judge White's judgement and stepped forward to request due consideration be given to his record and block his nomination at the time. I believe John Ashcroft knew his opposition to Judge White would be damaging to him personally and his future in politics and that he would be criticized for such a decision. John Ashcroft had the courage to do what was right for our country and not what was "politically correct". Therefore, I respectfully request the Senate be made aware of these facts as Judge White testifies against John Ashcroft.

In closing, I disagree with Judge White's statement that "hard cases make bad law". I believe hard cases call for competent individuals who make decisions based on facts and not supposition. The law is only as good as those who enforce it.

Thank you for your consideration.

Respectfully,


 Sheriff Ron Doerge
 Newton County

RD:cb

Attachments

c: Senator Orrin Hatch (FAX: 202-224-9102)

Ashcroft Confirmation Democratic Senators

Separate Opinion:

Dissenting Opinion by Judge White: While I would find the result troubling, I am compelled, nevertheless, to dissent. Defense counsel's unprofessional failure to interview Officers Opperman and Breen led the defense to make demonstrably false claims in its opening statement, claims that utterly destroyed the credibility of the PTSD theory before the defense even presented any evidence. While defendant has not, perhaps, demonstrated that this was outcome-determinative prejudice, as the majority opinion requires, that standard is too high. Under the proper standard, given the vagaries of a mental illness defense, I am convinced that there is a reasonable likelihood that, but for counsel's unprofessional errors, the result of either the guilt or sentencing phases of the trial would have been different.

Unprofessional Conduct

While the conduct of the prosecution in this matter is, as the principal opinion notes, not especially praiseworthy, the evidence of purposeful, prosecutorial misconduct is equivocal, at best, and I am reluctant to condemn the prosecution on this record. As to the defense counsel, however, I have no such reservations.

Although the principal opinion is correct in pointing out that defense counsel was initially careful in attributing the perimeter evidence to Mr. Johnson ("somebody went back to Johnson's house"), all caution was quickly abandoned as the defense told the jury, in no uncertain terms, that the defendant was that somebody:

he set up a perimeter. . . . that's what you do in Vietnam, you renourish and rest while your buddies stand guard duty, only Jim had to play all the roles. . . . He was on guard duty while he was resting and renourishing And when he went on his recon mission, he thought, I'd better . . . disable the car so the enemy can't use it. So he flattened the tires

Invent as they were on making such extravagant claims about what this behavior revealed about their client's mental state, the defense team was remarkably cavalier in determining whether these assertions had any basis in fact. While it is true, as the State argues, that no evidence in the defense's possession indicated that someone else had done these things, no evidence pointed to Mr. Johnson, either. As defense counsel testified at the Rule 29.15 hearing, the defense decided that Mr. Johnson was responsible because it fit their experts' theory about what sort of behavior he might have engaged in: "the experts . . . thought that was a great piece of evidence for their testimony." Thus, the defense made the mistake of assuming that the evidence would show what they hoped it would show, instead of investigating to see what actually might be determined.

Even minimal investigation would have sufficed. The defense team was not required to depose every single endorsed witness. But the defense, if it was inclined to make so much of what went on in James Johnson's garage on the night of December 8th, was obliged to at least ascertain who was present at that location, and, at the very least, to interview those persons. Similarly, if the defense thought that the tire evidence was important, it should reasonably have attempted to contact a person who could confirm that the tires were, in fact, flat when the car was first found by the authorities. These witnesses were not hard to find. As defense counsel noted, he had nagging questions about why these particular officers had been endorsed and repeatedly asked the prosecution who they were. While the prosecution's investigator did apparently say "that they were just chain people and probably aren't going to use them, etc., etc." the equivocal answer of an opposing investigator does not relieve a reasonably diligent and cautious advocate of the duty to at least pick up the phone and ask these witnesses what their connection to the case was. Defense counsel did not do even that, and it caused them to make a critical error from which the defense never recovered. While it may be true that the prosecution sprang a trap on the defense, it was a trap that defense counsel helped set through inadequate preparation and investigation and armed through its own overblown, factually unsupported statements about what happened the night of the killings. Reasonably cautious and zealous advocates would not have been so easily misled.

Prejudice

The principal opinion does not endorse the behavior of either side and, at least implicitly, recognizes that some breakdown in professionalism probably occurred here. Hence, where I really differ from the principal opinion is on the issue of prejudice. The majority applies too high a standard.

While the prejudice standard is, as the majority states, whether there was a "reasonable probability" of a different result,(FN2) the principal opinion actually seems to be applying an outcome-determinative standard. *Strickland* explicitly rejects an outcome-determinative standard.(FN2) Thus, Mr. Johnson is not required to show that his counsel's unprofessional errors are the "most likely" reason why his defense failed, as the principal opinion holds. The United States Supreme Court reiterated this as recently as 1995, contrasting the "reasonable probability of a different result" standard with the higher, outcome-determinative standard, and also noting that this is not merely a sufficiency of the evidence standard.(FN3) The majority seems to apply the latter standard. Tellingly, for a case based entirely on a defense of mental illness, the principal opinion's review of the evidence does not mention any of the testimony of the three defense PTSD experts, instead choosing to focus solely on the inculpatory "raw facts." This disregard for essentially the entire defense case in assessing prejudice reflects an improper, sufficiency of the evidence standard. Certainly, I do not understand the principal opinion to hold that there is overwhelming evidence that Mr. Johnson was legally sane at the time of the killings. While I agree that there was sufficient evidence to convict, and am not necessarily convinced that the weakness of the case was not the "most likely" reason the defense failed, I find it is reasonably likely that a jury that had not seen the defense

destroy its own credibility on this issue would have been sufficiently receptive to the expert diagnosis of a mental disease or defect to permit a reasonable likelihood of a different result.

As to the idea that the defense was able to mitigate the effects of its gaffe, I am unconvinced. The fact that the defense elicited testimony from the officers and the defendant explaining why the defense did not know that their client had not constructed the perimeter, and the fact that defense had their experts testify that the perimeter evidence was not important in their diagnosis of Mr. Johnson actually indicates the opposite. In my view, these efforts to distance the defense from this evidence show that the defense team knew how

badly its credibility had been damaged and spent the entire trial vainly attempting to recover some shred of believability. In particular, the prosecutor, in his closing argument, did not think that the failure to ascertain who had created the perimeter evidence was unimportant. The prosecution's tactic in rebuttal was to "flash back" to defense counsel's opening argument and to recount what the defense had "promised" to prove to the jury. After reading at great length from defense's opening statement, the prosecutor vividly captured the devastating effect that statement had on the entire defense case: "Pure unadulterated lies to you. We have... disproven each and every fact that the Defense said they were going to sell you on this Vietnam defense. The only land mines that this case is about are the ones the Defense has been stepping on all week." Obviously, there is no question that Mr. Johnson killed the victims here. The question is whether he was sane when he did so. There was expert psychological testimony on both sides. I cannot say that it is not at least reasonably likely that a jury would have believed the PTSD theory if Mr. Johnson's counsel had not utterly discredited himself and the theory by tying it and the defense into a completely connected scenario at the very outset of the case.

Penalty Phase Prejudice

Even more troubling to me is an issue that the principal opinion does not address: "When a defendant challenges a death sentence . . . , the question is whether there is a reasonable probability that, absent the errors [of counsel], the sentencer . . . would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." (FN4) Clearly, the aggravating factors here are extremely grave. But there are clear mitigating factors as well: Mr. Johnson's previously law-abiding life, his service to his country, at least. While a reasonable juror might have felt that Mr. Johnson's mental difficulties did not rise to the level of legal insanity, it is reasonably likely that such a juror would find those mental problems, combined with Mr. Johnson's previous positive contribution to society sufficiently mitigating to warrant a sentence of life. Any such tendency was severely undercut by defense counsel's opening argument, which left the jury with the strong impression that any claims of emotional distress by Mr. Johnson were made up out of whole cloth. Absent this unprofessional error, it is at least reasonably likely that a jury would have found the balance of mitigating and aggravating factors differently.

Conclusion

This is a very hard case. If Mr. Johnson was in control of his faculties when he went on this murderous rampage, then he assuredly deserves the death sentence he was given. But the question of what Mr. Johnson's mental status was on that night is not susceptible of easy answers. While Mr. Johnson may not, as the jury found, have met the legal definition of insanity, whatever drove Mr. Johnson to go from being a law-abiding citizen to being a multiple killer was certainly something akin to madness. I am not convinced that the performance of his counsel did not rob Mr. Johnson of any opportunity he might have had to convince the jury that he was not responsible for his actions. This is an excellent example of why hard cases make bad law. While I share the majority's horror at this carnage, I cannot uphold this as an acceptable standard of representation for a defendant accused of capital murder. I would hold that Mr. Johnson received ineffective assistance of counsel, was prejudiced thereby, and is entitled to a retrial.

Footnotes:

FN1. *Strickland v. Washington*, 466 U.S. 668, 694 (1984).

FN2. *Id.* at 693-94.

FN3. *Kyles v. Whitley*, 115 S.Ct. 1555, 1565-66 (1995).

FN4. *Strickland*, 466 U.S. at 695.



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Richard F. Duncan
Welpton Professor of Law
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FAX: (402) 472-5185

January 10, 2001

Senator Orrin G. Hatch
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Hatch:

As a chaired Professor of Constitutional Law, I have devoted most of my adult life to thinking, teaching, and writing about Constitutional Law. I care deeply about equal protection, free speech, free exercise of religion, and other constitutional liberties and values.

I am writing to express my strongest support for the nomination of Senator John Ashcroft as Attorney General of the United States. Senator Ashcroft is a man of great experience and ability and, more importantly, of great integrity. His views on constitutional law are well within the mainstream. He believes deeply in liberty and equal justice for all. He will be a wonderful Attorney General, and I hope the Senate will promptly confirm his nomination.

Very truly yours,

A handwritten signature in cursive script that reads 'Richard F. Duncan'.

Richard F. Duncan
Welpton Professor of Law

RD:ds



EARTHJUSTICE
LEGAL DEFENSE FUND

BOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII
JUNEAU, ALASKA NEW ORLEANS, LOUISIANA SAN FRANCISCO, CALIFORNIA
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.

January 15, 2001

The Honorable Patrick L. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20515

The Honorable Orrin G. Hatch
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20515

Dear Senators Leahy and Hatch:

I am writing to convey Earthjustice Legal Defense Fund's opposition to former Senator John Ashcroft's confirmation as the next Attorney General of the United States. As the country's leading nonprofit environmental law firm, we believe it is necessary to speak out against the appointment of an Attorney General who has consistently demonstrated hostility towards the nation's environmental and public health protection laws – laws that the Attorney General is obliged to enforce. It would be contrary to the interests of the nation for the U.S. Senate to approve John Ashcroft as Attorney General. We therefore urge you to vote against his confirmation.

The U.S. Attorney General is one the most important environmental appointments made by any President. As the nation's chief law enforcement official, the Attorney General is charged with the responsibility of enforcing all federal laws, including the laws designed to protect the nation's precious natural resources and the public's health. The Attorney General's wide-ranging responsibilities as head of the Department of Justice (DOJ) makes the AG a central policymaker in all legal matters involving federal clean water, clean air, public lands, endangered species, and overall environmental health laws, as well as related civil rights laws that ensure that all Americans receive equal justice under the law.

As you know, the AG directs the DOJ's Environment and Natural Resources Division, which is responsible for enforcing the nation's environmental laws and defending legal challenges to the government's environmental programs and activities. The Criminal Division develops and enforces the criminal provisions of more than 900 statutes, including the criminal provisions of federal environmental laws, and formulates and implements overall criminal enforcement policy. The Solicitor General's Office supervises and conducts the federal government's litigation in the United States Supreme Court – a critical role, as the United States is involved in about two-thirds of all the cases the U.S. Supreme Court decides on the merits each year. The Attorney General also oversees the U.S. Attorneys, who are the government's front-line litigators under federal environmental statutes.

LAW FIRM FOR THE ENVIRONMENT
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The Attorney General's direction and oversight of all of these offices deeply influences national environmental policy. Whatever the statutes, if they are not vigorously and fairly enforced, the people and resources the laws are meant to protect are not served.

Senator Ashcroft's positions on environmental protection matters place him well outside the mainstream of American political values and raise troubling questions as to his ability and willingness to enforce laws that he has long opposed. As a U.S. Senator, John Ashcroft's anti-environmental record is clear: he has not only voted repeatedly against efforts to strengthen natural resources and public health protections, he has consistently supported efforts to weaken environmental laws that are currently on the books – laws that he would be charged to enforce and defend as Attorney General.

For example, in the 106th Congress, Senator Ashcroft was one of only six Senators to cosponsor a bill, S. 495, that would have drastically weakened the Clean Air Act by taking away one of the most critical enforcement tools against states that fail to meet clean air requirements: sanctions restricting federal highway aid. Senator Ashcroft voted on October 12, 2000, against stripping a rider from a spending bill that prohibits the Environmental Protection Agency (EPA) from officially listing localities in violation of new soot and smog air standards until June 2001, or until the Supreme Court decides a case concerning these new standards, even though the lower courts had confirmed the agency's authority to make the designations. Senator Ashcroft had previously attacked these new clean air regulations, cosponsoring a bill in the 105th Congress, S. 1084, that would have blocked these strong standards designed to protect children, seniors, and others from smog and soot.

Also in the last Congress, Senator Ashcroft cosponsored S. 2417, an attack on a key enforcement component of the 1972 Clean Water Act, the Total Maximum Daily Load (TMDL) program, designed to clean up waters too polluted for swimming, fishing, and other uses. For many years, states and EPA largely ignored this critical program until lawsuits brought by environmental groups, including Earthjustice Legal Defense Fund, compelled EPA and the states to start meeting their responsibilities under the Act to identify and restore impaired waters. Now that the law is being implemented, it has come under fierce attack from industry groups, and S. 2417 was part of the effort to undermine this part of the original Clean Water Act.

Senator Ashcroft has voted on several occasions, most recently April 6, 2000, to open up the Arctic National Wildlife Refuge to oil drilling. Senator Ashcroft voted against a bipartisan attempt to remove a provision in the Senate FY 2001 budget resolution that assumed \$1.2 billion in anticipated revenue from oil drilling in the Arctic National Wildlife Refuge.

On July 18, 2000, Senator Ashcroft supported an unsuccessful attack on national monuments, voting for an amendment that would have undermined the President's authority to protect spectacular natural areas by prohibiting the designation of any new national monuments unless authorized by Congress.

Senator Ashcroft has been a cosponsor of measures that are contrary to the Constitutional rulings of the U.S. Supreme Court that would let land speculators and developers go directly to federal courts to press their "takings" claims in the event that a local planning or zoning ordinance restricted any use of private property. This legislation would federalize local environmental protection and land use issues to give well-funded developers the upper hand in dealing with local officials exercising their duties to protect their communities. The legislation he favors flies in the face of his professed support for local control and a limited federal government role.

In 1995, Senator Ashcroft defended a sweeping bill, the Comprehensive Regulatory Reform Act of 1995, that would have undercut legal safeguards for environmental, human health, consumer and labor protection. During debate on that measure, Senator Ashcroft also voted for a proposal that would allow polluting industries to avoid reporting most of their toxic chemical releases as required by the 1986 Community Right to Know Act, a critical tool for communities working to reduce exposure to harmful pollution.

Senator Ashcroft voted in the 104th Congress to build upon the "salvaged timber rider" by extending indefinitely the time for old growth timber sales directed by this provision. The rider, attached to the 1995 Budget Rescissions Act, allows timber companies to purchase and log parcels in our national forests without regard to federal environmental laws.

These are just a few of many examples of Senator Ashcroft's extreme anti-environmental record. According to the nonpartisan League of Conservation Voters, Senator Ashcroft voted against the environment on every floor vote the organization tallied in the last two Congresses. He has a lifetime average of voting for the environment just 3.7 percent of the time during his career in the U.S. Senate.

Based on this record, Earthjustice Legal Defense Fund does not believe that, as Attorney General, Senator Ashcroft will defend the nation's environmental protection laws with the vigor and commitment that the office requires and the public deserves. We believe the nation's interests would be better served by the appointment and confirmation of an Attorney General with more balanced, moderate positions on the environment, an issue of great importance to the American people and the future of this nation.

Earthjustice Legal Defense Fund respectfully requests that you vote against Senator Ashcroft's confirmation. Thank you for your consideration of our views.

Sincerely,



Vawter Parker
Executive Director

EIR

Executive Intelligence Review

Contact: Suzanne Rose
Phone: (202) 544-6449
Fax: (202) 544-7105

**Testimony to the
Judiciary Committee
U.S. Senate
In Opposition To The Nomination Of
Senator John Ashcroft
As Attorney General Of The United States
January 16, 2001**

**by Dr. Debra H. Freeman
U.S. Political Editor, EIR**

Chairman Leahy, and Members of the Committee:

My name is Dr. Debra H. Freeman. I submit this testimony as the national spokesperson for Lyndon H. LaRouche Jr., Founder and Contributing Editor of Executive Intelligence Review, to voice the strongest possible opposition to the nomination of Senator John Ashcroft as the next Attorney General of the United States. My opposition to Mr. Ashcroft's confirmation is shaped by two considerations that go beyond the normal factors that one would weigh, in considering a candidate for the top law enforcement post in the U.S. Federal Executive Branch.

The first of those factors is the extraordinary global financial and monetary crisis that will be the first and overriding order of business confronting the incoming Bush Administration, as even President-elect Bush and Vice President-elect Richard Cheney have limitedly acknowledged in public statements. The scope of the onrushing world financial and economic crisis, however, goes far beyond anything that anyone in the incoming Administration now anticipates, and it will require a dramatic reversal of most of the policy axioms that have governed U.S. official policy over the past 35 years, if the United States is to survive in its present, albeit weakened Constitutional form. Unlike the so-called "Asia Crisis" of 1997-98 and the so-called "Russia" and "Brazil" crises of 1998-99, the epicenter of the current phase of global monetary and physical economic disintegration is the advanced sector, specifically the United States, with our skyrocketing balance of trade deficit, negative household savings, and collapsing real industrial output. Thus, the crisis phase that we have now entered has the most profound implications for the well-being of the American population and goes to the heart of our domestic tranquillity and the common good.

The second factor, in this context, is the role that the next Attorney General will play, as a leading member of the Executive Branch crisis team, dealing with the global financial and monetary crisis, and the other consequent regional and domestic crises, that will arise from these extraordinary circumstances. As the chief law enforcement official of the Federal Executive Branch, the next Attorney General will have responsibilities in this broader crisis-management team setting, that will often supersede his more immediate role within the Justice Department and subsumed federal law enforcement

agencies, proper. Thus, no assessment of Mr. Ashcroft's qualifications can be competently made, without first considering his role within a Presidential team, focused on dealing with this now unavoidable series of crises.

The incoming Administration will be faced, immediately, with the choice between: (1) abandoning the current economic and monetary policy axioms and returning to policies that, in the past, have led the United States and the world out of the path of disaster, as during the Presidency of Franklin D. Roosevelt; or, (2) under the guise of "crisis management," imposing a form of brutal bureaucratic fascism on the United States, that bears striking similarities to the conditions under which Adolf Hitler seized power in Germany in 1933. It was Hitler's "crisis management" of the Reichstag fire and other events, real and manufactured, that established the dictatorship that no one in Germany had anticipated, even weeks before the coup was carried out. Unlike "normal times," the realities of the present crisis period mean that there is no middle ground between these two polar extremes. The luxury of "muddling through" for the next four years is no longer on the table.

These rather blunt words are necessary at this time. They underscore the danger represented by the confirmation of John Ashcroft, under circumstances compounded greatly by the Scalia-Rehnquist majority on the current U.S. Supreme Court, which further increases the danger of a Hitler-style crisis management dictatorship. Lyndon LaRouche discussed this specific danger, during a Jan. 3, 2001 public symposium in Washington, D.C., in response to a question from members of the U.S. Congress. I quote from Mr. LaRouche's response to the question about the Ashcroft nomination:

“First of all, when Bush put Ashcroft in, as a nomination for the Justice Department, he made it clear, the Ku Klux Klan was riding again. That’s clear. Now, maybe Bush didn’t know what he was doing. But somebody in the Bush team did. And a lot of them had the voice to say something about it. Ashcroft was an insult to the Congress. If the Democrats in the Congress, capitulate to the Ashcroft nomination, the Congress is finished.

“This is pretty much like the same thing that Germany did, in February 28, 1933, when the famous *Notverordnung* (emergency decree) was established. Just remember, after the Reichstag burning, the Reichstag fire, that Goering, who commanded at that time, Prussia -- he was the Minister-President of Prussia at the time -- set into motion an operation. As part of this, operating under rules of Carl Schmitt, a famous pro-Nazi jurist of Germany, they passed this act called the *Notverordnung*, the emergency act, which gave the state the power, according to Schmitt’s doctrine, to designate which part of his own population were enemies, and to imprison them, freely. And to eliminate them. This was the dictatorship.

“Now, remember, that Hitler had come into power on January 30 of that same year. Less than two months earlier. He’d come in as a minority party, which had been discredited in the previous election. He was put in by bankers, including the father of President George Bush (the former President), Prescott Bush. Prescott Bush, as agent for Harriman of New York, worked with the British banks, to put Adolf Hitler into power in January of 1933. At that time Hitler was discredited, and about to be bombed out. He was stuck into power because that was the last chance to get him into power.

“Everyone said, no, Hitler's not going to make it, because the majority of the population is against him. Then, on February 28, 1933, the *Notverordnung* act was passed, on the pretext of the Reichstag fire. And this established a dictatorship, which Germany did not get rid of until 1945.

“Now, I'm not suggesting that the case of Ashcroft is comparable to the Reichstag fire. But it's a provocation, a deliberate provocation. And if the Democratic Party and decent Republicans do not combine to throw that nomination back in the face of the nominator, this Congress isn't worth anything. That is, because it will have surrendered its dignity.

“If you give those kinds of powers, of a Justice Department, to that Ashcroft, and what he represents, under that flag, you don't have any justice left in the United States....

“We're going into a period in which either we do the kinds of things I indicated in summary to you today, or else, what you're going to have, is not a government. You're going to have something like a Nazi regime. Maybe not initially at the surface. What you're going to have is a government which cannot pass legislation, meaningful legislation. How does a government which cannot pass meaningful legislation, under conditions of crisis, govern? They govern in every case in known history, by what's known as crisis-management. In other words, just like the Reichstag fire in Germany.

“What you're going to get with a frustrated Bush Administration, if it's determined to prevent itself from being opposed, you're going to get crisis management. Where members of the special warfare types, of the secret government, the secret police teams,

will set off provocations, which will be used to bring about dictatorial powers and emotion, in the name of crisis management.

“You will have small wars set off in various parts of the world, which the Bush Administration will respond to, with crisis management methods of provocation. That's what you'll get. And that's the problem. And you have to face that. You've got to control this process now, while you still have the power to do so. Don't be like the dumb Germans, who, after Hitler was appointed to the Chancellorship, in January 1933, sat back and said, 'No, we're going to defeat him at the next election.' There was never a next election -- there was just this 'Ja Wohl,' for Hitler as dictator. Because the *Notverordnung* of February 1933, eliminated the political factor.

“And that's the danger you'll get here. If the Bush Administration is determined to hammer its way through on this thing, it's not resisted, and you allow it to do so, you will find that it is strongly tempted. And you look at, remember what former President George Bush's specialty was, as I remember very well. Remember Iran-Contra, one of the biggest mass-murder swindles in modern history, run by Vice-President Bush, under special powers, given to him under special orders, with the Executive Branch. He ran Iran-Contra, the biggest drug-running game in the world. And behind Bush -- and I know these guys very well, because I've been up against them; most of my problems came from these characters -- these guys, pushed to the wall, will come out with knives in the dark. They will not fight you politically; they will get you in the back. They will use their thugs to get you. That's their method -- know it.

“So, don't sit back and be nice guys. When Bush makes some proposal, which is sensible, it should be treated as a sensible proposal. But when he tries to shove a provocation down your throat, like Ashcroft, no. No way, buddy, No way.”

Lyndon LaRouche, in an article published in the January 1, 2001 issue of *Executive Intelligence Review*, developed, at great length, the added dangers inherent in the outlook of Associate Supreme Court Justice Antonin Scalia. These are not academic issues. Under the crisis conditions that I have already cited, the danger of a Rehnquist-Scalia Supreme Court majority, with a co-thinker like Mr. Ashcroft in the post of Attorney General, is that the Court and the Justice Department would function as a roadblock to the necessary emergency economic measures that any sensible President would adopt, to promote the general welfare. Worse, they would usher in the kinds of police state measures against any pockets of policy resistance that were adopted by the Nazis after February-1933. LaRouche began his article, “Scalia and the Intent of Law,” with the following warning:

“A crucial, systemic, and deadly element of constitutional fraud, permeates and subsumes the most notable rulings bearing upon criminal justice, political, and economic issues, among those uttered by the U.S. Supreme Court's Associate Justice Antonin Scalia. For reasons I shall identify here, Scalia's avowed doctrine of ‘textualism,’ if continued in practice under presently onrushing conditions of deep financial crisis, leads, quickly, either to a self-doomed fascist dictatorship, or a rapid descent of society directly into chaos.

“If Scalia's dogma were to continue to define the majority view of the U.S. Supreme Court, an early slide into chaos could occur simply as a result of a specific political inability of the incoming government: its inability to muster the kind of political support needed for any of those kinds of legislative and other measures, by means of which our nation could be saved from the now rapidly accelerating threat of financial and economic chaos. No effective measures to deal with this present crisis, could be taken, without overriding promptly virtually every principle for which Scalia has presently come to represent in that Court....

“Given the implications of the grave financial crises faced by the U.S.A. today, the crucial fact of greatest importance concerning Scalia's doctrines on law, is that his political and legal outlook is identical, on all crucially relevant points of comparison, to the legal dogmas used to bring Adolf Hitler to power during a roughly comparable period of grave financial crisis in Germany. Specifically, Scalia expresses the same explicitly Romantic dogmas of the pro-fascist ‘conservative revolution’ of G.W.F. Hegel, Friedrich Nietzsche et al., which Scalia has imitated, in keeping with the model precedent of the so-called ‘Kronjurist’ of Nazi Germany, Carl Schmitt. That is the Schmitt who was the legal architect of the doctrine creating those dictatorial powers given, with finality,’ to the Nazi regime of Adolf Hitler.

“At this juncture, that importance of that issue of Scalia's personality, must not be avoided, and my warning should not be considered as in any way an exaggerated one. Even allowing for the secondary differences in method between that British radical-empiricist school, which is followed by Scalia, and continental European forms of

philosophical Romanticism of Schmitt and his predecessors, Scalia's radically nominalist form of legal philosophy, is implicitly fully as evil in its inhering effects, and shares all of the crucial features, which were the worst implications of way in which the doctrines of Schmitt were used to confer dictatorial (*Notverordnung*) powers upon Adolf Hitler. Indeed, from the standpoint of philosophy of law in general, Scalia's doctrine is intrinsically even more hideous than that of Schmitt.

“Even from the standpoint of Scalia's specifically British, radical-empiricist dogma of ‘textualism,’ it is already clear, that under the relatively gravest conditions of international banking crisis, such as those of 1932-1933 and, the worse crisis of today, that the application of the legal doctrines of either a Schmitt or a Scalia must tend to result, equally, in either the early imposition of the most hideous modern form of dictatorship, as ferocious as that of Hitler, within the U.S.A. itself; or, as I have already said, in the more likely alternative, the attempt to enforce Scalia's or kindred doctrine, would lead to the simple disintegration of the U.S. as a nation, a disintegration like that of Percy Bysshe Shelley's “Ozymandias.”

“I recapitulate that just-stated point for clarity, as follows. It were inevitable, that if the doctrine expressed by Scalia, were to continue to prevail at the highest levels of the U.S. government, that under the conditions of crisis now confronting the U.S.A., and also the world at large, the result must either be a form of a dictatorship in the U.S.A. as bad, and probably worse than that in Germany under the Hitler dictatorship, or, should such a dictatorship fail, as is likely, the worst dark age in the recent memory of our planet. I am not predicting an Armageddon; I am Jonah delivering a warning to the U.S. Nineveh,

warning of the available choice before us all. Unless Scalia's influence is effectively resisted, such dismal prospects were virtually inevitable for the near future.”

Mr. Ashcroft has a long-standing record of public policy stands that contradict the fundamental Constitutional provisions of the General Welfare Clause of the Preamble, that demand of the Federal Government, nothing less than the zealous pursuit of the inalienable rights of every individual citizen to “life, liberty and the pursuit of happiness.” As Missouri Attorney General, as Governor, and later as U.S. Senator, Mr. Ashcroft has fought against the rights of all Americans to equal educational opportunities, he has been a zealous advocate of the death penalty, has placed states rights above the proper role of the Federal Government, and has labored to undermine the U.S. Constitution through a series of efforts to remove safeguards against frivolous or radical amendments.

One of the unfortunate legacies of the Clinton Administration is that the Department of Justice and the Federal Bureau of Investigation, today, enjoy greater unchecked bureaucratic power than at any time in recent memory. Early efforts by the Clinton Administration to curb the excessive powers of the DOJ and the FBI, built up during previous administrations, were successfully thwarted, to the point that the Presidency, itself, became a first-order target of Federal law enforcement agencies, rendering later reform impossible. In the past, I have presented testimony before this Committee, documenting the shameful pattern of judicial abuses by the FBI and the Department of Justice Criminal Division, in Operation Fruehmenschen (which targeted thousands of African-American elected officials for judicial frame-up), in the Waco and Ruby Ridge massacres, and, most emphatically, in the railroad prosecution of Lyndon

LaRouche and dozens of his political associates. The LaRouche case was described by former U.S. Attorney General Ramsey Clark, in 1995 testimony before an independent commission on Justice Department tyranny: "I believe 'the LaRouche case' involves a broader range of deliberate and systematic misconduct and abuse of power over a longer period of time in an effort to destroy a political movement and leader, than any other Federal prosecution in my time or to my knowledge."

In 1998, a bipartisan majority of members of the House of Representatives backed the McDade-Murtha bill, which attempted to place serious constraints on the Justice Department, the FBI, and other Federal law enforcement agencies--to prevent the continuing pattern of official criminality and abuses, targeted against American citizens. That effort was only partially successful. Much remains to be done to assure that the U.S. Justice Department no longer serves as a government-sponsored political police and assassination bureau.

Were Senator John Aschcoft to be confirmed as Attorney General, he would only augment the horrible abuses of power and criminal tyranny, already rampant within the Justice Department and FBI bureaucracies, especially under the global crisis conditions I have outlined above. For all of these reasons, the appointment of Senator John Aschcoft must be rejected by this Committee.

Thank you.



Federal Managers Association

United States Marshals Service

*600 Army Navy Drive
Arlington, Virginia 22202*



January 16, 2001

Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510

Honorable Orrin G. Hatch
Senate Judiciary Committee
United States Senate
131 Russell Senate Office Building
Washington, D.C. 20510

Subject: Senator John Ashcroft

Dear Senators Leahy and Hatch:

We are writing on behalf of the United States Marshals Service Federal Managers Association, Chapter 373. We represent the interests of U.S. Marshals Service managers at the mid-level to upper management levels in all Judicial Circuits across the nation. We are a non-profit Association whose mission is to promote excellence in public service. As federal managers and supervisors, our members are committed to serving the American public with professionalism and integrity. Our national organization represents the interests of over 200,000 managers and supervisors in the Federal Government and draws its membership from more than 25 federal departments and agencies.

The Marshals Service Federal Managers Association fully supports the nomination of Senator John Ashcroft as our next United States Attorney General. We ask that you enter this letter of support into the record, and distribute copies to all members of the Senate Judiciary Committee.

President-elect Bush has brought together an excellent group to serve as his Cabinet. His nominees are diverse and are very experienced. The new President needs to be able to surround himself with cabinet members that he chooses who will help enact his agenda. The centerpiece of Senator Ashcroft's long history of public service has been integrity. He brings a unique record of service to this challenge. He was twice elected Missouri's Attorney General, serving with both Republican and Democrat Governors. He was elected Governor of Missouri and then reelected with 64% of the vote. He was elected to the U.S. Senate, where he just completed a six-year term. No other U.S. Attorney General has ever had this wealth of experience and management expertise.

The record is clear that Senator Ashcroft has a long history of strong leadership on important issues, just a few of these include:

- ✓ widespread acclaim for his effectiveness in running the Missouri Attorney General's office by attracting strong men and women to serve his state and strictly upholding the law;
- ✓ balancing the state budget all eight years as Governor;

- ✓ making education reform a priority as Governor;
- ✓ toughening penalties for crimes committed with a gun;
- ✓ working to protect children at school, strengthen classroom safety;
- ✓ voting for background checks at pawn shops;
- ✓ earning endorsements from Missouri law enforcement agencies;
- ✓ supporting 26 of 28 African-Americans nominated to the Federal bench;
- ✓ was commended as Governor by one of the oldest Black Bar Associations for his record of appointing minorities, and
- ✓ appointing many African-Americans to Missouri's courts.

John Ashcroft understands law enforcement. He understands the job of the Attorney General is to carry out the letter of the law, and he will do that. His past record clearly indicates that he will ensure that the rule of law is followed by the Justice Department, and he will manage a highly professional department. We need an Attorney General that is a good manager, has sound judgement, and high integrity - and that person is John Ashcroft.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Barnes", with a long horizontal flourish extending to the right.

Dave Barnes, President
United States Marshals Service
Federal Managers Association



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG, PA 17120

MIKE FISHER
ATTORNEY GENERAL

16TH FLOOR
STRAWBERRY SQUARE
HARRISBURG, PA 17120
(717) 767-3351

January 11, 2001

The Honorable Rick Santorum
United States Senate
120 Russell Building
Washington, D.C. 20510

RE: John Ashcroft

Dear Senator Santorum:

I am writing to you to express my support for John Ashcroft to serve as Attorney General of the United States.

I know you are very familiar with Senator Ashcroft from your service with him during the past six years in the United States Senate. Everyone I know of who knows the nominee expresses their deep personal respect for him.

Prior to his service in the U.S. Senate, John Ashcroft served as the Attorney General and Governor of Missouri. During his tenure as Attorney General, he served as the President of the National Association of Attorneys General. Although his service in that organization preceded my election, I know many people in our organization, including Roy Zimmerman, who have the highest regard for John Ashcroft.

As Attorney General of Pennsylvania, I look forward to working with John Ashcroft. His breadth of experience and knowledge of the office which I hold would be very important to maintaining a close working relationship between the Department of Justice and my office.

It is my sincere hope that you will vote to confirm John Ashcroft as the next Attorney General of the United States of America.

Very truly yours,

Mike Fisher

D. Michael Fisher
Attorney General



Archbishop Philip M. Hannan
President

January 18, 2001

VIA FAX (504) 228-5797

Senator Orrin Hatch
Senate Judiciary Committee
224 Dirksen Office Building
Washington, D.C. 20510

Dear Senator Hatch,

I wish to recommend very strongly that the Committee support the nomination of John Ashcroft for the post of Attorney General.

Mr. Ashcroft has all the requisite qualifications to perform admirably the duties of that high office. He has committed himself to uphold the laws of this country in definite terms and there is no valid reason to doubt his sincerity.

The failure of the Committee to uphold his appointment would be a declaration that bigots rule this country. I am confident that you will recognize and support his efforts to serve as the Attorney General.

I write also as a former Catholic Chaplain of the 82nd Airborne Division during World War II. On behalf of the surviving members of that Division I plead with you to regard the sacrifices of the men in our Division who believed deeply in freedom and justice and who certainly desired our country to have men of the highest caliber in positions that deal with justice.

With cordial best wishes, I remain,

Sincerely yours,

Archbishop Philip M. Hannan
President of FOCUS Worldwide TV Network
Retired Archbishop of New Orleans

PMH/aac

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A Review Exclusive

MISSOURI COPS SAID ASHCROFT AGREED TO LOOK THE OTHER WAY" ON FORFEITURE LAW

By Daniel Forbes

Two Missouri police officials quoted then governor John Ashcroft as having told them he'd "look the other way" should they ignore an upcoming Missouri State Supreme Court ruling that might direct asset forfeiture monies to be distributed to local school boards in accordance with the state constitution.

The statements were made independently and at different times by both a sheriff in uniform and a police chief at a meeting at the office of then US Attorney for the Western District of Missouri, Jean Paul Bradshaw, a decade ago, according to Don Burger, then an official with the US Department of Justice. Representing Justice, Burger attended in his role as a community affairs specialist seeking to steer to Missouri schools and treatment programs some of the drug-bust money being illegally kept by police.

John Ashcroft drapes himself in the mantle of "integrity." He used the word in reference to himself several times during his introduction by President-elect Bush as the Attorney General nominee. The repeated characterization fuels the oft-proclaimed notion that Sen. Ashcroft is a man of such moral rectitude that the nation can count on him to fully enforce all laws - no matter his personal views. During the first day of his Senate confirmation hearings, Sen. Ashcroft declared, raising his right hand for emphasis, that, "When I swear to uphold the law, I will keep my oath, so help me God." Yet, during Sen. Ashcroft's tenure as governor of

Missouri, he blithely told two senior law enforcement officials he would ignore a serious matter of law, according to Burger.

Says Burger, recalling the meeting at Bradshaw's office in Kansas City, MO a decade ago, the two law enforcement officials said Gov. Ashcroft had told them he would "look the other way" should the police proceed to ignore a ruling about to emerge from the Missouri Supreme Court. The ruling, ultimately issued in November 1990, mid-way through Sen. Ashcroft's second term as governor, concerned a case brought by a local school board that argued that Missouri law enforcement must follow the state constitution and turn proceeds from asset forfeiture cases over to education rather than keep the money for themselves. Millions of dollars were at stake, money Missouri law enforcement agencies had used for years to buy everything from computers to radio systems to cars and guns.

Now, with a ruling expected shortly, the cops were nervous that their well might run dry. But, according to Burger's recollection of statements by the two top cops, who spoke independently at different times during the meeting, police - especially the highway patrol that reports to the governor's office - need not fear interference from the same cabinet nominee who now pledges to rigorously and impartially enforce the nation's laws.

Hosted by US Attorney Bradshaw, the meeting was attended by members of what was known informally as the Law Enforcement Coordinating Committee, says Burger. Among the items on the agenda was a discussion of the "problem of state law," he says - that is, the provision in Article IX, Section 7 of Missouri's constitution that requires "the clear proceeds of all penalties, forfeitures and fines collected hereafter for any breach of the penal laws of the state â€¦ shall be distributed annually to the schools of the several counties according to law."

Referring to the sheriff and the police chief, Burger told the Review, "Both men stated at different times during the meeting that - based on their conversations with Governor Ashcroft - the governor said he would 'look the other way' specifically regarding the [Missouri] Supreme Court's ruling and asset seizures going to education. That was the terminology used by both persons." Burger adds that he remembers both individuals using the specific "look the other way" terminology because, "It struck me as an unusual reference regarding the applicability of funds to be set aside for education."

In fact, says Burger, the remarks were salient enough, that he later jotted down the Ashcroft quote in the margins of a Dept. of Justice report he was reading. The governor's statement, in Burger's opinion, indicated that Missouri law enforcement agencies would continue, despite any state supreme court ruling, to "use asset forfeiture to divert money to sheriff and police department projects."

Bradshaw, now in private practice in Kansas City, recalls no such statements by any police officials at any meeting he attended. Mindy Tucker, a spokesperson for

the Bush/Cheney transition team said that ignoring a court ruling "is not a position ever held by Gov. Ashcroft." She based her statement, she said, on conversations with "people familiar with his positions on this." But, consider the disclosure last May by Karen Dillon, who's written an award-winning two-year series in the Kansas City Star on asset forfeiture issues:

"In 1990, just a few days after the Missouri Supreme Court ruled that state forfeitures had to go to education in most cases, the US attorney for the Western District of Missouri wrote a letter to state and local law enforcement agencies. 'I know that all of you in law enforcement are in desperate need for additional financial resources,' wrote Jean Paul Bradshaw. He explained that police could bring seizures to a federal agency even if the agency had no involvement in the case. 'As most of you know, the money we share through our forfeiture program goes [directly] to the state or local law enforcement agency,' he wrote."

The fruits of Ashcroft's alleged winking and Bradshaw's exhortation were harvested richly. There have been subsequent attempts in 1992, 1993, and last year in the Missouri legislature to strengthen the law that forfeited assets be conveyed to education. Another attempt will be made in the upcoming session. A report by the staff of the US Senate Judiciary Committee; a 1998 federal district court case and Dillon's massive and continuing series in the Kansas City Star also suggest an end-run around the state constitutional requirements.

City Councilman and Mayor Pro Tem of Kansas City, Alvin Brooks, is a former police detective and a charter board member of the Community Anti-Drug Coalitions of America. He was also one of President Bush's "Thousand Points of Light," and, according to his bio, was recognized by William Bennett as "a front-line soldier in our war against drugs."

Back in 1990 he was running the Ad Hoc Group Against Crime in Kansas City, which fought crime and drug abuse. During that time Brooks says he had many conversations with Don Burger, representing the Dept of Justice, about the mechanics of asset forfeiture and how to steer some of those funds to local drug treatment programs. He said his discussions with Burger focused on "how could we get law enforcement to bring some money back to the neighborhoods where the forfeitures were taking place." He adds, "Don did research on this and said here's what community groups should do to try to get some of this money."

Told of Burger's allegations, Kevin Zeese, executive director of the Common Sense for Drug Policy Legislative Group opposing the Ashcroft nomination, says "Ashcroft told people to go ahead, to federalize it, I'll look the other way. That's an affirmative action, but one he tried to keep his fingerprints off." Hilary Shelton, director of the NAACP Washington Bureau, says that senators he has spoken to, including Russ Feingold (D-WI), report that Sen. Ashcroft has told his former Senate

colleagues that he'll vigorously enforce the law without exception. But Shelton maintains that, "If indeed these allegations are true, it raises major, fundamental concerns about Mr. Ashcroft's ethical ability to serve as attorney general. It begs the question of how he will enforce laws that he doesn't agree with."

The concept by which state and local law enforcement agencies still circumvent the Missouri Constitution is known as "adoptive forfeiture." Basically, the cops call in federal agents, typically DEA agents, and have them "adopt" the case. Stopping a car on Interstate 70, for instance, and finding drugs and a quantity of cash, the Missouri Highway Patrol declares that it has detained the assets (often including the car itself), but has not "seized" them. It leaves that to the DEA. Then, according to federal guidelines, the feds keep 20% of the proceeds and, in effect, launder the remainder back to the local authorities; often, several jurisdictions will slice up the pie. Everyone but school kids is happy.

Quoting the Kansas City Star, the Senate Judiciary Committee report quotes one officer as saying, "We don't deal in state forfeitures at all, because law enforcement doesn't derive any revenues from that." Evidence that the tactic continues is found in a concurring opinion issued by a federal judge in the Eight Circuit in 1998, who found that the Missouri Highway Patrol and the DEA "successfully conspired to violate the Missouri Constitution."

James D. Worthington, a partner in the Lexington, MO, law firm of Aull, Sherman, Worthington, Giorza and Hamilton, represented the local school board in the 1990 case. He says the case was prompted by press reports of three separate forfeitures of approximately \$1 million each in a particular county, and the school board in Odessa reasoned that surely they should have received some funds. After the court ruling, says Worthington, police agencies indicated they would comply. "But then they proceeded with a sleight of hand, a bait and switch, a calling the feds down to have the feds 'seize' the money. It's been nothing but organized blackmail, graft and corruption."

Don Burger joined Justice in 1968, recruited by Ramsey Clark to spend a career working primarily to foster improved relations among the many different shades of Americans. He served the final years of a twenty-two year career based in Kansas City. Retired from federal service, he's now a consultant on civil rights issues.

Atkins Warren is now regional director of the Dept. of Justice for the states of Missouri, Kansas, Nebraska and Iowa, and he worked with Burger for many years in Washington. "He was a very good employee," said Warren. "He did a lot to resolve community conflict." Warren termed Burger "credible," then added, "He was excellent."

US Rep. Jim Clyburn, Democrat of South Carolina, got to know Burger through their work with the National Association of Human Rights Workers; Rep. Clyburn is a past president and Burger served a term as national secretary. (Burger was also president of his government employees union local.) Rep. Clyburn, who opposes the

Ashcroft nomination, says, "Burger was always a straight shooter with me. I never had any dealings with him that make me question whether he was a straight shooter or not."

Leonard Zeskind, formerly research director for the anti-Klan, Atlanta-based Center for Democratic Renewal, worked with Burger combating hate crimes and white supremacy organizations such as the Covenant Sword and Arm of the Lord in rural Missouri.

Currently writing a book for Farrar, Strauss, Giroux on white nationalist groups and a former McArthur Foundation "genius" award winner, Zeskind declares Burger, "a reasonable guy, a nice, smart guy."

In fact, Burger is such a straight arrow, he actually referred a potential favorable witness on Sen. Ashcroft's behalf to Missouri Senator Kit Bond. With accusations of racism hounding Sen. Ashcroft, Burger says he referred an African-American woman to Sen. Bond who was anxious to speak favorably of her experience at Evangel University in Springfield, MO, the college run by Ashcroft's father. Marlene Henderson confirms that last Friday, Burger called both Sen. Bond's Missouri and Washington offices on her behalf.

Burger says he's fairly agnostic on Ashcroft's nomination, but that he's spent a career trying to develop funding for drug treatment, among other things, and wants to call attention to where seized assets are still being directed.

New York freelancer Daniel Forbes testified before both the US Senate and the House of Representatives regarding his series in Salon on sub rosa White House payments to television networks and magazines rewarding anti-drug content. A subsequent Salon article detailed the media campaign's origins as an attempt to influence voters on state medical marijuana initiatives.

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COMMITTEES
CHAIRMAN:
Joint Committee
on Capital Improvements
MEMBER:
Banks & Financial Institutions
Budget
Public Health & Safety

LOUIS FORD
58th DISTRICT STATE REPRESENTATIVE

January 8, 2001

The Honorable Jean Carnahan
The United States Senate
Washington D.C. 20510

Dear Senator Carnahan:

As the State Representative of the 58th District for 10 years and Committeeman for over 30 years, I am writing to express my opinion concerning former Senator John Ashcroft.

In my opinion, the former Senator does not represent the views of the majority of Missourians and certainly not the City of St. Louis. I have worked with him and find his views at odds with our state. I deeply and profoundly believe he has racist leanings. This is not healthy for Missouri or our great nation. He has shown in the past through his legislation and views that he holds contradictory views to the masses. Justice Ronnie White is not the only victim of his hatred because of a different skin color or ideas. I would strongly urge you and the Senate as a whole body to oppose Senator Ashcroft's nomination to the post of Attorney General.

Sincerely,

A handwritten signature in cursive script that reads "Louis Ford".

Representative Louis H. Ford
District 58

LF/nel

cc: all Democratic U.S. Senators

January 16, 2001

Senator Orrin Hatch
Chairman
Senate Judiciary Committee
Washington, D.C.

Re: John Ashcroft

Dear Senator Hatch:

The undersigned are former Assistant Attorneys General for the State of Missouri who served in that capacity during John Ashcroft's tenure as Missouri Attorney General. We are writing to state for the record that during our time in these positions John Ashcroft never interfered with our enforcement or prosecution of the law and never imposed his personal political beliefs on our interpretation or administration of the law we were entrusted to enforce.

Edward F. Downey
Assistant Attorney General
1980-1991
1996-1998
Chief Counsel - Environmental
1982-1991

Melodie A. Powell
Assistant Attorney General
1981-1990

Madeleine Birmingham Cole
Assistant Attorney General
1980-1982

Henry Herschel
Assistant Attorney General
1980-1994
Unit Head - Litigation
1984-1987
Chief Counsel - Consumer Protection
1987 - 1994
Chief Counsel - Environmental
1990-1992

Margaret Keate Landwehr
Assistant Attorney General
1982-1984

Priscilla Gunn
Assistant Attorney General
1981-1983

Charles E. Smarr
Assistant Attorney General
1982 - 1984

John R. Perkins
Assistant Attorney General
Consumer Protection Division
1977-1981

Robert Dolan
Assistant Attorney General
1981-1984

Charles R. Miller
Assistant Attorney General
1981-1983

J. Kent Lowry
Assistant Attorney General
1977-1980

Steven W. Garrett
Assistant Attorney General
1979-1982

John D. Landwehr
Assistant Attorney General
1981-1984

Clayton S. Friedman
Assistant Attorney General
1984-1992
Kansas City Regional Office Manager
1990-1992
Director of Multistate Litigation
1987-1992

Michael Finkelstein
Assistant Attorney General
1977-1987

Joseph Colagiovanni
Assistant Attorney General
1982-1984

Curtis F. Thompson
Assistant Attorney General
1981-1992
2000 - Present

John C. Reed
Assistant Attorney General
1980-1984

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NATIONAL PRESIDENT

**GRAND LODGE
FRATERNAL ORDER OF POLICE®**

LEGISLATIVE OFFICE
309 Massachusetts Ave., N.E.
Washington, DC 20002
Phone 202-547-8189 • Fax 202-547-8190

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

10 January 2001

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing on behalf of the more than 293,000 members of the Fraternal Order of Police to advise you of our support for the nomination of Senator John Ashcroft to the position of Attorney General of the United States.

Throughout Senator Ashcroft's years of service as Missouri's Attorney General, Governor, and United States Senator, he has demonstrated a strong commitment to keeping our communities safe. In addition, Senator Ashcroft has made a commitment to consult with the F.O.P. on all aspects of America's criminal justice policy. It is this willingness to listen to the concerns of law enforcement officers that is a major reason for our support of his nomination.

The F.O.P. has stood with Senator Ashcroft as he worked to improve the lives and professions of these brave men and women and their families. In the last session of Congress, Senator Ashcroft introduced and guided to passage legislation providing spouses and dependent children of law enforcement officers killed in the line of duty greater access to financial assistance for higher education.

Senator Ashcroft has proven himself to be extremely sensitive to the needs of America's law enforcement community, and we strongly support his nomination to the post of Attorney General. On behalf of the membership of the Fraternal Order of Police, I respectfully request that as Chairman of the Judiciary Committee, you help move the nomination of Senator Ashcroft to the Senate floor as soon as practicable.

Please do not hesitate to contact me, or Executive Director Jim Pasco, if we may provide any additional information or assistance.

Sincerely,

Gilbert G. Gallegos
National President

CC: Members, Committee on the Judiciary, United States Senate

** TOTAL PAGE. 02 **

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Free Congress
Foundation

The Real Face of Extremism: Unmasking John Ashcroft's Opposition

By
Thomas L. Jipping, M.A., J.D.

January 17, 2001

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EXECUTIVE SUMMARY

If the Senate applied to President-elect Bush's Cabinet nominees the standard that Senator John Breaux (D-LA) urged in 1993 be applied to President Clinton's nominees, Senator John Ashcroft would be unanimously confirmed at the next Attorney General. He is superbly qualified, of the highest integrity, and President-elect Bush has nominated him.

Senator Ashcroft's opposition is based solely on his political views. They oppose him because he is not one of them. Since this argument would fail on its face, Senator Ashcroft's opponents instead characterize his views and beliefs as "extreme." The only basis for that conclusion, however, is that leftist groups such as People for the American Way do not agree with those views. Conservative views are not extreme, they are just conservative.

PAW's report uses illegitimate stealth tactics such as repetition of pejorative or derogatory labels, repeating accusations by unidentified persons, and implicitly making accusations PAW denies making explicitly. It should take more than a drive-by innuendo for the U.S. Senate to defeat a Cabinet nominee.

In addition, PAW's facts are incomplete, inaccurate, and misleading. PAW says that high ratings from conservative advocacy groups make Senator Ashcroft "extreme" without revealing that many Democrats – including some of his harshest critics today – also voted for the same legislative measures. PAW says that low ratings from leftist advocacy groups make Senator Ashcroft "extreme" without revealing that these scorecards give virtually the same low marks to nearly all Republicans. This scam succeeds only in identifying Senator Ashcroft as a Republican.

PAW's own examples expose their assault on Senator Ashcroft as a fraud. They say Senator Ashcroft was "extreme" when he:

- Voted with 54 Senators against the nomination of Ronnie White
- Voted with 47 Senators against an abortion resolution
- Voted with 42 Senators to require that the American Heritage Rivers Initiative have congressional approval before implementation
- Voted with 35 Senators to oppose the nomination of David Satcher to be Surgeon General

Sincere, reasonable Senators voted on both sides of the matters outlined in the PAW report. PAW, however, refuses to recognize any position they do not favor as legitimate.

Finally, PAW ignores most of Senator Ashcroft's long and distinguished career, citing only those things PAW can twist to suit its caricature. Senator Ashcroft, for example, voted against only 12 of the 245 judicial nominees the Senate considered during his tenure. Those 12 were so controversial that an average of 32 Senators opposed them, nearly twice the opposition as all opposed nominees. Thus Senator Ashcroft was careful and considered in his opposition, choosing only nominees who were so controversial that a large majority of his fellow Republicans joined him.

The Real Face of Extremism: Unmasking John Ashcroft's Opposition

By
Thomas L. Jipping, M.A., J.D.¹

“on balance, is this person qualified to perform the job of a Cabinet secretary, and I think if the answer is yes, the total picture indicates we should adopt them and approve them.”

**Senator John Breaux (D-LA)
CNN's "Crossfire"
June 3, 1993**

Senator Breaux urged his colleagues to apply this reasonable, common-sense standard when evaluating President Bill Clinton's Cabinet nominees. If they apply the same standard to President George W. Bush's Cabinet nominees, Senator John Ashcroft will be unanimously confirmed as the next Attorney General of the United States.

Unfortunately, his opponents are urging something entirely new in American political history, that the Senate defeat a Cabinet nomination solely because they disagree with his politics. Not only has the Senate never done so, it is not the Senate's place to do so. The American people will evaluate the Bush administration's policies in the next election; the Senate's confirmation process is the place neither to re-run the election just past nor to preview the election to come. As Senator Breaux urged, the Senate's role is to confirm the President-elect's qualified choices, not to continue a presidential campaign some political forces will never concede.

¹ Vice President for Legal Policy and Director, Center for Law & Democracy, Free Congress Foundation. M.A., State University of New York (SUNY) at Buffalo (1989); J.D. *cum laude*, SUNY-Buffalo (1987); B.A. with honors, Calvin College (1983). Law clerk to the late Judge William D. Hutchinson, U.S. Court of Appeals for the Third Circuit (1988-89).

No one in America is more qualified to be Attorney General than John Ashcroft. Not only has he already been an attorney general, his prior service was so distinguished that his peers – Democrats and Republicans – elected him president of the National Association of Attorneys General and gave him an award for distinguished service. Not only was Senator Ashcroft a governor but his service was so distinguished that his peers – Democrats and Republicans – elected him chairman of the National Governors Association. A former law professor, Senator Ashcroft is the co-author of two college textbooks on business law and, while a U.S. Senator, chaired the Judiciary Subcommittee on the Constitution.

Second, Senator Ashcroft is a man of the highest personal and professional integrity. No one knows this better than his Senate colleagues, including Democrats.

- **Senator Carl Levin (D-MI)** said on the Senate floor that while “in many instances I have found myself on the opposite side of issues from John [Ashcroft], I have always respected his intellect, his integrity, his principled positions and his ability to disagree without being disagreeable.”²
- **Senator Kent Conrad (D-ND)** said “Senator Ashcroft has been a man of his word who served his state and his country with distinction.”³
- **Senator Bob Torricelli (D-NJ)** “praised [Ashcroft’s] ‘sound judgment and high integrity’ and said he favored his confirmation.”⁴

Finally, President-elect George W. Bush has nominated Senator Ashcroft to serve as Attorney General. The Constitution’s separation of powers and American political tradition counsel that, subject to the Senate’s check for qualifications and integrity, the head of the executive branch should be able to choose the heads of executive branch departments.

The tactics and arguments of Senator Ashcroft’s opposition are best presented in the report by People for the American Way (PAW) titled *The Case Against the Confirmation of John Ashcroft as Attorney General of the United States*, dated January 4, 2001. This analysis first highlights the principal tactic being employed by Senator Ashcroft’s opponents because it may, if not rejected, infect future debates over nominees to other positions. This analysis then tracks the PAW report’s topical organization to reveal that many of its supposed factual assertions are false or misleading. The Senate should not find persuasive any case built on such tactics and misleading facts.

This analysis is submitted to the United States Senate and the general public on behalf of more than 35 national and state grassroots organizations.⁵

² *Congressional Record*, December 15, 2000, at S11849.

³ *Id.*

⁴ See Gibbs, “Confirmation Bear Traps,” *Time*, January 15, 2000.

⁵ These organizations are listed at the end of this report.

I. Tactics

Shorn of misleading rhetoric, Senator Ashcroft's opponents essentially insist that he is not fit to be Attorney General because he is not one of them. Coming from those who insist on tolerance, inclusion, and diversity, this obvious hypocrisy is especially stunning. Those who refused to vote for Mr. Bush, however, have no claim on choosing his Cabinet or demanding that the Attorney General implement their policies instead of the President's.

Senator Ashcroft's opponents cannot state openly that they oppose his appointment because they oppose his politics, so they advance their position by stealth. His politics, they say, are not only different from theirs, his politics are "extreme." This attempt to craft an ugly caricature of the nominee is intended simply to create an impression negative enough to prevent his confirmation or compromise his service.

Whether its treatment of the nominee's record is accurate, incomplete, misleading, or wholly manufactured does not matter because PAW intends the public primarily to acquire not understanding but distaste.

And no matter what the outcome of this nomination fight, these leftists have notified the Bush administration that they will fight future nominees, particularly those to the Supreme Court, with similar vengeance and tactics.

Repetition is the key to PAW's demonizing tactic. Not including the report's web address, PAW refers to Senator Ashcroft as "extreme" or "extremist" no fewer than 17 times. The report's readers are reminded at least 16 times that, in addition to being "narrow" and "rigid," Senator Ashcroft is to the "right" or "right wing" and, in nine of these instances, that he is "far" as well. Senator Ashcroft is not simply "conservative" in PAW's report, he is "ultra" conservative. Neither PAW nor its allied organizations, of course, are described in similarly pejorative or derogatory terms.

PAW's other stealth tactics include making an accusation through the unattributed words of unidentified others while denying responsibility for the accusation themselves. PAW insists, for example, that "[w]e do not contend that John Ashcroft is a racist, as *some have claimed about him*."⁶ Elsewhere, PAW notes that "*others have charged* that Ashcroft's conduct reflected clear insensitivity to African Americans"⁷ while simultaneously insisting that "we cannot judge the reasons why Senator Ashcroft did what he did."⁸ This tactic of claiming clean hands while those hands are pointing fingers is dishonest and has no place in an open, genuine debate about this nomination.

⁶ People for the American Way, *The Case Against the Confirmation of John Ashcroft as Attorney General of the United States* (January 4, 2001), at 3 (hereinafter *PAW Report*) (emphasis added).

⁷ *Id.* at 10 (emphasis added).

⁸ *Id.*

In another stealth tactic, PAW denies making an accusation explicitly while simultaneously, and repeatedly, making that accusation implicitly. Significantly, PAW will not deny that Senator Ashcroft is a racist, only that PAW has never actually called him one. They want the suggestion, the possibility, that he might be to linger as long as possible. The following chart gives examples of these accusations-in-passing.

EXPLICIT DENIAL	IMPLICIT ACCUSATIONS
<p>"We do not contend that John Ashcroft is a racist"⁹</p>	<p>"Senator Ashcroft's extensive role in opposing various minority candidates"¹⁰</p> <p>"a disturbingly large proportion of the nominees opposed by Ashcroft were women or minorities."¹¹</p> <p>"John Ashcroft's opposition to the confirmation of minority nominees extended beyond the courts"¹²</p> <p>"Ashcroft's opposition to minority Executive Branch nominees."¹³</p>

Many controversial Clinton judicial nominees have been women and minorities because Mr. Clinton planned it that way. By choosing women and minority nominees with highly controversial records, Mr. Clinton set up the very situation that exists today. When Republican Senators object to these nominees based on their record, Democrat Senators and their leftist allies respond with accusations based on sex and race. This very shrewd strategy allows PAW, as in this report, to observe the supposed pattern, ignore its real cause, and add the misleading implication of racism to its caricature of the nominee.

This leftist caricature of Senator Ashcroft is based on the accusation of "ideological extremism." PAW essentially defines philosophical, ideological, or political views or positions with which it disagrees as extreme.

Disagreement with People for the American Way on political or philosophical issues is not extremism.

PAW and its leftist allies are entitled to their opinion, but only that. Shorn of its rhetorical trappings, this leftist attack on Senator Ashcroft dissolves into one simple assertion: that he is not one of them. True enough, but even that illegitimate argument is based on false and misleading facts.

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.* at 10.

¹² *Id.* at 11.

¹³ *Id.* at 12.

II. Facts

A. Voting Record Ratings

PAW says that Senator Ashcroft is a “consistent and reliable vote for right-wing legislative priorities”¹⁴ as measured by interest group scorecard ratings. Since PAW is creating a caricature, however, it is not enough merely to observe that a conservative legislator would receive high ratings from conservative groups and low ratings from liberal groups. Rather, PAW must present these evaluations not as conservative and liberal, but as bad and good. The ratings they cite, therefore, come not from conservative and liberal groups but from “right wing” (bad) and “progressive” (good) groups. Thus even if their factual distortions are exposed – as this analysis will do – the negative impression will remain, affecting how people perceive Senator Ashcroft and, perhaps, how Senators will vote on his nomination.

Looking only slightly beyond PAW’s selective treatment of these ratings, however, exposes this tactic as a fraud.

1. American Conservative Union

The PAW report claims that Senator Ashcroft’s 96% rating from the American Conservative Union (ACU) on selected Senate votes last year proves he is a captive of the “far right.”¹⁵ Consider, however, what PAW chooses not to disclose about this rating:

- Senator Ashcroft voted in favor of Education Savings Accounts. Senators voting with him and getting ACU credit include the following “right-wingers”:
 - Vice Presidential Nominee Joe Lieberman (D-CT)
 - Dianne Feinstein (D-CA)
 - John Breaux (D-LA)
 - Herb Kohl (D-WI)
 - Max Cleland (D-GA)
 - Robert Byrd (D-WV)
- Senator Ashcroft voted against transferring defense spending to other federal agencies. Senators voting with him and receiving ACU credit include these “conservatives”:
 - Vice Presidential Nominee Joe Lieberman (D-CT)
 - Edward Kennedy (D-MA)
 - John Kerry (D-MA)
 - Daniel Patrick Moynihan (D-NY)
 - Joe Biden (D-DE)

¹⁴ *Id.* at 4.

¹⁵ *Id.*

- Senator Ashcroft voted to phase out the “Death Tax” by 2010. Voting with him and receiving ACU credit include the following “extremists”:
 - Robert Torricelli (D-NJ)
 - Mary Landrieu (D-LA)
 - Blanche Lincoln (D-AR)
 - Patty Murray (D-WA)
 - Olympia Snowe (R-ME)
 - Susan Collins (R-ME)

- Senator Ashcroft voted to reduce the percentage of taxable Social Security benefits. Senators voting with him included the following “reactionaries”:
 - Dianne Feinstein (D-CA)
 - William Roth (R-DE)
 - Ben Nighthorse Campbell (R-CO)
 - Lincoln Chafee (R-RI)
 - Jim Jeffords (R-VT)

- Senator Ashcroft voted to ban federal funding of the so-called “Kyoto Treaty” so that it would only be implemented after Senate ratification. Senators voting with him included the following opponents of “equal justice for all”:
 - Patrick Leahy (D-VT)
 - Barbara Boxer (D-CA)
 - Richard Durbin (D-IL)

PAW’s conclusion that Senator Ashcroft’s legislative record is “extreme” is a fraud, since most Republicans and many Democrats – including those as liberal as he is conservative – supported many of the same “right-wing legislative priorities.”

2. National Right to Life Committee

The PAW report similarly omits important facts while attacking Senator Ashcroft for receiving a 100% rating from the National Right to Life Committee for selected votes during the 106th Congress. PAW never mentions, for example, that the same group gave Senator John Breaux (D-LA) a very high 77% rating and Minority Whip Harry Reid (D-NV) a 66% rating.

3. Liberal, er, "Progressive" Organizations

PAW also asserts, and the media frequently repeat, that low ratings from liberal, make that "progressive," organizations also prove Senator Ashcroft's "ideological extremism." PAW again intentionally omits very revealing facts.

- While the **NAACP** gave Senator Ashcroft an "F" for certain votes in each of the last three Congresses, the votes they chose to grade represented the Democrat Party's legislative agenda. Far from being civil rights issues, these votes included removing Mr. Clinton from office following his impeachment, the so-called patient's bill of rights, hiring new teachers, background checks at gun shows, and raising the minimum wage.
- The NAACP gave an "F" to no less than 52 Republican Senators including Susan Collins of Maine, Gordon Smith of Oregon, John Warner of Virginia, Kay Bailey Hutchison of Texas, and Peter Fitzgerald of Illinois. Senator John McCain of Arizona received the lowest rating.
- The NAACP gave an "A" to 44 Democrat Senators and a "B" to just one
- "On the scorecards of the **National Abortion and Reproductive Rights Action League** (NARAL), Senator Ashcroft's votes earned him a solid 0%"¹⁶ Yet PAW omits the following facts:
 - NARAL's 1999 scorecard gave Senator John Breaux (D-LA) the same 0% as Senator Ashcroft and gave Democratic Minority Whip Harry Reid (D-NV) just 5%.
 - The following Senators also received less than a 50% rating from NARAL:
 - Kent Conrad (D-ND)
 - Byron Dorgan (D-ND)
 - Joseph Biden (D-DE)

While NARAL gave no less than 51 Republican Senators a score of 65% or less, the group also gave the following Senators a 65% rating:

- Minority Leader Thomas Daschle (D-SD)
- Tim Johnson (D-SD)
- Robert Byrd (D-WV)
- Ernest Hollings (D-SC)
- Daniel Patrick Moynihan (D-NY)
- Mary Landrieu (D-LA)
- Evan Bayh (D-IN)
- Blanche Lincoln (D-AR)

¹⁶ *Id.*

- **“Handgun Control** reports that Ashcroft has opposed every single bill on their priority list during his 6 years in the Senate.”¹⁷ Again, PAW omits the following facts:
 - Liberal Senator Olympia Snowe (R-ME) supported only one of Handgun Control’s legislative priorities and liberal Senator James Jeffords (R-VT) supported less than half of them.
 - Handgun Control also gave failing grades to Democratic Senators including:
 - Max Baucus (D-MT), who supported just one-quarter of HC’s legislative priorities
 - Patrick Leahy (D-VT), who supported only 42% of the group’s agenda
 - Jeff Bingaman (D-NM), who received only a 53% rating

If absolute or consistent organizational scorecard ratings can be used to identify someone at the ideological extreme, several Democrats are as much on one fringe as PAW asserts Senator Ashcroft is on the other. Senator Barbara Boxer (D-CA), the first Senator to publicly oppose the Ashcroft nomination, received an “A” from the NAACP, a 100% from NARAL and a 100% from Handgun Control. The fact that PAW applauds not only Senator Boxer’s political performance, but also her opposition to Senator Ashcroft’s nomination, exposes their concern about “extremism” as a fraud.

PAW opposes Senator Ashcroft because he is conservative; they can only label him “extreme” by defining all conservative views that way.

B. Specific Votes and Positions

PAW insists that the votes and positions they discuss “reflect more than policy disagreements” but demonstrate “the extreme nature of Ashcroft’s views and actions.”¹⁸ This supposed extremism, in their view, disqualifies him for the post of Attorney General. The analysis here will track the organizational format of the PAW report. Highlighting this is crucial, because when it becomes clear not only that Senator Ashcroft had a sound and legitimate basis for these votes and positions, but was often joined by most fellow Republicans and even some Democrats, PAW’s disclaimer turns out to be yet another fraud.

These are the votes and positions of a principled conservative, votes and positions with which PAW simply disagrees.

¹⁷ *Id.*

¹⁸ *Id.* at 5.

1. "Ashcroft's sabotaging of Judge Ronnie White's nomination."¹⁹

On October 5, 1999, the Senate voted 45-54 against approving the nomination of Missouri Supreme Court Justice Ronnie White to the U.S. District Court. PAW calls this outcome "extreme,"²⁰ their code word for an outcome or position that it cannot accept as even legitimate. PAW suggests no reasonable Senator could have concluded that Justice White should be denied a lifetime appointment to the federal bench.

Since 54 Senators so concluded, PAW tries to turn at least Senator Ashcroft's participation in the confirmation process for this nomination into more than it was. First, PAW says Senator Ashcroft's opposition was actually "sabotage" to suggest he did something underhanded or deceptive for which, perhaps, others Senators can be excused. PAW actually accuses Senator Ashcroft of misleading the Senate about Justice White's record,²¹ as if no other Senator examined that record for himself.

Opposing the White nomination is no more sabotage than disagreeing with PAW's legislative priorities is ideological extremism. It is a position, taken by 54 Senators after examining the evidence, with which PAW simply disagrees.

Just as PAW wants to re-play the presidential election, so they want to re-argue past political controversies such as the White nomination. They simply do not accept, however, that reasonable people could disagree about it. They seem to be saying "it's our way, or no way" or, in present parlance, "it's our way, or you're an extremist." Even so, correcting PAW's distortions is necessary fully to expose the lengths to which Senator Ashcroft's opponents have gone to create their caricature.

PAW falsely asserts that Justice White was "unquestionably qualified to be a federal judge"²² to suggest that any such questions had to arise from an improper or ulterior motive such as racism. If he was "unquestionably qualified," however, more than half the U.S. Senate would not have opposed his nomination. PAW can, perhaps, say that they believe he was qualified, but they are hardly the objective arbiters of such questions so that those who do not share their values or principles must necessarily accept their conclusions. Many Senators, and many concerned citizens and law enforcement organizations, had a great many questions about Justice White's fitness to be a federal judge. This fact alone reduces PAW's attack on Senator Ashcroft to merely a bad attitude, a sour-grapes refusal to accept defeat.

PAW may not like it, but many people do not share their view of an activist federal judiciary. For those who do not, Justice White's record on the Missouri Supreme Court provided a significant basis for doubting that he would respect the integrity of state and federal law and refrain from substituting his own policy preferences for those of elected legislators.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 8,10.

²² *Id.* at 5.

Justice White's record provided a sound basis for voting against his nomination and the Senate rejected it because of his record, not his race.

a. Senator Ashcroft chose not to veto the White nomination

Like other controversial nominations, Justice White's traveled slowly through the confirmation process. PAW's repeated claims and implications that Senator Ashcroft alone blocked the nomination²³ are simply false. In fact, he refused at least two important opportunities to do so. Though he could, by representing the state containing this judgeship, single-handedly have vetoed the nomination, Senator Ashcroft did not and was actually criticized by some conservative advocacy groups for allowing it to proceed.²⁴ He could similarly, as a member of the Judiciary Committee, have blocked the nomination. He did not, but agreed to a full Senate vote.

b. law enforcement groups strongly opposed the White nomination

When he declined to veto the White nomination, Senator Ashcroft may not have known just how objectionable the nominee's record actually was. He no doubt chose to let it proceed precisely so he and other Senators could examine that record; he did not want to act prematurely. By the end of the confirmation process, however, Senator Ashcroft had consulted with and received negative evaluations from the Missouri Federation of Police Chiefs, the National Sheriffs' Association, the Mercer County Prosecutor, and the Missouri Sheriffs' Association. Indeed, 77 of 114 of Missouri's Sheriffs – Democrats as well as Republicans – opposed White's nomination.

Moniteau County Sheriff Kenny Jones wrote:

*Every law enforcement and every law-abiding citizen needs judges who will enforce the law without fear or favor. As law enforcement officers, we need judges who will back us up and not go looking for outrageous technicalities so a criminal can get off. We don't need a judge such as Ronnie White on the Federal court bench.*²⁵

A Missouri prosecutor wrote: "Judge White's record is unmistakably anti-law enforcement, and we believe his nomination should be defeated."²⁶

²³ *Id.* at 6.

²⁴ Amazingly, during the first day of Senator Ashcroft's confirmation hearing, Senator Richard Durbin (D-IL) actually criticized the nominee for allowing the nomination to proceed. Had he done so, however, PAW and Democrats would have criticized him for refusing to let the Senate fully consider the nomination.

²⁵ *Congressional Record*, October 4, 1999, at S11873.

²⁶ *Id.*

No district court nominee has received this level of law enforcement opposition in at least a dozen years. Justice White's record, not his race, attracted law enforcement and Senate opposition.

Different Senators reading the same record, of course, came to different conclusions. That happens often in politics. Yet PAW apparently refuses to accept the legitimacy of any view they do not share. Rather than simply admit that its view did not prevail in this instance, PAW insists that Senator Ashcroft "grossly distorted and misrepresented Judge White's decisions in death penalty cases."²⁷ Those decisions, however, speak for themselves.

c. Justice White's own decisions raised serious concerns

In *State v. Johnson*,²⁸ for example, the defendant's shooting rampage claimed the lives of a sheriff, two deputy sheriffs, and a sheriff's wife. James Johnson first shot a deputy, responding to a domestic violence call at his home, in the back and again in the forehead as the deputy lay on the ground. He drove to the sheriff's home and shot at his wife through the window, killing her in front of her family. Johnson later shot and wounded another deputy sheriff, traveled to the sheriff's office, and shot to death two other officers.

The evidence against Johnson included his own detailed confession. After hearing that evidence, a jury convicted him of four capital murders and the trial judge imposed four death sentences. Justice White was the lone vote on the Missouri Supreme Court to block his execution.

Justice White acknowledged that the evidence was sufficient to justify Johnson's conviction, but insisted that his counsel had been so ineffective as to deny the defendant a fair trial. The prosecution had easily shown that the police, and not Johnson, were responsible for such things as creating a perimeter of tin cans around his driveway. Johnson's lawyer had argued evidenced Johnson's delusion that he had been back in Vietnam killing the Viet Cong rather than police officers.

The trial, however, served its purpose, testing the evidence and determining the truth. Simply because a defendant's story is discovered not to be true does not mean he has been poorly served by his attorneys, especially when other evidence solidly establishes his guilt. The state supreme court determined that the significant evidence against Johnson, including his own detailed confession, not only was more than enough for conviction but was inconsistent with the mental defect defense.

Justice White's lone dissent in this multiple-murder case was troubling for its theory as well as its would-be result. In short, he would have changed the law in a number of ways, including allowing an allegation of ineffective assistance to prevail in the face of, rather than in the absence of, independent and sufficient evidence of guilt.

²⁷ PAW Report at 7.

²⁸ 968 S.W.2d 123 (Mo.1998).

Without the defense counsel's error, Johnson would have had to persuade the jury that he did not appreciate the criminality of his actions – that he thought he was in Vietnam killing Viet Cong rather than in Missouri killing deputy sheriffs. As the majority opinion demonstrated, Johnson had no chance of doing this. In his own confession, Johnson identified by name the Sheriff whose wife he killed and the motive for his killings – revenge. Johnson did not retreat to the woods, he drove from residence to residence, from office to office, looking for his intended victim. He did not shoot uniformed officers only, but murdered Mrs. Jones in her home in front of her family.

In his dissent, Justice White stated: “While Mr. Johnson may not, as the jury found, have met the legal definition of insanity, whatever drove Mr. Johnson to go from being a law-abiding citizen to being a multiple killer was certainly something akin to madness.” Something “akin to madness”? This novel legal theory had no basis in the law, but appeared rooted only in White's personal feelings or intuition about the case. The implications of White's made-up theory are staggering: criminal defendants who are not insane, who identify their victims, describe their own motive, and confess to the crime could nonetheless escape responsibility because of behavior that strikes a judge as “something akin to madness.”

Thus Justice White's lone dissent in this case had not one, but two, disturbing features. He was not only willing to void the sentence duly imposed after a trial based on this “akin to madness” theory the law does not recognize, but also to find ineffective assistance of counsel even when the other evidence still establishes the defendant's guilt.

It is unsurprising that none of Justice White's colleagues agreed with his, some might say, “extreme” position in the *Johnson* case.

Equally disturbing was Justice White's sole dissent in *Missouri v. Kinder*.²⁹ As Senator Ashcroft explained during the debate on White's nomination:

In that case, the defendant raped and beat a woman to death with a lead pipe. White voted to grant the defendant a new trial, despite clear evidence of guilt, including eyewitness testimony that Kinder was seen leaving the scene of the crime at the time of the murder with a pipe in his hand, and genetic material was found with the victim. White dissented based on the alleged racial bias of the judge, which he urged was made evident by a press release the judge had issued to explain his change in party affiliation. The judge changed parties at sometime prior to this case [because] he was opposed to affirmative action, discriminating in favor of one race over another race . . . that was the only basis for Judge White to provide a new opportunity for this individual to get a second bite at the apple, not the evidence about his conduct, the genetic material, or the eyewitness testimony.³⁰

White did not claim that the *Kinder* judge had conducted an unfair trial. Instead, he allowed his personal assumptions, rather than the requirements of the law, determine his position in this case. He simply assumed that all opponents of racial preferences are racists and that such racism disqualifies them from acting as judges, tainting any decision they make

²⁹ 942 S.W.2d 313 (Mo.1996).

³⁰ *Congressional Record*, October 4, 1999, at S11872.

without regard to the evidence or lack of impropriety in the way they conduct trials. One can perhaps understand why PAW would embrace White; like them, he appears also to conclude that someone with contrary opinions is not only incorrect, but a bad person.

d. Senator Ashcroft correctly describes Justice White's death penalty record

PAW's central claim of "distortion"³¹ against Senator Ashcroft involves the frequency with which Justice White dissented in death penalty cases. Senator Ashcroft is right and PAW is wrong. During the confirmation debate, Senator Leahy asked Senator Ashcroft whether other judges on Missouri's high court had actually voted more often than Justice White against affirming a death sentence. Senator Ashcroft accurately replied:

The [other] judges . . . have served a variety of tenures, far in excess of the tenure of Judge White. The clear fact is that, during his tenure, he has far more frequently dissented in capital cases than any other judge. He has, I believe, participated in three times as many dissents as any other judge. To try to compare a list of dissents or items from other judges from other time frames, long intervals, and a variety of different facts, with the tenure that Judge Ronnie White has served is like comparing apples and oranges.³²

e. the Senate did not delay nominees because of race

Perhaps realizing that reasonable people can, in fact, come to different conclusions about Justice White's record, PAW utilizes a version of its guilt-by-association tactic. PAW claims that slow pace of the White nomination reflected not the nominee's controversial record but some pattern whereby "minority and female judicial nominees . . . were significantly delayed by the Senate...for periods of time longer than the delays experienced by President Clinton's white male nominees."³³ This observation is obviously intended to suggest that Senate Republicans delayed or opposed judicial nominees on the basis of their race. Without a shred of evidence, this perverse suggestion is perhaps the most irresponsible and reprehensible of all PAW's underhanded tactics.

It is true that the Clinton nominees with the most controversial records were often women and minorities. This deliberate strategy allowed leftist groups such as PAW to do precisely what they are doing today -- using the false charge of sexism or racism to force confirmation of nominees the Senate would otherwise reject. In those cases, however, it would have been sexism or racism for the Senate to adopt separate standards, whether more lenient or more strict, for evaluating women and minority nominees.

³¹ PAW Report at 7.

³² Congressional Record, October 4, 1999, at S11873.

³³ PAW Report at 6.

The charge, however, is simply false. Through October 7, 1999, the week the Senate rejected White's nomination, for example, Senate Judiciary Committee during that Congress had approved 18 women and minority nominees, but only 15 white male nominees. While males' nominations were approved by the committee an average of 124 days from nomination, while women and minority nominations were approved an average of 125 days from nomination.³⁴ From the beginning of the 106th Congress through July 2000, President Clinton nominated 101 individuals for federal judgeships. Of these, 27% were minorities and 29% were women. The Senate confirmed 64% of all nominees, including 59% of minorities, 65% of female nominees, and 64% of white male nominees.³⁵

Not a shred of evidence – and none of these leftist critics has ever offered any – even suggests that a single Senator ever voted against any judicial nominee, or that any decision affecting the handling of any judicial nomination, was ever made because of the nominee's race.

The sex-and-race gambit engineered by Mr. Clinton and his leftist allies creates something of a zero-sum game. Senator Ashcroft's opponents want to goad his supporters into tacitly accepting, and then trying to balance, baseless accusations and false innuendoes with other actions that appear to reflect racial sensitivity. But Mr. Ashcroft's opponents are actually playing an all-or-nothing game: they will oppose someone who is not one of them. No matter how many things Senator Ashcroft may have done, it will not be enough because he does not agree with his leftist opponents on everything. Thus recitation here of votes, positions, and actions from Senator Ashcroft's public and personal life, then, does not admit the legitimacy of this scheme. Instead, it corrects the record for those who wish to consider all the facts.

- As Governor, Ashcroft supported and signed into law Missouri's Martin Luther King, Jr. holiday, at a time when such holidays were controversial.
- As Governor, Ashcroft signed the law establishing Scott Joplin's house as Missouri's first and only historic site honoring a black citizen; led the fight to save independent Lincoln University, founded by black soldiers; and established an award in the name of George Washington Carver, emphasizing academic excellence.
- As Governor, Ashcroft nominated eight black judges in Missouri, including the first to the court of appeals in Kansas City.
- As Governor, Ashcroft appointed three black members of his Cabinet.
- As Senator, Ashcroft supported all 26 black judicial nominees confirmed by the Senate during his tenure, and President Clinton withdrew one of those before there was a floor vote.

³⁴ See also Jipping, "From Least Dangerous Branch to Most Profound Legacy: The High Stakes in Judicial Selection," 4 *Texas Review of Law & Politics* 365,429-32 (2000).

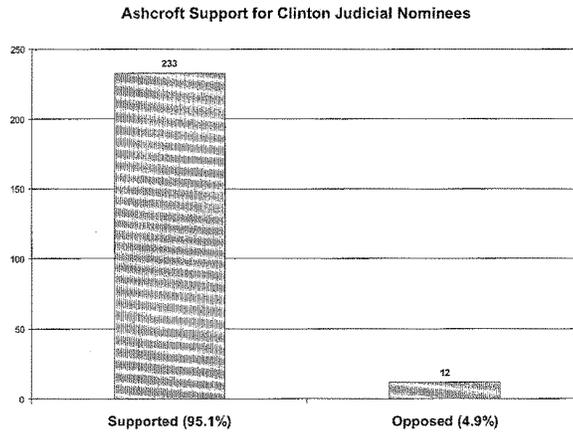
³⁵ Statement of Senator Orrin Hatch, Chairman, Senate Judiciary Committee, July 20, 2000.

PAW's suggestion that opposition to a black nominee is automatically racist is belied by PAW's own opposition to Clarence Thomas' 1991 Supreme Court nomination. PAW would no doubt claim that their opposition to that black nomination was based on his record. Today, however, they claim that opposition to the White nomination is based on race. The only difference between these two situations is that PAW opposed the one and supported the other.³⁶

2. "Ashcroft's extremist record on other Judicial and Executive Branch nominations."³⁷

The PAW report asserts that "Ashcroft...consistently...opposed lower court nominations."³⁸ This simply is not true. During his six years in the Senate, from 1995 to 2000, the Senate voted on 245 Clinton judicial nominees. Senator Ashcroft voted against 12, or 4.9%.

Claiming that a Senator of one party supporting more than 95% of the nominees by a president of the other party is consistent opposition is, one might say, an "extreme" position.

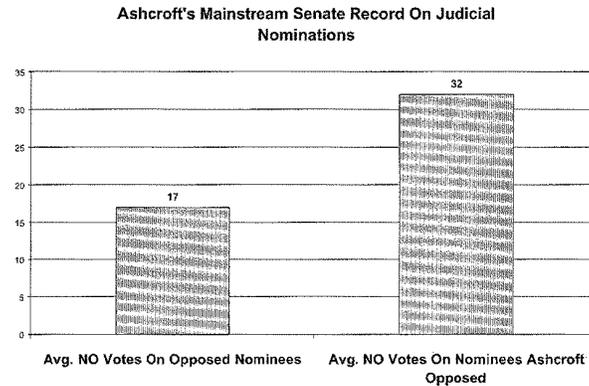


³⁶ One interesting question concerns PAW's assessment of Senator James Jeffords (R-VT) who voted against Thomas and against White.

³⁷ *PAW Report* at 10.

³⁸ *Id.*

PAW's additional to assertion that Senator Ashcroft was in the tiny minority when he did oppose nominees is also false. While an average of 17 Senators voted against all opposed Clinton nominees, an average of 32 Senators voted against the nominees Senator Ashcroft opposed. Thus, Senator Ashcroft opposed very few nominees, and only those whose records also troubled a majority of his Republican colleagues.



The PAW report's deception on this point is particularly egregious. Attempting to portray Senator Ashcroft as extreme, PAW says that a "minority" of Senators opposed certain controversial judicial nominees.³⁹ Is PAW really suggesting that minority positions are necessarily "extreme"? Yet their own examples expose their fraudulent position. PAW observes that "a minority of Senators" last year voted against the nomination of Richard Paez to the U.S. Court of Appeals.⁴⁰ The 39 votes against Paez, however, was 72% of the Republican majority and is among the five most-opposed appeals court nominations of the last two decades. Opposition to Paez included not only conservative Republicans such as Senator Ashcroft, but moderate Republicans such as Fred Thompson and Bill Frist of Tennessee and John Warner of Virginia. Just two paragraphs later, the PAW report praises the vote of Senators Thompson and Frist for the nomination of David Satcher to be Surgeon General. They must have recovered from their extremism.

The PAW report similarly observes that 34 Senators voted in 1998 against the nomination of Susan Oki Mollway to the U.S. District Court.⁴¹ Not only was this 62% of Republicans, but it was the third-highest opposition to a district court nominee in 20 years. Joining conservative Senator Ashcroft were moderate Senators Frist, Ben Nighthorse Campbell of Colorado, and John McCain of Arizona.

³⁹ *Id.* at 11.

⁴⁰ *Id.*

⁴¹ *Id.*

It is useful to repeat the tactic as we analyze the facts asserted in the PAW report. PAW wants to paint an ugly caricature of Senator Ashcroft by demonizing, rather than debating, conservative positions. These positions, according to PAW, are not just wrong, they are illegitimate so that no one who holds them is fit for public office. Hence the repeated accusation of "extremism."

This tactic extends beyond sex and race to sexual preference. PAW also claims that Senator Ashcroft's opposition to the appointment of James Hormel to be U.S. Ambassador to Luxembourg was just such an example of the extremism that disqualifies him to be Attorney General. PAW claims that Senator Ashcroft opposed this nomination "simply because [Hormel] is 'gay and a prominent advocate of gay rights.'"⁴² Yet the truth is again markedly different than PAW's claim. The Hormel nomination concerned a number of Senators for various reasons, not the least of which was the nominee's complete lack of any foreign policy or diplomatic experience. In addition, noting Luxembourg's overwhelmingly conservative and Catholic population, some Senators were concerned that Hormel's appointment would taint that nation's perception of American values or worse and be viewed as provocative or insulting. These considerations may not apply to domestic appointments, but they are certainly relevant to diplomatic appointments in other countries.

PAW's other examples of nominations Senator Ashcroft opposed only establish that he is in the mainstream of his Republican colleagues. PAW points out, for example, that 35 Senators – a majority of Republicans – opposed the nomination of David Satcher to be Surgeon General⁴³ and that 43 Senators – an even larger majority of Republicans – opposed the earlier nomination of Henry Foster to that post.⁴⁴

Since Senator Ashcroft was in the large majority of his party on these confirmation votes, PAW can only be arguing once again that a position they do not share is, by definition, extreme.

3. "Ashcroft's extremist views in opposition to abortion and common methods of birth control."⁴⁵

Senator Ashcroft is a pro-life conservative. The President-elect who nominated him is a pro-life conservative. This is no doubt frustrating to liberals who think abortion is a legitimate choice, but they lost the election.

On October 21, 1999, Senator Ashcroft voted for the Partial-Birth Abortion Ban Act. The legislation included criminal and civil penalties for knowingly performing a partial-birth abortion, unless the life of the mother was endangered. Polls show that the vast majority of Americans oppose this procedure and nearly two-thirds believe states should be

⁴² *Id.* at 12 (citing *Time*, May 11, 1998).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 13.

allowed to ban them.⁴⁶ Similarly, nearly two-thirds of the Senate voted to do so and Senator Ashcroft was joined by Democrats including the following:

- Daniel Patrick Moynihan (D-NY)
- Tom Daschle (D-SD), Democratic Leader
- Harry Reid (D-NV), Democratic Whip
- Patrick Leahy (D-VT)
- Evan Bayh (D-IN)
- Joseph Biden (D-DE)
- John Breaux (D-LA)
- Robert Byrd (D-WV)
- Kent Conrad (D-ND)
- Byron Dorgan (D-ND)
- Fritz Hollings (D-SC)
- Tim Johnson (D-SD)
- Mary Landrieu (D-LA)
- Blanche Lincoln (D-AR)

Senator Ashcroft believes that, since life begins at conception, the taking of innocent life in the womb through abortion is wrong. He reaffirmed this belief as his confirmation hearing opened. Only one-quarter of Americans believe that abortion should be legal in all circumstances.⁴⁷ On abortion, leftist groups such as PAW are outside the mainstream.

The supposed concern about Senator Ashcroft's pro-life views is that, as Attorney General, he would not enforce laws with which he personally disagrees. Every public official, however, confronts this situation. Certainly officials in the executive branch – charged under the Constitution with enforcing the laws – face this dilemma. Yet each takes an oath of office. PAW has never actually said, though they have often suggested, that Senator Ashcroft is any more likely to violate his oath of office than another executive branch official. As the confirmation hearing opened, Senator Leahy suggested that Senator Ashcroft's views were particularly “unyielding” and PAW repeatedly says those views are “rigid.”⁴⁸ Are they either suggesting that other Senators do not have firm views on important philosophical and political issues or that they prefer public officials whose views on such matters change, shift, and bend with public pressure or new circumstances?

PAW is not generally concerned that the Attorney General enforce the law fairly. If they were, they would have said so at the appointment of past Attorneys General or publicly objected when they neglected to do so. Attorney General Janet Reno, for example, simply abandoned enforcement of obscenity laws. She sought to change the meaning of the federal child pornography statutes in a way that would weaken its enforcement, a move so improper that the U.S. Senate voted unanimously, and the U.S. House of Representatives voted 426-3 ,

⁴⁶ Fox News/Opinion Dynamics Poll, April 2000.

⁴⁷ Lydia Saad, The Gallup Organization, *Americans Walk the Middle Road on Abortion* < (visited Jan. 9, 2001).

⁴⁸ *PAW Report* at 3,4,18.

to rebuke her, and the U.S. Court of Appeals twice rejected her efforts. PAW is obviously concerned generally about good government or the fair administration of justice. Their attack on Senator Ashcroft is instead nothing more than a version of the tactic noted earlier in this analysis. PAW does not want all laws enforced, they want laws they like enforced. Thus they did not balk when Attorney General Reno failed to enforce laws PAW did not like, and today attacks Senator Ashcroft believing he may not enforce laws they like.

Leftists such as PAW believe that only conservatives have the potential for allowing personal beliefs to interfere with professional judgment. Conservatives, the implication goes, are inherently untrustworthy because conservative views are, by definition, extreme.

An additional reason for confidence that Senator Ashcroft will enforce the law is that he is committed to the separation of powers required by the Constitution. This is, in fact, the basis of his concern about judicial activism – that judges not cross the line between judicial and legislative power. Judges cannot make law because they have no power to do so, and attempting to do so violates their oath of office. Similarly, Senator Ashcroft believes that executive branch officials must observe the line between executive and legislative power. They no more have power to change the law than judges do.⁴⁹

Senator Ashcroft's consistency on this fundamental principle poses a serious problem for PAW and other leftist critics. While they have in the past attacked him for saying that judges cannot make law, today they attack him by claiming he will try to make law from the executive branch. They insist he will do from the executive what he believes cannot be done from the judiciary and demand that he not do from the executive what they say can be done from the judiciary. It's all very confusing, until one understands that PAW simply wants their leftist political agenda advanced and it does not matter how or by whom. Thus the discussion returns to the original proposition that PAW opposes Senator Ashcroft because he is not one of them.

PAW's obvious inconsistency again exposes their real position – that the only legitimate views are those they share, whether judicial, legislative, or executive.

Senator Ashcroft's actions as well as his principles demonstrate he will enforce the law, even when it might conflict with his personal beliefs. He has, for example, pledged to enforce the Freedom of Access to Clinic Entrances Act (FACE), the federal criminal statute that punishes those individuals who commit acts of criminal intimidation or violence at abortion clinics. He voted for Senator Charles Schumer's (D-NY) amendment to the Bankruptcy Act which would have rendered debts incurred as a result of such violence non-dischargeable in bankruptcy. And in the opening day of his confirmation hearing, Senator Ashcroft made clear that he will enforce the law "as it is, not as I would have it be."

⁴⁹ On the first day of Senator Ashcroft's confirmation hearing, Senator Strom Thurmond (R-SC) discussed this critical point.

4. "Other examples of Ashcroft's negative record on civil rights and indifference to the rights of women and minorities."⁵⁰

The basis for PAW's outrageous claim about Senator Ashcroft's supposed "insensitivity to the rights of minorities and women and his lack of commitment to full equality for all"⁵¹ is as obvious as it is illegitimate. PAW first defines "sensitivity" to minority rights and "commitment" to equality as adherence to their own leftist political agenda. In PAW's logic, a Senator lacks such sensitivity and commitment when he does not share that agenda. PAW will not accept that those who do not share their political ideology can possibly be committed to such things. Thus, again, they oppose Senator Ashcroft's nomination because he is not one of them.

Because this is their strategy, PAW does not care that Senator Ashcroft voted for every one of the 26 black judicial nominees confirmed by the Senate during his tenure. They do not care that as Governor he appointed black judges and Cabinet members or supported the Martin Luther King, Jr. holiday. And they don't care that he took a strong stand against racial profiling, chairing the Senate's only hearing on the subject before his Judiciary Subcommittee on the Constitution. At that hearing, he said that "using race broadly as a profiler in lieu of individualized suspicion is, I believe, an unconstitutional practice." He repeated that position during his confirmation hearing.

Similarly, PAW does not care that Senator Ashcroft co-sponsored the Violence Against Women Act and authored the bill's Internet stalking provisions. PAW does not care that he supported making civil judgments for those who commit violent acts at abortion clinics non-dischargeable in bankruptcy or that he supported guaranteeing minimum hospital stays for women who give birth or cosponsored a measure to permit breast and cervical cancer coverage by Medicaid for low-income women. PAW does not care that Senator Ashcroft supported measures to make pediatricians available as primary care doctors, promoted unlimited access to OB-GYN services or sponsored the Pension Opportunities for Women's Equality in Retirement Act. These actions, though part of Senator Ashcroft's record, do not count. PAW is not playing a zero-sum game, where items on one side of the scale count because there are items on the other side; they are playing an all-or-nothing game where if even one item exists on the wrong side of the scale, nothing on the other side matters.

PAW attacks Senator Ashcroft's vote against a federal "hate crimes" statute.⁵² Not only is the concept of criminalizing motives or thoughts, as opposed to behavior, itself controversial, but so is the federal, as opposed to state, government's role. Senator Ashcroft's opposition cannot be based on his blanket opposition to hate crimes legislation because, as Governor, he signed Missouri's first hate crimes statute. In the Senate, he supported legislation to provide funding for state and local prosecutors so that state and local hate crimes initiatives, like the one Ashcroft signed as Governor, could be adequately enforced. Again, those actions do not count to PAW because Senator Ashcroft is not one of them.

⁵⁰ *PAW Report* at 15.

⁵¹ *Id.*

⁵² *Id.*

A common PAW stealth tactic is to suggest that every view, position, or action of every institution or individual with whom someone has had contact can be attributed to that person. Stating this tactic alone establishes its illegitimacy. Thus it is entirely illegitimate when PAW observes that Senator Ashcroft received an honorary degree from Bob Jones University⁵³ and suggests that every controversial policy or statement associated with the school or its leaders somehow adhere to him.

Even if it were, it would not apply because Senator Ashcroft has publicly rejected them. During his 2000 Senate campaign, Senator Ashcroft stated, with reference to the Bob Jones University positions cited by PAW: "These positions of Bob Jones University, I reject categorically."⁵⁴ And if PAW's tactic were legitimate, fairness dictates that the controversial positions or statements of Bob Jones University or its leaders also be attributed to others who have spoken there. These include former Presidents Ronald Reagan and George W. Bush; South Carolina Democrat Governor Jim Hodges; and Ambassador Alan Keyes.⁵⁵

PAW uses the same tactic focusing on Senator Ashcroft's 1998 interview with the *Southern Partisan* magazine.⁵⁶ PAW first casts the magazine as "neo-Confederate" and "racially insensitive."⁵⁷ PAW ominously observes that *Southern Partisan* once ran an advertisement for a T-shirt with Abraham Lincoln's portrait carrying the subtitle "Sic Semper Tyrannis," meaning "thus always to tyrants," the John Wilkes Booth's shout upon shooting Lincoln. The phrase, by the way, is also Virginia's state motto. Because Senator Ashcroft participated in that interview, PAW suggests these labels apply to him.

Here is what Senator Ashcroft actually said in his *Southern Partisan* interview:

- **Senator Ashcroft:** Revisionism is a threat to the respect that Americans have for their freedoms and liberty that was at the core of those who founded this country, and when we see George Washington, the founder of our country, called a racist, that is just total revisionist nonsense, a diatribe against the values of America. Have you read Thomas West's book, *Vindicating the Founders*?
- ***Southern Partisan:*** I've met Professor West, and I read one of his earlier books, but not that one.
- **Senator Ashcroft:** I wish I had another copy: I'd send it to you. I gave it away to a newspaper editor. West virtually disassembles all of these malicious attacks the revisionists have brought against our founders. Your magazine also helps set the record straight. You have a heritage of defending Southern patriots like Lee, Jackson, and Davis. Traditionalists must do more. I've got to do more. We've all got to stand up and speak in this respect, or else we'll be taught that these people were giving their lives - subscribing their sacred fortunes and their honor to some perverted agenda.

⁵³ *Id.*

⁵⁴ Radio Interview, KMOX, St. Louis, February 28, 2000.

⁵⁵ See Shapiro, "S.C. Resurrection Sets Tone for Election," *USA Today*, August 1, 2000, at 10A.

⁵⁶ *PAW Report* at 16.

⁵⁷ *Id.*

Senator Ashcroft's and choice of words – taken directly from the Declaration of Independence – show that he objected to the politically correct agenda of revisionist historians who mischaracterize America's founders. Does PAW disagree with Senator Ashcroft and insist that the signers of the Declaration of Independence subscribed their lives, fortunes, and sacred honor to a perverted agenda of racism and slavery?

In advocating that an accurate historical record be kept of their words, deeds, and achievements, Senator Ashcroft joins numerous non-Southerners who, while not supporting slavery, recognized that certain leaders in the South had distinguishing characteristics. Winston Churchill, for example, said that Confederate Generals such as Robert E. Lee were "men of the highest morale and virtue [who] deemed themselves bound to the death to the fortunes and sovereign independence of their states"⁵⁸

PAW not only attributes to Senator Ashcroft the views of those with whom he has never associated and completely mischaracterizes his words, but even holds him responsible for advertisements in a magazine with which he has conducted an interview! It would have been ridiculous to apply this approach to former President Jimmy Carter following his interview with *Playboy* magazine in which he expressed guilt over "lust in my heart." And if this absurd tactic were legitimate, PAW must also hold Senator Ashcroft responsible for other things appearing in that magazine such as writings by black columnists Walter Williams and James Meredith, who integrated the University of Mississippi in 1962.⁵⁹

PAW also argues that Senator Ashcroft is an extremist for agreeing that "homosexuality is a sin" and opposing the so-called "Employer Non-Discrimination Act" (ENDA),⁶⁰ which would grant homosexual employees the right to sue employers in federal court for not hiring or promoting them due to their sexual preferences.

Disagreement with PAW is not extremism and reasonable people can disagree about these issues. Those demanding tolerance of their views have none for views they do not share.

Many Americans believe homosexuality is immoral. Senator Ashcroft is a committed Christian and his faith condemns homosexual behavior. Is PAW really suggesting that qualified Americans must abandon their faith for public service? That demand would violate the Constitution's command that "no religious test shall ever be required as a qualification to any office or public trust under the United States."⁶¹

As for ENDA, Senators opposing the legislation did not sanction discrimination against homosexuals, but believed that using the Civil Rights Act to stop such discrimination would have been a mistake. They feared the potential for using the legislation to seek enormous punitive and compensatory damages for perceived slights or endless litigation that

⁵⁸ See, e.g., IV S. Churchill, *History of the English Speaking Peoples: The Great Democracies* 155 (1958).

⁵⁹ See Greenhut, "Ashcroft, a Confederate? As Confederate as I Am," *National Review Online* (visited January 13, 2001).

⁶⁰ *PAW Report* at 17.

⁶¹ U.S. Constitution, Article VI, Section 3.

would have hurt productivity and cost jobs for all people, whatever their sexual preference. They feared that the 1991 Civil Rights Act's provisions regarding so-called "disparate impact" discrimination might be used to mandate that employers inquire into all employees' sexual preference in order to avoid practices that disproportionately affect homosexuals. No less than 50 Senators, including five Democrats, voted to defeat this bill. Is PAW actually arguing either that these Democrats are extremists or that being in the majority on this vote places Senator Ashcroft outside the mainstream?

Like many Americans, a majority of the United States Supreme Court, and electoral majorities in California and Washington State, Senator Ashcroft opposes racial preferences. This is not an extremist position. Yet PAW takes Senator Ashcroft to task for voting in 1998 to eliminate the Disadvantaged Business Enterprise program.⁶² Thirty-seven Senators, two-thirds of the Republican conference, voted with him. The real question is why this program still exists after the Supreme Court held it unconstitutional.⁶³

PAW even attempts to turn a vote regarding the 1977 Community Reinvestment Act (CRA) into some kind of racial or civil rights issue.⁶⁴ The CRA permits federal regulators to restrict a bank's operations based on the racial composition of its customers. Specifically, Senator Ashcroft voted to exempt banks with assets of less than \$250 million from the CRA. The vast majority of these small banks already invest almost exclusively in their local communities, thus meeting the CRA's purpose. Senator Ashcroft joined 38 of his colleagues in this vote, which would ease regulatory burdens on those small banks. Though PAW attacks his "minority views,"⁶⁵ he was in the large majority of Republicans.

PAW cannot criticize Senator Ashcroft for being outside the Democrat mainstream; that's why he is a Republican. PAW cannot criticize Senator Ashcroft for being outside the Republican mainstream because their own examples show he is in the middle of it. They attack him because he is not one of them.

5. "Ashcroft's opposition to gun safety and gun control."⁶⁶

PAW claims in its organizational mission statement that it "organizes and mobilizes Americans to fight for fairness, justice, civil rights and the freedoms guaranteed by the Constitution."⁶⁷ Unfortunately, this is only potentially true for those freedoms of which PAW approves. The PAW report attacks Senator Ashcroft's important work on behalf of the civil rights and freedoms guaranteed by the Second Amendment to the Constitution.

⁶² *PAW Report* at 17.

⁶³ See *Adarand v. Peña*, 515 U.S. 200 (1995).

⁶⁴ *PAW Report* at 17.

⁶⁵ *Id.*

⁶⁶ *Id.* at 18.

⁶⁷ www.pfaw.org/about/ (visited January 13, 2001).

PAW labels Senator Ashcroft an extremist because, they say, he is “ranked as one of the National Rifle Association’s most reliable votes in the Senate.”⁶⁸ To repeat, however, disagreement with PAW is not extremism. A majority of Americans have a favorable view of the National Rifle Association⁶⁹ and more than four million of them are NRA members. Perhaps PAW believes Senator Ashcroft is an extremist for consistently calling on Attorney General Reno to enforce existing gun laws. Or for helping enact laws to toughen penalties for gun crimes.⁷⁰ PAW’s readers may never know because they these aspects of Senator Ashcroft’s record never found mention in the report.

PAW knows well that different legislative proposals can focus on the same goal with different results. Thus they are totally disingenuous to suggest that by voting against a particular proposal to close the supposed “gun show loophole” Senator Ashcroft favored allowing “criminals and juveniles easy access to guns.”⁷¹ He opposed legislation written so broadly that it would cover any sale of firearms from one individual to another and would effectively shut down gun shows entirely. Yet he supported another proposal that addressed the sale of firearms at gun shows and that actually passed. He also supported an amendment requiring background checks for purchases of guns at pawn shops and sponsored an amendment to the juvenile justice to tighten laws against juvenile possession of assault weapons.

Curiously, PAW omitted most of Senator Ashcroft’s record on this issue. Their selective and misleading discussion only reinforces the conclusion that they oppose Senator Ashcroft because he is not one of them.

PAW also attacks Senator Ashcroft for opposing a federal mandate for gun safety locks.⁷² Perhaps PAW supports unnecessary federal mandates, but Senator Ashcroft does not. By the time this amendment was offered, more than over 80% of all gun manufacturers had voluntarily agreed to provide safety locks on all sales of firearms anyway.

6. “Ashcroft’s anti-environmental positions.”⁷³

PAW criticizes Senator Ashcroft for his leadership on the Economic Growth and Sovereignty Act which he introduced in 1998.⁷⁴ Yet this legislation would only preserve the sovereignty and constitutional dignity of the United States by prohibiting federal agencies from implementing a treaty which had not been ratified by the United States Senate. Article II, section 2, of the Constitution confers on the Senate the responsibility to evaluate a treaty’s merits and its potential impacts on the United States. The Senate, not the President

⁶⁸ *PAW Report* at 18.

⁶⁹ CNN/USA Today Gallup poll conducted April 7-9, 2000,

⁷⁰ Public Law 105-386 (1998).

⁷¹ *PAW Report* at 18.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

or leftist interest groups, must give or withhold its advice and consent for treaties negotiated by the executive branch to become the law of the land.

Senator Ashcroft's bill simply exercised the Senate's constitutional prerogative, allowing full debate before implementation of the economically and scientifically flawed Kyoto Global Climate Change treaty. Ironically, many labor movement opponents of Senator Ashcroft's nomination today once joined him in opposing the Kyoto Treaty, which would have severely hampered American manufacturing. The substance of Senator Ashcroft's bill was incorporated into subsequent annual appropriations bills with bi-partisan support.

PAW also attacks Senator Ashcroft's support for a measure to limit the effect of the American Heritage Rivers Initiative (AHRI) on private property owners.⁷⁵ The amendment, offered by Senator Tim Hutchinson (R-AR), would have authorized the President to implement the American Heritage Rivers Initiative to the extent of individual designations approved by Congress. It was introduced out of concern that the American Heritage Rivers Initiative could have detrimental effects on private property rights, and should be considered by Congress before executive branch action. Passage of the amendment simply assured Congress the opportunity to consider the program before it was imposed on property owners living near a designated river.

Whether or not PAW agrees with Senator Ashcroft on this issue, he was one of 42 Senators to vote for the amendment – again, in the large majority of Republicans. Would PAW label Democrats Robert Byrd (WV) and Byron Dorgan (ND) extremists for supporting it as well?

7. "Other votes demonstrating Ashcroft's rigid ideology."⁷⁶

PAW observes that "Ashcroft received a 0% rating from the National Committee to Preserve Social Security and Medicare."⁷⁷ Typical for PAW, however, they neglect to mention that Senator Ashcroft supported the Social Security "lockbox," winning enactment of the first Social Security lockbox budget rule. He authored and passed the first Medicare lockbox to similarly prevent spending raids on that trust fund.

Significantly, while PAW previously used ratings or scorecards that it thought suited its purpose, it ignores the scorecard from the Seniors Coalition while claiming that Senator Ashcroft "has one of the worst records in the Senate with respect to preserving Social Security."⁷⁸ The reason for PAW's oversight is that Senator Ashcroft was one of just seven Senators to receive a 100% rating for the 106th Congress. Similarly, the 60 Plus Association gave Senator Ashcroft a 100% approval rating for his votes in the 105th Congress.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 19.

PAW next claims that Senator Ashcroft “was in a minority of less than one-third of the Senate that voted in 1998 against a national drunk driving standard,”⁷⁹ raising the preposterous suggestion that he opposes measures to prevent drunk driving. Senator Ashcroft, however, takes seriously his oath to support and defend the entire Constitution. Just as PAW ignores the Second Amendment to that charter, they also give the Tenth Amendment short shrift. Yet Senator Ashcroft believes, as did America’s founders, that the Constitution provides the federal government only with certain powers and that most decisions are “reserved to the States.” This includes limits on drunk driving.

PAW charges that “Ashcroft sponsored an unsuccessful amendment to completely eliminate funding for the National Endowment for the Arts.”⁸⁰ At that time, the NEA was funding highly questionable art programs and distributing funds in an inconsistent manner that shortchanged Missouri’s citizens. Is PAW suggesting that a Senator is an extremist in fighting for his state’s residents?

Similarly, PAW labels Senator Ashcroft “the leading right-wing opponent of [national school] testing”⁸¹ but fails to explain his reasons for opposing a national testing measure. Like many Americans, he believed national testing could lead to a national curriculum in which local needs and priorities would be eliminated. While this may indeed be the goal of national testing supporters, others are concerned about giving the federal government the ability to decide what children should know and how they are taught.

8. “Ashcroft’s cavalier approach to amending the Constitution.”⁸²

This attack is perhaps the most disingenuous. PAW has routinely attacked those, such as Senator Ashcroft, who are concerned about judicial activism, by which judges cavalierly amend both statutes or the Constitution at will. That “constitutional amendment” process is never legitimate. Yet here, PAW attacks him for pursuing constitutional amendments through the only legitimate process. When praising activist judges, PAW will speak of the Constitution as a living, morphing, flexible, changing document. Here, in attacking Senator Ashcroft, PAW says the Constitution “is not something that should be amended lightly.”⁸³ Arguments exist for and against various individual proposals to amend the Constitution, but the truly extreme position is the one that countenances ever using the illegitimate approach of judicial activism rather than the legitimate approach outlined in the Constitution itself.

Senator Ashcroft insists that the Constitution be amended only through the one legitimate process while PAW applauds its continual amendment through illegitimate judicial activism. And they call him an extremist?

⁷⁹ *PAW Report* at 19.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

CONCLUSION

PAW's attack succeeds only in establishing that Senator Ashcroft is a conservative. In fact, their own examples show time after time that he most often is squarely within the large majority of Republicans in voting on important issues. All the hyperbole and name-calling in the world cannot change that.

PAW simply will not accept as legitimate views they do not share are legitimate; opinions contrary to theirs, no matter how mainstream or bi-partisan, are "extreme" and those who hold them unfit for important offices such as Attorney General. They oppose Senator Ashcroft's nomination because they oppose his politics, because he is not one of them. Their so-called "report" is a fraud, built on less-than-half truths, outright distortions, and misleading omissions. Its purpose is only to create an ugly caricature rather than accurately and honestly evaluate the merits of this nomination.

Senator Ashcroft is superbly qualified and a man of the highest integrity. President-elect Bush has nominated him to be Attorney General. PAW and others will have an opportunity to evaluate the performance of this administration in the next election. Until then, all Americans must reject the dishonest and manipulative tactics PAW has chosen to employ.

ENDORSEMENTS

1. American Conservative Union
2. American Decency Association
3. American Policy Center
4. California Republican Assembly
5. Center for Arizona Policy
6. Christian Coalition of Georgia
7. Christian Coalition of Rhode Island
8. Citizen Soldier
9. Citizens for a Sound Economy
10. Citizens for Constitutional Property Rights
11. Coalitions for America
12. Committee for a Republican Future
13. Delaware Home Educators Association
14. Eagle Forum of Rhode Island
15. Eagle Forum of Wisconsin
16. English First
17. Free Congress Foundation
18. Georgia Family Council
19. Government Is Not God -- PAC
20. Independent Women's Forum
21. Law Enforcement Alliance of America
22. Life Coalition International
23. Life Legal Defense Foundation
24. Michigan Decency Action Council, Inc.
25. Mississippi Family Council
26. National Federation of Republican Assemblies
27. National Tax Limitation Committee
28. National Taxpayers Union
29. New Jersey Family Policy Council
30. Northern Virginia Republican Political Action Committee
31. Parents Rights Coalition of Massachusetts
32. Pro-Life America
33. Pro-Life Ohio
34. Religious Freedom Coalition
35. Save America's Youth
36. Wisconsin Information Center

Free Congress Foundation
 Press Office

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 ntrulock@freecongress.org

Free Congress Foundation

FOR IMMEDIATE RELEASE
 January 19, 2001

**GRASSROOTS ENDORSEMENTS OF SENATOR
 JOHN ASHCROFT'S NOMINATION TO BE UNITED
 STATES ATTORNEY GENERAL**

As of January 19, 2001

1. "The Don Kroah Show" WAVA Radio
2. 48th Ward Regular Republican Organization, Chicago
3. 60 Plus Association
4. Adirondack Solidarity Alliance
5. Alabama Citizens for Life
6. Alabama Policy Institute
7. Alaska Catholic Defense League
8. Alaska Right To Life
9. America's Survival, Inc.
10. America Center For Law and Justice
11. American Association of Christian Schools
12. American Association of Pro-Life Obstetricians and Gynecologists
13. American Civil Rights Coalition
14. American Civil Rights Union
15. American Conservative Union
16. American Council For Immigration Reform
17. American Decency Association
18. American Family Association
19. American Family Association of Kentucky
20. American Family Association of Michigan
21. American Family Association of New Jersey
22. American Family Association of New York
23. American Family Defense Coalition, California Central Coast Chapter
24. American Freedom Crusade
25. American Immigration Control
26. American Land Rights Association
27. American Policy Center
28. American Pro-Constitutional Association (AMPROCON)
29. American Renewal
30. American Shareholders Association
31. Americans For Military Readiness
32. Americans For Tax Reform
33. Americans For The Right To Life
34. Americans For Voluntary School Prayer
35. Americans United For The Unity Of Church and State
36. Arkansas Family Council
37. Association of American Educators
38. Association of Christian Schools International
39. Association of Concerned Taxpayers
40. Association of Maryland Families

41. Baptist International Missions, Inc.
42. Brass Roots
43. BrotherWatch
44. California Public Policy Foundation
45. California Republican Assembly
46. Calvary Baptist Academy
47. Campaign For California Families
48. Capital Research Center
49. Catholic Citizens Of Illinois
50. Catholicvote.org
51. Center for a Sound Economy
52. Center For Military Readiness (CMR)
53. Center for Pro-Life Studies
54. Center For Reclaiming America
55. Christian Coalition of Alabama
56. Christian Coalition of America
57. Christian Coalition of California
58. Christian Coalition of Florida
59. Christian Coalition of Georgia
60. Christian Coalition of Ohio
61. Christian Coalition Of Rhode Island
62. Christian Schools of Vermont
63. Christian Voice
64. Christus Medicus Foundation
65. Citizen Soldier
66. Citizens Against Higher Taxes
67. Citizens Against Repressive Zoning
68. Citizens For A Sound Economy
69. Citizens For Community Values
70. Citizens For Constitutional Property Rights
71. Citizens For Excellence In Education
72. Citizens For Law and Order
73. Citizens For Less Government
74. Citizens For Traditional Values
75. Citizens United
76. CNP Action, Inc.
77. Coalition For Better Community Standards
78. Coalition For Constitutional Liberties
79. Coalition for Local Sovereignty
80. Coalition On Urban Renewal and Education (C.U.R.E.)
81. Coalitions For America
82. Colorado Association of Christian Schools
83. Committee For a Republican Future
84. Concerned Citizens Opposed To Police States
85. Concerned Women For America
86. Concerned Women For America of Virginia
87. Conservative Caucus, Inc.
88. Conservative Victory Fund
89. Constitution Party of Vermont
90. Council of Conservative Citizens, Inc.
91. Crime Victims United of California
92. Culture of Life Foundation
93. Cutting Edge - A Talk Show
94. Delaware Home Education Association
95. Delaware Christian Coalition
96. Eagle Forum
97. Eagle Forum of Alabama
98. Eagle Forum of Arkansas
99. Eagle Forum of California
100. Eagle Forum of Georgia

101. Eagle Forum of Mississippi
102. Eagle Forum of New Jersey
103. Eagle Forum of North Carolina
104. Eagle Forum of Ohio
105. Eagle Forum of Rhode Island
106. Eagle Forum of South Carolina
107. Eagle Forum of Wisconsin
108. English First
109. Environmental Conservation Organization
110. Erie Citizens Against Pornography
111. Evergreen Freedom Foundation
112. Families Allied for Intelligent Reform of Education (FAIRE)
113. Family Association of Kentucky
114. Family First, Nebraska
115. Family Life Communications
116. Family Policy Network
117. Family Research Council
118. Family Research Forum of Wisconsin
119. Family Research Institute of Wisconsin
120. Family Taxpayers Network
121. Florida Eagle Forum, Inc.
122. Focus On The Family
123. Freedom Alliance
124. Friends of Oregon
125. Georgia Report
126. Global Evangelism Television
127. Government Is Not God - PAC
128. Graham Williams Group
129. Granite State Taxpayers
130. Guardians of Education for Maine
131. Hawaii Christian Coalition
132. Heritage Ridge Church and School
133. Home Education Radio Network
134. Home School Legal Defense Association
135. Human Life Alliance
136. Illinois Association of Christian Schools
137. Illinois Citizens For Life
138. Illinois Right To Life Committee
139. Independent Women's Forum
140. Indiana Eagle Forum
141. Information Radio Network
142. Islamic Institute Foundation
143. Justice For Murder Victims
144. Kansas Conservative Union
145. Kansas Eagle Forum
146. Kansas For Life
147. Kansas Taxpayers Network
148. KBRT AM 740, Costa Mesa, Ca
149. KFLR Radio - Phoenix, Arizona
150. Landmark Legal Foundation
151. Landowners Association of North Dakota (LAND)
152. Law Enforcement Alliance of America
153. Liberty Counsel
154. Life Action League of Massachusetts
155. Life Advocacy Alliance
156. Life Coalition International
157. Life Issues Institute
158. Life Legal Defense Foundation
159. Louisiana Family Forum
160. Madison Project

161. Maine Right To Life Committee
162. Maryland Constitution Party
163. Maryland Taxpayers Association
164. Massachusetts Citizens For Life
165. Massachusetts Eagle Forum
166. Massachusetts Family Institute
167. Medina County Christian Coalition
168. Memory Of Victims Everywhere (M.O.V.E.)
169. Michigan Decency Action Council
170. Michigan Family Forum
171. Minnesota Association of Christian Schools
172. Minnesota Christian Coalition
173. Mississippi Family Council
174. Missouri Eagle Forum
175. National Association Of Christian Educators
176. National Center For Constitutional Studies
177. National Center For Home Education
178. National Coalition For The Protection of Children and Families
179. National Federation of Republican Assemblies
180. National Institute of Family Life and Advocates
181. National Legal Foundation
182. National Liberty Journal
183. National Rifle Association
184. National Tax Limitation Committee
185. National Taxpayers Union
186. Neighborhood Research/Mountaintop Media
187. Nevada Republican Assembly
188. New Hampshire Right To Life
189. New Jersey Christian Coalition
190. New Jersey Family Policy Council
191. New York Eagle Forum
192. North Carolina Christian School Association
193. North Carolina Conservatives United
194. Northern Virginia Republican Action Committee
195. Northwest Legal Foundation
196. Oklahoma Family Policy Council
197. Old Dominion Association of Church Schools
198. Open Door Baptist Church
199. Operation Rescue
200. Operation Save America
201. Organized Victims of Violent Crime
202. Parents in Control
203. Parents Rights Coalition of Massachusetts
204. Pennsylvania Family Institute
205. Pennsylvania Landowners Association
206. Pennsylvania Republican Assembly
207. People Advancing Christian Education
208. Pro-Life Action League
209. Pro-Life America
210. Pro-Life Ohio
211. Project 21
212. Property Rights Congress
213. PROVE (Parents Requesting Open Vaccine Education)
214. Providence Foundation
215. Religious Freedom Coalition
216. Republican National Coalition For Life
217. Republican Platform Committee
218. Republicans Against Pornography
219. Right To Life of Cincinnati
220. Save Americas Youth

- 221. Second Amendment Sisters
- 222. Small Business Survival Committee
- 223. South Dakota Family Policy Council
- 224. South Dakota Shooting Sports Association
- 225. Sovereignty International
- 226. Taxpaying Adults
- 227. Teen-Aid, Inc.
- 228. Tennessee Association of Christian Schools
- 229. Tennessee Eagle Forum
- 230. Texas Eagle Forum
- 231. Texas Home School Coalition
- 232. Texas Journal
- 233. The Alliance for Traditional Marriage and Values
- 234. The American Family Policy Institute
- 235. The American Pistol and Rifle Association of Vermont
- 236. The Armstrong Foundation
- 237. The Center For Arizona Policy
- 238. The Center For Equal Opportunity
- 239. The Christian Civil League of Maine
- 240. The Constitutional Coalition
- 241. The Family Council
- 242. The Family Foundation
- 243. The Family Institute of Connecticut
- 244. The National Center For Public Policy Research
- 245. The Niobrara Institute
- 246. The Patrick Henry Center for Individual Liberty
- 247. The Strategic Policies Institute
- 248. Toward Tradition
- 249. Tradition Family, Property, Inc.
- 250. Traditional Values Coalition
- 251. U.S. Family Network
- 252. United Seniors Association
- 253. US Business and Industry Council
- 254. Utah Eagle Forum
- 255. Utah Republican Assembly
- 256. Watchdogs Against Government Abuse (WAG)
- 257. Weld County Republicans
- 258. West Virginians Against Government Waste
- 259. Whatcom County Republican Party
- 260. Wisconsin Information Network (WIN)
- 261. Wisconsin State Sovereignty Coalition
- 262. Young America's Foundation
- 263. Young Americans For Freedom

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Please ASJ

**Nomination of Senator John Ashcroft
to be Attorney General of the United States**

Endorsements

Business and Technology Organizations/Corporations:

Information Technology Association of America
 Nortel Networks, Frank Carlucci, Chairman
 Commercial Internet eXchange Association, Barbara Dooley, President
 National Association of Manufacturers
 US Chamber of Commerce
 US Black Chamber of Commerce, President Endorsed
 National Federation of Independent Businesses
 Korean-American Business Political Action Committee
 Associated Builders and Contractors
 Associated General Contractors
 American Farm Bureau Federation
 Food Distributors International
 American Insurance Association
 Business Software Alliance (BSA)
 Informational Technology Industrial Group (ITI)
 Center for Democracy & Technology (CDT)
 National Association of Wholesaler Distributors (NAW)
 Citizens for a Sound Economy
 Kleiner Perkins Caufield & Byers (Partners Floyd Kvamme & Kevin Compton)
 Technet
 Napster
 Prudential
 USTA
 Excite@Home
 Autoweb.com
 Click Action, Inc.
 Laugh.com

Victims Rights Groups:

Stephanie Roper Foundation
 Victims of Crime United
 Justice for Homicide Victims
 Justice for Murder Victims
 National Organization of Parents of Murdered Children
 Victims of Crime and Leniency
 Crime Victims United of California
 Families and Survivors United
 Michigan Victims Rights
 Arizona Voice for Crime Victims

State Attorneys General Expressing Support:

AG Jim Ryan (IL)
 AG Wayne Stenejem (ND)
 AG Steve Carter (IN)
 AG Don Stenberg (NE)
 AG Mark Barnett (SD)
 AG Charlie Condon (SC)
 AG Bill Pryor (AL)
 AG Betty Montgomery (OH)
 AG Alan Lance (ID)
 AG Carla Stovall (KS)
 AG Micheal Fisher (PA)
 AG John Cornyn (TX)
 AG Mark Shurtleff (UT)
 AG Mark Earley (VA)
 AG Gay Woodhouse (WY)
 AG Toetagata Albert Mailo (Samoa)
 AG Jose Fuentes-Agostini (PR) (retired)
 AG Rufus Edminsten (SC) (retired) – Democrat
 AG Andy Miller (VA) (retired) – Democrat
 AG Paul Abbate (Guam) (retired) – Republican
 AG Ronald Amemiya (HI) (retired) – Democrat
 AG Chauncey Browning (WV) (retired) – Democrat
 AG Steve Clark (AR) (retired) – Democrat
 AG Charles Cole (AK) (retired) – Republican
 AG Thomas W. Corbett, Jr. (PA) (retired) – Republican
 AG Richard Cullen (VA) (retired) – Republican
 AG George Deukmejian (CA) (retired) – Republican
 AG Paul Douglas (NE) (retired) – Republican
 AG John Easton, Jr. (VT) (retired) – Republican
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 AG Tyrone Fahner (IL) (retired) – Republican
 AG Kenneth Eikenberry (WA) (retired) – Republican
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 AG Douglas Head (MN) (retired) – Republican
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 AG William Janklow (SD) (retired) – Republican
 AG Jim Jones (ID) (retired) – Republican
 AG Robert Kane (PA) (retired) – Republican
 AG John LaSota, Jr. (AZ) (retired) – Republican
 AG David Leroy (ID) (retired) – Republican
 AG Michael Lilly (HI) (retired) – Democrat
 AG Brian McKay (NV) (retired) – Republican
 AG Joseph Meyer (WY) (retired) – Republican

AG Allen Olson (ND) (retired) – Republican
 AG Pedro Pierluisi (PR) (retired) – Republican
 AG Jim Smith (FL) (retired) – Republican
 AG Robert Stephan (KS) (retired) – Republican
 AG Roger Tellinghuisen (SD) (retired) – Republican
 AG Duane Woodard (CO) (retired) – Republican
 AG LeRoy Zimmerman (PA) (retired) – Republican

Law Enforcement Agencies/Organizations Expressing Support:

International Association of Chiefs of Police
 International Brotherhood of Police Officers
 National District Attorneys' Association
 Fraternal Order of Police
 Law Enforcement Alliance of America
 National Sheriffs' Association
 Missouri Police Chiefs of Police
 National Troopers Coalition

Minority Groups:

Republican National Hispanic Association
 Korean-American Business Political Action Committee
 NAACP -- Past President – VA – Paul Gillis
 National Association of Korean Americans (NAKA)
 LAVAS (an organization representing Vietnamese Americans several Southern cities)
 African American Republican Leadership Council

Law Professors:

Teresa Stanton Collett, *Professor of Professional Ethics, South Texas College of Law, Houston, TX*
 Viet Dinh, *Professor, Georgetown University Law Center, Washington, D.C.*
 Richard F. Duncan, *Professor, University of Lincoln Nebraska College of Law, Lincoln, NE*
 Michael I. Krauss, *Professor, George Mason University School of Law, Arlington, VA*
 Michael W. McConnell, *Professor, University of Utah College of Law, Salt Lake City, UT*
 Geoffrey P. Miller, *Professor, New York University Law School*
 Michael Stokes Paulsen, *Professor of Constitutional Law and Legal Ethics, University of Minnesota Law School, Minneapolis, MN*
 Ronald R. Rotunda, *Albert E. Jenner, Jr. Professor, University of Illinois College of Law, Champaign, IL*
 Todd J. Zywicki, *Professor, George Mason University School of Law, Arlington, VA*

Grass Roots Organizations Compiled by the Free Congress Foundation:

1. 60 Plus Association
2. Alabama Citizens for Life
3. Alabama Policy Institute

4. Alaska Catholic Defense League
5. Alaska Right to Life
6. America's Survival, Inc.
7. American Association of Christian Schools
8. American Association of Pro-Life Obstetricians and Gynecologists
9. American Civil Rights Union
10. American Conservative Union
11. American Council For Immigration Reform
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13. American Family Association
14. American Family Association of Kentucky
15. American Family Association of New York
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20. Americans For The Right To Life
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22. Americans United For The Unity Of Church and State
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24. Association of Concerned Taxpayers
25. Association of Maryland Families
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27. BrotherWatch
28. California Public Policy Foundation
29. California Republican Assembly
30. Campaign for California Families
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32. Catholicvote.org
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34. Center for Pro-Life Studies
35. Center For Reclaiming America
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37. Christian Coalition of America
38. Christian Coalition of Georgia
39. Christian Coalition of Rhode Island
40. Christian Schools of Vermont
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43. Citizens Against Repressive Zoning
44. Citizens for Community Values
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46. Citizens for Excellence in Education
47. Citizens for Law and Order
48. Citizens for Less Government

49. Citizens for Traditional Values
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53. Coalition for Local Sovereignty
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57. Concerned Women For America
58. Concerned Women For America of Virginia
59. Conservative Victory Fund
60. Constitution Party of Vermont
61. Council of Conservative Citizens, Inc.
62. Culture of Life Foundation
63. Cutting Edge- A Talk Show
64. DE Home Education Association
65. Delaware Christian Coalition
66. Eagle Forum
67. Eagle Forum of Alabama
68. Eagle Forum of Arkansas
69. Eagle Forum of Georgia
70. Eagle Forum of North Carolina
71. Eagle Forum of Rhode Island
72. Eagle Forum of Wisconsin
73. English First
74. Environmental Conservation Organization
75. Family Association of Kentucky
76. Family First, Nebraska
77. Family Life Communications
78. Family Policy Network
79. Family Research Council
80. Family Research Forum of Wisconsin
81. Family Research Institute of Wisconsin
82. Family Taxpayers Network
83. Florida Eagle Forum, Inc.
84. Focus on the Family
85. Government is Not God- PAC
86. Granite State Taxpayers
87. Hawaii Christian Coalition
88. Home Educators Radio Network
89. Human Life Alliance
90. Independent Women's Forum
91. Information Radio Network
92. Kansas Eagle Forum
93. Kansas Taxpayers Network
94. KFLR Radio - Phoenix, Arizona

95. Law Enforcement Alliance of America
96. Liberty Counsel
97. Life Advocacy Alliance
98. Life Coalition International
99. Life Issues Institute
100. Life Legal Defense Foundation
101. Louisiana Family Forum
102. Maryland Taxpayers Association
103. Massachusetts Citizens For Life
104. Massachusetts Family Institute
105. Memory of Victim's Everywhere (M.O.V.E.)
106. Michigan Decency Action Council
107. Minnesota Christian Coalition
108. Mississippi Family Council
109. National Association Of Christian Educators
110. National Center For Constitutional Studies
111. National Tax Limitation Committee
112. National Liberty Journal
113. National Tax Limitation Committee
114. National Taxpayers Union
115. New Jersey Christian Coalition
116. New Jersey Family Policy Council
117. New York Eagle Forum
118. North Carolina Conservatives United
119. Northern Virginia Republican Political Action Committee
120. Northwest Legal Foundation
121. Old Dominion Association of Church Schools
122. Organized Victims of Violent Crime
123. Parents in Control
124. Parents Rights Coalition of Massachusetts
125. People Advancing Christian Education
126. Project 21
127. Pro-Life Action League
128. Pro-Life America
129. Property Rights Congress
130. Religious Freedom Coalition
131. Republican National Coalition For Life
132. Small Business Survival Committee
133. Sovereignty International
134. Teen-Aid, Inc.
135. Texas Eagle Forum
136. Texas Journal
137. The Alliance for Traditional Marriage and Values
138. The American Family Policy Institute
139. The American Pistol and Rifle Association of Vermont

140. The Center for Equal Opportunity
141. The Constitutional Coalition
142. The National Center For Public Policy Research
143. Toward Coalition
144. Traditional Family, Property, Inc.
145. Traditional Family Values Coalition
146. U.S. Business and Industry Council
147. Utah Eagle Forum
148. Utah Republican Assembly
149. Watchdogs Against Government Abuse (WAG)
150. Young America's Foundation

Other Individuals/Organizations Expressing Support:

National Center for Security Policy
National Clergy Council
American Life League
Christian Legal Society
Concerned Christian Citizens
Polish American Congress
Americans for Tax Reform
Council for Citizens Against Government Waste (CCAGW)
Numerous Individual Members of the Missouri Bar (see attached letter)
Union of Orthodox Jewish Congregations of America (congratulatory letter, not outright endorsement)
Boys and Girls Clubs of America
Joel C. Mandelman, former Deputy General Counsel to the U.S. Commission on Civil Rights, 1984-86
Z. Dwight Billingsly, former Deputy Comptroller, City of St. Louis
James E. Johnson, former Assistant Secretary of the Navy
John Michael Snyder, Citizens Committee for the Right to Keep and Bear Arms



1025 Vermont Ave., NW, Third Floor Washington, DC 20005-6303

January 11, 2001

The Honorable Patrick J. Leahy
 Chairman, Senate Committee on the Judiciary
 433 Russell Senate Office Building
 Washington, DC 20515

Dear Senator Leahy:

On behalf of the thousands of members of Friends of the Earth, I would like to formally express this organization's opposition to the nomination of former Senator John Ashcroft as United States Attorney General. As a Senator for the state of Missouri, Ashcroft had a consistent record of promoting the interests of polluters over citizens' rights and supporting numerous attempts to weaken or roll back federal environmental protections.

The Attorney General, as head of the Department of Justice (DOJ) and chief law enforcement officer of the Federal Government, has sweeping discretionary authority to uphold and defend our nation's environmental laws. DOJ's Environment and Natural Resources Division, in particular, has the responsibility to engage in litigation concerning the protection, use and development of the nation's natural resources and public lands, wildlife protection, cleanup hazardous waste sites, and defense of environmental challenges to government programs and activities. To place this discretion squarely in the hands of someone with a long record of opposing the laws he will be sworn to uphold would be a mistake.

As a Senator, John Ashcroft's anti-environmental record is clear:

Protecting Polluters over People

- In 1995, Senator Ashcroft defended a sweeping bill (S. 343, the Comprehensive Regulatory Reform Act of 1995) that would have undercut legal safeguards for environmental, human health, consumer and labor protections. (see: *Roll Call Vote No. 315, July 20*)
- During debate of that same bill, Senator Ashcroft voted to defend a provision that would allow polluting industries to avoid reporting most of their toxic chemical releases as required by the 1986 Community Right to Know Act. (see: *Roll Call Vote No. 306, July 13, 1995*)
- Recently, Senator Ashcroft voted to protect the mining industry by attempting to delay a rule that would require hardrock mining companies to cover potential cleanup costs through bonds or insurance deposits and hold mining companies accountable to strong environmental performance standards. (see: *Roll Call Vote No. 224, July 20, 2000*)

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Earth Share



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 Les Amis de la Terre
 Amigos de la Tierra

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Derailing Environmental Protection Laws

- In the 106th Congress, Senator Ashcroft was one of only six Senators to cosponsor a bill that would have drastically weakened the Clean Air Act by taking away one of the most critical enforcement tools for states that fail to meet clean air requirements – sanctions on Federal highway aid. (see: *S. 495, To amend the Clean Air Act to repeal the highway sanctions, 106th Congress, 1st Session*)
- In the 105th Congress, Senator Ashcroft voted against a filibuster of a bill that would weaken land use protections by amending most federal environmental laws and allowing polluters to newly challenge federal environmental protections. The bill also would have overridden existing local procedures to allow developers to challenge city and county zoning laws directly in federal courts instead of existing local administrative appeals and state courts. (see: *Roll Call Vote No. 197, July 13, 1998*)
- Also in the 104th Congress, Senator Ashcroft voted to build on the infamous “salvaged timber rider” by extending indefinitely the time for old growth timber sales directed by this provision. The rider, attached to the 1995 Budget Rescissions Act, allows timber companies to purchase and log parcels in our national forests without regard to federal environmental laws. (see: *Roll Call Vote No. 33, March 14, 1996*)

The position of Attorney General has substantial discretion regarding how to address the diverse topics that the United States Department of Justice defends and prosecutes. Based on his record, Friends of the Earth sees no indication that Senator Ashcroft will use this discretion for anything other than the outright appeasement of polluting industries and weakening of our nation's environmental protection laws. As such, Friends of the Earth urges you to oppose his nomination.

Sincerely,



Brent Blackwelder
President

DOUG GASTON
TEXAS COUNTY PROSECUTING ATTORNEY
1442 South Sam Houston Blvd.
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Telephone: (417) 967-5240 Fax: (417) 967-5574

October 4, 1999

The Honorable John Ashcroft
United States Senator
170 Russell Office Bldg.
Washington, D.C. 20510

Senator Ashcroft,

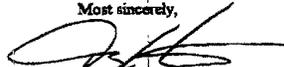
It is my understanding that the nomination of Ronnie White to the United States Federal Court is coming up for a vote soon in the United States Senate. I have serious concerns about this nomination.

Judge White's voting record has given law enforcement officials cause for alarm. While on the Supreme Court he has consistently voted against use of the death penalty, even in the most brutal and clear-cut cases. In fact, White has voted against use of the death penalty more than any other judge on the Court.

White's was also the lone dissenting vote on the case allowing drug checkpoints of major highways in our state. There are other causes of concern, but I think it is best summed up as follows: The Judiciary exists to interpret the law, not make it. Judge White's opinions as a member of the Missouri Supreme Court have caused me to fear more judicial activism and pro-criminal jurisprudence that would run contrary to the will of our founding fathers and to the good of our country.

Please examine Judge White's record closely, Senator. This is an enormously important decision with the most serious of implications. Thank you for taking the time and making the effort to cast a wise vote on the nomination.

Most sincerely,



Doug Gaston
DG/jg

RICHARD A. GEPHARDT
MISSOURI
DEMOCRATIC LEADER

H-204 U.S. CAPT
202-225-0101

Congress of the United States
House of Representatives
Office of the Democratic Leader
Washington, DC 20515-6537

January 22, 2001

The Honorable Patrick J. Leahy
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy,

I write to clarify my position on the issue of school busing in St. Louis that was raised during the Senate Judiciary Committee's nomination hearing for John Ashcroft for the office of Attorney General.

While I did oppose busing during its early implementation in St. Louis, it was done so in the spirit of my desire to unite the community of St. Louis and achieve the goal of equal educational opportunity for all students in a manner less volatile than busing. I have never opposed integration, and I have throughout my political career supported a quality public education for all students regardless of race. I firmly believe that this should be the organizing principle of our great nation. More recently, my office has worked to assist in the implementation of the settlement of the St. Louis school desegregation case. In addition, I have been a consistent proponent of affirmative action programs that provide greater diversity and enhanced educational opportunities at public and private institutions of higher education.

While the issue of school busing is largely behind us, I remain committed to its goals of desegregation and justice for all students. Thank you for this opportunity to clarify the record.

Sincerely,



Richard A. Gephardt
Democratic Leader

Written Statement of

Professor Michael J. Gerhardt, William & Mary Law School

I am very grateful for the opportunity to submit a statement to the Senate Judiciary Committee regarding the nomination of Senator John Ashcroft to serve as United States Attorney General. In this statement, I primarily address the standard of deference that the Senate, in the course of discharging its advise and consent responsibilities, owes to a president's cabinet nominations. As I will argue below, the weight of authority demonstrates that the level of deference owed by the Senate to a president's cabinet nominees is very high; they should be opposed or rejected only for strong or compelling reasons.

My statement consists of four parts. Part I reviews the principal authorities for the standard of deference owed by the Senate to a president's cabinet nominations. In my view, various sources of constitutional authority, including the structure of the Constitution, original understanding, and historical practices, support the Senate's granting very high deference to a president's choice of people to serve in his cabinet. In Part II, I identify the few reasons that have qualified as sufficiently strong or compelling to support opposition to or rejection of a cabinet-level nominee. My survey of the history of the federal appointments process suggests that the reasons that have been found in the past to serve as sufficiently important justifications for formally rejecting cabinet-level nominees are serious conflicts-of-interest and ethical or personal misconduct. In Part III, I address the relevance of some recent trends in the federal appointments process that arguably undercut the pattern identified in Part II. I argue that one trend over the past few decades -- an increase in contests of sub-cabinet nominations -- is irrelevant to the instant proceedings, because of the basic differences in the respective relationships of cabinet and sub-cabinet officers to the President and in these officials' scope of responsibilities: cabinet officers are structurally and traditionally much more closely identified with the presidents who appointed them (and thus presidents tend to rise or fall much more so with their cabinet nominations than with their sub-cabinet appointments); and sub-cabinet appointees tend to have duties within much more narrowly defined subject areas (such as civil rights) than cabinet officers. Moreover, I suggest the recent trend in the appointments process to favor payback is not a healthy or constructive practice. To the contrary, it reflects a destructive deviation from the norms that have guided the federal appointments process throughout most of the twentieth century. The predilection for payback threatens to become a new norm that will transform the process into one in which senators oppose nominations in a vicious cycle of tit-for-tat. Finally, in Part IV I propose some lines of questioning senators might consider asking Senator Ashcroft. I believe the questions suggested are appropriate for both demonstrating the proper level of respect owed to a cabinet nominee and for testing the Senator's fitness to serve as Attorney General. As I have argued, Senator Ashcroft's fitness turns on whether he has any serious conflicts-of-interest or engaged in ethical or other conduct that would disqualify from serving as Attorney General.

I.

As I understand it, a central concern of the Senate Judiciary Committee is determining the proper level of deference owed by the United States Senate to a president's cabinet-level choices, particularly his nominee for the position of Attorney General. In the course of completing my recently published book on the federal appointments process,¹ I have studied in depth the origins, structure, and evolution of the appointments process. Based on this study, I have found that the

weight of authority, particularly constitutional structure, original understanding, and historical practices, support the Senate's generally giving very high deference to a president's choices of cabinet officers.

To be sure, the text of the Appointments Clause² provides no explicit limitations on a president's discretion in choosing, or the Senate's discretion in reviewing his choice of, cabinet nominees. Nevertheless, several inferences from the structure of the Constitution support the Senate's rejecting cabinet or cabinet-level nominees only for strong or compelling reasons. For instance, the vesting of the nominating authority in the President rather than the Senate reflects the framers' expectation that in the course of running for office a president would gain greater knowledge than any member of Congress about the range of qualified people in the nation to serve as cabinet officers. And since the President and the President alone would be the only federal official subject to a national election the framers expected that he would conduct himself in office -- and exercise his special prerogatives, particularly his nominating authority -- as a representative of and with the interests in mind of all citizens of the United States. Moreover, one can infer from the President's status as the single individual constitutionally charged with taking care that the laws be faithfully executed the necessity that he be able to staff his administration with people in whom he has confidence and who share his agenda. Otherwise, Congress could easily frustrate his ability to discharge his oath of office by forcing him to staff his administration with people who oppose his policies or mandate.

If there were any doubt about these inferences -- and I am not aware of any -- they are fully bolstered by the presumption of confirmation for presidential nominations that can be plainly inferred from the structure of the Appointments Clause. First, by requiring only a bare majority of the Senate for confirmation or approval, the Constitution sets a relatively low threshold for a president's nominees. Virtually all other significant legislative action must satisfy stiffer procedural requirements: the passage of laws requires the concurrence of both houses of congress and the president's signature (or, if vetoed, two-thirds override), treaties require the agreement of at least two-thirds of the Senate, and the impeachment and removal of presidents and certain other high-ranking officials require the concurrence of both chambers of Congress, including a majority of the House of Representatives for impeachment and at least two-thirds of the Senate for removal and disqualification. The constitutional structure obviously makes it practically impossible for a small number of senators (i.e., anything less than one-half of the Senate) to stop a presidential nomination once it has reached the floor of the Senate.

Second, by fixing the power to nominate in a single person who (arguably) has a mandate of national scope and includes within that power the ability to make successive nominations, the appointments clause gives the President a substantial advantage over the diffuse Senate in disagreements over appointments. The appointments clause puts a "political burden on the

¹See Michael J. Gerhardt, *The Federal Appointments Process: A Constitutional and Historical Analysis* (Duke University Press, 2001).

²U.S. Const., art. II, section 2, clause 2.

Senate [that] makes it difficult [for the senate] to successfully oppose a president of ordinary political strength for narrow or partisan reasons.³ The problem for the Senate is one of sustaining opposition: as a large collegial body it faces a much more difficult hurdle in organizing itself repeatedly in a prolonged contest with the unitary executive over the latter's choices to fill a certain post. The Senate's job is made more difficult because it occupies a defensive posture in the appointments process in which it is largely confined to exercising a veto. As a structural matter, it lacks the means formally to take the lead (as an institution) in making nominations or in the initial stages of the appointments process.

Furthermore, once a nomination is made, it is likely, by virtue of having been formally made by the president, to be clothed with an aura of respectability, credibility, and presumptive merit unless a critical mass of senators can show otherwise. Consequently, the focus in the Senate, once a nomination is made, is necessarily less on a nominee's merits than on potentially disqualifying factors.

Several framers made statements that are not only consistent with the inference of a presumption of confirmation but also the expectation that the Senate would reject a president's nominees for executive offices only for strong or compelling reasons. For example, Alexander Hamilton anticipated the Senate's reluctance to interfere with a president's nominees for high-level executive offices. In Federalist Number 76, he explained his belief that "[a]s [senators'] dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the Chief magistrate, it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal."⁴ If, however, the Senate rejected a nominee for purely partisan or petty reasons, Hamilton expected that "the censure of rejecting a good [nomination] would lie entirely at the door of the Senate."⁵ In explaining the division of authority in the appointments clause to the North Carolina ratifying convention, James Iredell agreed with Hamilton that the Senate should reject a president's nominees only if the nominee were "positively unfit" for the post to which he had been nominated.⁶

³John O. McGinnis, "The President, the Senate, and the Constitution, and the Confirmation Process: A Reply to Professors Strauss and Sunstein," 71 *Tex. L. Rev.* 633, 639-40 (1993).

⁴Federalist No. 76, at 494 (A. Hamilton).

⁵Federalist No. 77, at 461 (A. Hamilton).

⁶4 Jonathan Elliott, *The Debates in the Several States Ratifying Conventions on the Adoption of the Federal Constitution* 134 (1888). One of the Constitution's earliest authoritative commentators, Justice Joseph Story predicted that senatorial interference with appointments to executive offices would be rare: "The more common error, (if there shall be any) will be too great a facility to yield to the executive wishes, as a means of personal, or popular favor." Joseph Story, *Commentaries on the Constitution*, section 791 (R. Rotunda & J. Nowak eds. 1987).

Besides these statements, the framers and ratifiers said little else about what would qualify as a strong or compelling reason for rejecting a nomination.⁷ They left it to the Senate to work out over time its justifications for opposing or rejecting a president's cabinet choices. One significant pattern that has clearly emerged over time is that the Senate generally has deferred far more to a president's nominees to cabinet officers than to any other confirmable offices. In contrast to its close scrutiny and frequent interference with judicial nominations, the Senate has rejected only five cabinet nominees (and four others to cabinet-level offices) in floor votes while confirming over nine hundred such nominations.⁸

There are many reasons for the Senate's traditional deference to a president's cabinet choices. Many if not most senators have supported a president's need to have his preferred choices serve in his cabinet, because they want to see him succeed, they want to show the proper respect for the people's will in choosing a president, they have previously served in high-level executive offices (such as governorships) and can identify with or appreciate the President's need to hire such people, or they view such deference as a means to curry favor or cultivate good will for subsequent negotiations or bargaining with a president on other matters.

The high deference that the Senate owes to a president's cabinet choices is reinforced, indeed strengthened, in cases in which the nominee happens to be (or have been) a senator. Indeed, senatorial courtesy in the form of deference to presidential nominations of other senators to confirmable offices has proven to be enduring. Of the more than seventy (70) senators and representatives whom presidents have nominated to cabinet posts, ambassadorships, and other

⁷For a general review of both the comments and their significance, see M. Gerhardt, *supra* note 1, at 36-38.

⁸*Id.* at 162-65.

⁹The nominations of senators to cabinet-level offices have become routine in American history. Every president has engaged in this practice. Some of the more notable nominations include the following: President James Monroe's nomination of former senator John Quincy Adams as secretary of state; President Andrew Jackson's nomination of Senator Levi Woodbury of New Hampshire first as secretary of the navy and later as secretary of the treasury; President Abraham Lincoln's nomination of Senator Salmon P. Chase of Ohio as secretary of the treasury; President Rutherford B. Hayes's nominations of three senators to his cabinet; President James Garfield's nomination of Senator James Blaine to be secretary of state (Blaine would also serve as President Benjamin Harrison's secretary of state); President William McKinley's appointment of Senator John Sherman as secretary of state; President William Howard Taft's nomination of Senator Philander Knox as secretary of state; President Woodrow Wilson's nomination of former House member Albert Burlison as Postmaster General; President Warren Harding's nominations of former senator Albert Fall as secretary of the interior and of former House member Edwin Denby as secretary of the navy (admittedly, both appointments would prove to be disastrous for Harding as well as the nominees given their involvement in the Teapot Dome scandal); President Harry Truman's nominations of Senator James Byrne as secretary of state; President Richard Nixon's nomination of Senator William Saxbe from Ohio to become attorney general; President

cabinet-level offices,⁹ only a handful have failed to be confirmed.¹⁰ The reasons for such nominations are relatively obvious (and for the Senate's acquiescence in them): they have helped to build bridges with members of Congress, particularly in areas of critical concern to the presidents who nominated them. In addition, such appointments have brought expertise in the ways of the nation's Capitol and familiar faces to an administration, particularly in circumstances in which the chief executive has not spent much time there before becoming President.

II.

If the Senate is generally obliged to oppose a president's cabinet nominees only for special or strong reasons, the obvious question that next arises is what reasons have qualified as sufficiently special or strong to support the Senate's rejection of a presidential nomination. My survey of the history of the federal appointments process indicates that in the cases in which the Senate has rejected a cabinet nominee the reasons have been confined to serious conflicts of interest or ethical or personal misconduct.

Only five cabinet nominees have been rejected in American history. These nominees were Roger Taney as President Jackson's nominee to become Secretary of the Treasury in 1836; Caleb Cushing (rejected by the Senate three times as President Tyler's secretary of the treasury, with the margin increasing against him with each vote), Charles Beecher Warren (turned down twice in 1925 as President Coolidge's nominee for attorney general), Lewis Strauss (rejected by the Senate in 1959 as President Eisenhower's secretary of commerce), and Senator John Tower (rejected by the Senate in 1989 as President Bush's secretary of defense). Each of these failed nominations is attributable to a relatively serious problem with the nominee or the President who

Jimmy Carter's nomination of Senator Edmund Muskie of Maine to be his secretary of state; and President Ronald Reagan's nomination of Senator Richard Schweiker as secretary of health and human services. More recently, President Clinton in his first term successfully appointed several senators to cabinet-level offices: Senator Lloyd Bentsen of Texas as secretary of the treasury, former senator and vice president Walter Mondale as ambassador to Japan, former Tennessee senator Jim Sasser as ambassador to China, and former Colorado senator Tim Wirth as undersecretary of state for global affairs. In his second term, President Clinton successfully appointed Senator William Cohen of Maine. In late November 1999, the Senate, by a vote of 96-2, confirmed President Clinton's nomination of Carol Moseley-Braun, a former senator from Illinois, to be ambassador to New Zealand. Besides these many senators appointed to cabinet-level offices, presidents have also successfully nominated House members (for whom there has been similar deference) to similar positions. *See generally id.* at 147-49.

¹⁰I review these rejections in Part II.

¹¹By the time the Senate was considering Cushing's nomination as Secretary of the Treasury, John Tyler had become a president without a party. Tyler was a Democrat who had alienated fellow Democrats when he chose to run as the running mate of Whig presidential candidate William Henry Harrison; however, Whigs distrusted Tyler because he had been a Whig

nominated him. For instance, Caleb Cushing's rejections were due in part to the Senate's contempt for President Tyler and his policies.¹¹ The rejection of Roger Taney as President Jackson's secretary of the treasury occurred as part of the struggle between the Senate and President Jackson over the fate of the national bank, which Taney had played a major role in dismantling by withdrawing its funds at President Jackson's instructions. In 1925, Charles Beecher Warren had a conflict-of-interest that proved fatal to his nomination as Attorney General. He had been closely associated in private practice with some of the big businesses with which he would have had to deal as attorney general, including a long term as a representative of the sugar trust. Democrats and progressive Republicans doubted that Warren, with this kind of background, would be able to avoid the conflicts of interest and corruption in which so many high ranking officials in the Harding administration had engaged. After the Senate rejected Warren (the first time since 1868 that a cabinet nominee had failed to be confirmed), President Coolidge re-nominated him and the Senate again rejected him. When President Coolidge offered Warren a recess appointment, Warren declined.

Subsequently, the Senate in 1989 rejected President George Bush's first choice for his secretary of defense, former Texas senator John Tower. Tower's nomination failed for several reasons, including his unpopularity with many Democratic colleagues (who by the time of his nomination controlled the Senate by a ten-seat margin) and his history of drinking and womanizing.

Besides John Tower, the Senate has also rejected only a few other senators' nominations to high-ranking positions other than the Supreme Court¹² and the cabinet. In the first such rejection, the Senate, with Vice President John Calhoun casting the deciding vote, rejected President Jackson's nomination of former New York senator Martin Van Buren to become minister to Great Britain. Given that Van Buren not long before had been confirmed as Secretary of State, there was little question about his qualifications to serve as Minister to Great Britain. Nevertheless, he became a casualty in a contest waged between his and Calhoun's supporters for influence within the Jackson administration (and more generally within the Democratic party). A little more than a century later, President Truman, in February 1949, nominated his friend and former Senate colleague Mon Wallgren as chairman of the National Security Resources Board,

before he became a Democrat. Moreover, many senators harbored a strong dislike (and distrust) for Tyler because he not only had declared himself President rather than Acting President upon the death of Harrison (regarded at the time as an extremely assertive act) but also once he declared himself president he asserted a very strong constitutional philosophy that was at odds with that of the popularly elected Harrison.

¹²Three senators failed to be confirmed to seats on the United States Supreme Court: John Crittenden (1829), George Badger (1852), and George Williams (confirmed as President Grant's Attorney General but rejected as Grant's nominee for Chief Justice in 1873). In contrast to its traditional approach to cabinet nominations, senators have not given any special deference to Supreme Court nominees. Senators have been much more skeptical of the latter because of the unique life tenure that they enjoy and the special authority to exercise judicial review.

an agency charged with the important task of planning the industrial mobilization of the country for national defense. Though most senators liked Wallgren personally, several questioned his qualifications for the post, and Wallgren withdrew his nomination after the Armed Services Committee voted seven to six to reject his nomination. (Except for one Democratic member's vote to reject the nomination, the vote followed party lines.) In October 1949, President Truman successfully nominated Wallgren to the Federal Power Commission.

III.

Some observers of the federal appointments process are likely to claim that there have been some recent trends that arguably undercut the pattern of relatively high deference of cabinet nominees that I identified in Part II. To be sure, there have been such trends, but, after describing them below, I want to distinguish their relevance to the consideration of Senator John Ashcroft's nomination as Attorney General.

The pattern that I identified in the previous part extends from the late eighteenth century arguably until the present day. For instance, only four of Presidents Eisenhower's, Kennedy's, and Johnson's cabinet and other non-judicial nominees were rejected, forced to be withdrawn, or faced substantial opposition in the Senate. After President Johnson, every president has had, however, at least one in ten of his cabinet-level nominations seriously opposed. With a Democratic Senate throughout his presidency, Jimmy Carter fared best among chief executives with only 10 percent of his high-level political nominations opposed to any significant degree.

Of particular interest to the Committee may be the cabinet nominees who faced stiff opposition but withdrew their nominations rather than confront possible or probable rejection by the Senate. Without any doubt, the most prominent of these nominees in recent years was Zoe Baird. In 1993, Ms. Baird withdrew her nomination as Attorney General because of concerns that arose over her failure to pay Social Security taxes on domestic help. Some attribute her forced withdrawal to the fact that the domestic help in question were illegal aliens. In their view, her problem was her insensitivity to the fact that by hiring illegal aliens she was in effect rewarding them for breaking the law and encouraging others to follow suit. Others, including myself, argue that Baird's problem was that her conduct deprived her of the moral authority she would need as Attorney General to enforce the very law she had broken herself as a private citizen.¹³

At least three other cabinet nominees withdrew their nominations (or their names from being formally nominated) in recent years. These three include Judge Kimba Wood as Attorney General, Bobby Inman as Secretary of Defense, and most recently Linda Chavez as Secretary of Labor. Judge Wood withdrew her nomination as Attorney General after she had lost President Clinton's confidence because she had failed to give a frank answer to an inquiry about whether

¹³See, e.g., M. Gerhardt, *supra* note 1, at 127-28, 231.

she had a "Zoe Baird problem." Even though Judge Wood had legally hired an illegal alien as domestic help, the President and his advisers concluded she should not be nominated because they believed the public would oppose the nomination because illegal aliens were increasingly entering the country at the time and taking away jobs from legal residents and because they thought Judge Wood should have either had sufficient political acumen to know that this would have been the problem with her nomination or should have been more disposed to be more candid with the White House vetters. Similarly, Ms. Chavez withdrew her nomination as President-Elect Bush's Secretary of Labor after revelations she had failed to notify his vetting staff of the fact that she once had an illegal alien reside with her as well as accept money under conditions that arguably might have been compensation for services rendered (and if so qualified as circumstances governable under laws Ms. Chavez would have had to enforce as Labor Secretary). Lastly, Mr. Inman withdrew his nomination as Defense Secretary over his frustration over negative reporting about his record and qualifications.

For several important reasons, I caution the Senate Judiciary Committee not to make too much of the recent trends in the appointments process, particularly the defeated nominations of Zoe Baird's, Kimba Woods', and other candidates for certain other offices in the Justice Department¹⁴ and national security domain.¹⁵ First, a forced withdrawal cannot be equated with a rejection of a nominee. For one thing, a forced withdrawal does not require any formal action by the Senate. In some cases, it is conceivable the person would or could have been confirmed, though we will never know for sure. Thus, it is conceivable that a forced withdrawal might not

¹⁴In 1997, the Senate Judiciary Committee ultimately refused to confirm President Clinton's nomination of Bill Lann Lee to be the assistant attorney general in charge of the Justice Department's Civil Rights Division because of his apparent support for affirmative action programs that, in the view of some senators, was at odds with controlling Supreme Court authority. Similarly, both President Clinton's nomination of Lani Guinier and President George Bush's nomination of William Lucas failed to win confirmation as the head of the Justice Department's Civil Rights Division because of negative inferences from the nominees' records in dealing with civil rights issues.

¹⁵Presidents Carter, Reagan, Bush, and Clinton each had their nominations to sensitive national security posts meet with considerable resistance and opposition in the Senate. In particular, Presidents Carter and Reagan each had nominees for the Director of the CIA rejected by the Senate (Theodore Sorenson and Robert Gates, respectively). In addition, President Bush had his first nominee for Secretary of Defense (John Tower) rejected by the Senate, while Bobby Inman, President Clinton's nominee to become his second Secretary of Defense, withdrew his nomination. Moreover, in 1997, George Tenet became the fifth person nominated by President Clinton to head the CIA in four years. Two of the nominees prior to Tenet -- Anthony Lake and Michael Cerns -- withdrew their nominations after each had been accused of certain ethical lapses. Two of Clinton's nominees as Secretary of the Air Force also withdrew their nominations, one because of concerns about his integrity and the other because of his belated response to some senators' concerns about lax security in some Energy Department labs.

have occurred so much because of a significant loss of support in the Senate as it did because of other factors, such as the loss of confidence of a president in the nominee or a nominee's preference to save the President who nominated him or her from the political or other fallout resulting from a bruising confirmation contest. Moreover, it is easier to defeat a nomination before it reaches the Senate floor, precisely because defeat does not depend on any formal action by the Senate.

The second reason the Committee should be cautious in attaching significance to the increase in contested nominations is that it parallels if not derives in part from another disturbing trend over the past fourteen years. From 1985 until 1993 (the year in which Bill Clinton became president), the highest percentage of party-line votes in a given year in Congress was 13 percent in 1991. After Bill Clinton's inauguration as president in 1993, the percentage of party-line votes increased dramatically -- 30 percent in 1993, 28 percent in 1996, 26 percent in 1998, and 40 percent -- an all-time high -- in 1999. Although the reasons for the increase in such party-line votes may not be clear or settled (beyond the obvious desire for payback), they have certainly driven debates about federal appointments.

To put this second point slightly differently, the Committee should be concerned that its scrutiny of a nominee for a position as important as Attorney General should not be viewed as being attributable to a partisan motivation, such as payback. Otherwise, the public's respect for the process diminishes, and, even worse, the process threatens to transform itself into a vicious cycle in which senators oppose nominations primarily for the sake of getting even for past injustices. If the process is ever to avoid turning into a brazen contest of tit-for-tat, the cycle must end at some point soon.

The third important reason that the Committee should avoid giving too much credence to the recent trend in confirmation contests is that senators from both parties over the past two decades have gone on record as insisting that a president's cabinet nominees should be given a high degree of deference. During both the Reagan and Bush administrations, most Republicans argued that Presidents Reagan and Bush were generally entitled to have the cabinet nominees of their choice, while many Democrats criticized their Republican colleagues' efforts to thwart some of President Clinton's cabinet nominations on the ground the President was generally entitled to receive a relatively high level of deference from the Senate in his choice of cabinet nominees. I will not reprint these statements here. Nevertheless, I am sure many senators recall having made (or at least often heard) such statements in the recent past, and the instant hearings provide the important opportunity to abide by them.

The fourth and possibly most important reason that increased contests over (and forced withdrawals of) nominees for sub-cabinet offices is the significant differences in the relationships between cabinet and sub-cabinet officers and the Presidents who appointed them and in the responsibilities of these officers. Cabinet officers report directly to the President and operate directly under his supervision. Consequently, senators traditionally hold presidents directly responsible (for better or worse) for everything done by their cabinet officers. Because of the unique accountability that presidents have for the good and bad or controversial things done by their cabinet officers, senators are willing to give presidents relatively broad discretion in

choosing them. In contrast, sub-cabinet officers rarely work closely or on a daily basis with the President, and they are often responsible for very narrow fields. Presidents are less likely to know about or to supervise closely the daily or regular activities of these officials. Because some of these officials nevertheless wield relatively important discretion or responsibility and can have relatively significant impact in areas of special concern to many Americans, many senators have paid close attention to their records and qualifications. This degree of focus is out of line with the traditional deference given to presidents in choosing those officers who will not only supervise these underlings but also be the most visible representatives and agents of the President.

IV.

Demonstrating great deference to a cabinet nominee does not of course mean automatically acquiescing to it. The Senate is still entitled to scrutinize the nomination in order to determine whether there is a legitimately strong or compelling reason to oppose it. In the absence of such a reason, senators should be prepared to accept a president's choice for a cabinet office (even if it is one they would not have made themselves).

The extraordinarily few rejections of cabinet nominations provide some precedents for senators to follow, if they so choose, for opposing a cabinet nominee. Of the five cabinet nominations rejected in American history, two were for reasons that are plainly inapplicable in the current situation: Caleb Cushing because of the extraordinary unpopularity of the President who nominated him, and Lewis Strauss because most senators concluded they could not work with him. There is no reason to think that the President-Elect or his nominee is so unpopular that the nominee should be rejected on that basis alone.

The remaining three rejections do arguably constitute precedents that could be followed in appropriate cases. For example, the Senate's rejection of Roger Taney's nomination as Secretary of the Treasury arguably is a precedent for a senator to oppose a nomination if he or she believes the nominee would, if confirmed, pursue or support a policy that the senator believes is unconstitutional or thoroughly at odds with the best interests of the nation. Charles Warren's rejection as Attorney General arguably supports a senator's opposing a nominee for the same office if he or she believes a nominee has a sufficiently important conflict-of-interest that interferes with or compromises his ability to ensure impartial enforcement of the laws of the United States. The Senate's rejection of Senator Tower's nomination arguably also serves as a precedent for rejecting another nominee, even if he or she were a senator, for engaging in personal misconduct that is inappropriate in a cabinet officer.

To assist the Committee in determining the degree to which any of these precedents is relevant in the instant hearing, I suggest several other lines of inquiry for senators to consider. I trust these lines of inquiry are designed to reflect both the proper degree of respect for Senator Ashcroft (as both a senator and cabinet nominee) and the Senate's appropriate focus on his fitness to serve as Attorney General.

First, Senator Ashcroft has voted against various nominees to certain offices because of

their ideologies or constitutional philosophies. Is it fair to infer from these votes that Senator Ashcroft expects or believes that officers of the United States (of which of course the Attorney General is one) will conduct themselves or otherwise try to discharge the duties of their offices in accordance with their ideologies?

Second, would Senator Ashcroft expect or require political appointees in the Justice Department to share a particular ideology? What, if any, kind of ideology or criteria would Senator Ashcroft use for recommending or selecting personnel for other Justice Department offices, including but not limited to Deputy Attorney General, Solicitor General, and the Assistant Attorneys General for the Civil Rights Division and the Office of Legal Counsel? Moreover, what criteria would Senator Ashcroft use for recommending possible judicial nominees to the President or White House? In addition, what, if any, ideologies or viewpoints would disqualify certain people from being considered for political appointments in the Justice Department or judicial nominations?

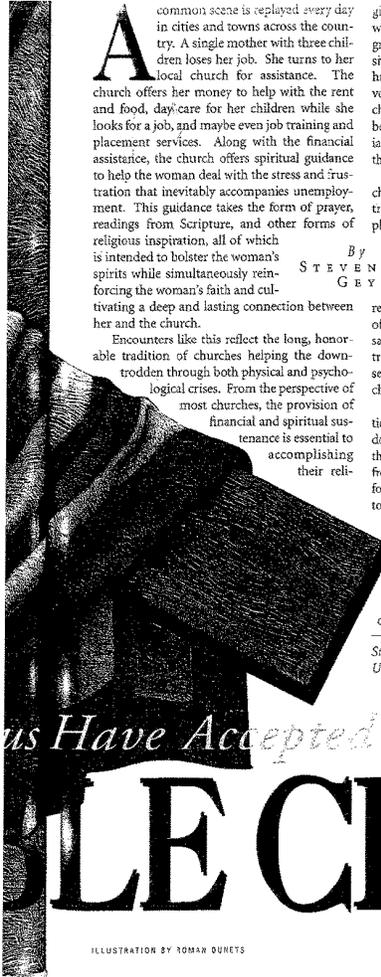
Third, how would Senator Ashcroft go about doing his job as Attorney General? How would he determine his priorities, and what would they be?

Fourth, are there any federal laws with which Senator Ashcroft disagrees either because he views them as bad policy or unconstitutional? How would he as Attorney General deal with a federal law with which he disagrees or is not, in his view, constitutional? Are there any federal laws that he believes should be under-enforced?

Fifth, if there are actions that senators have reason to believe raise possible conflicts-of-interest for Senator Ashcroft, they are, in my view, entitled to inquire about them. Moreover, if senators have reason to believe Senator Ashcroft has engaged in any conduct that is inappropriate for a cabinet officer, particularly Attorney General, they are also entitled to inquire about it.

Conclusion

Based on my study of the origins, structure, and evolution of the federal appointments process, I believe there are at least two principles that should guide the Senate Judiciary Committee in considering the nomination of Senator John Ashcroft as Attorney General. First, senators should be prepared to be very deferential to his nomination. Second, they should be prepared to vote against the nomination only for strong or compelling reasons. These reasons may include serious conflicts-of-interest or ethical or other misconduct that is incompatible with the nominee's responsibilities as Attorney General. Moreover, senators are fully entitled to make appropriate inquiries about the possible existence of such reasons before they reach any final conclusions about whether to vote for the confirmation of Senator Ashcroft as Attorney General.



A common scene is replayed every day in cities and towns across the country. A single mother with three children loses her job. She turns to her local church for assistance. The church offers her money to help with the rent and food, day care for her children while she looks for a job, and maybe even job training and placement services. Along with the financial assistance, the church offers spiritual guidance to help the woman deal with the stress and frustration that inevitably accompanies unemployment. This guidance takes the form of prayer, readings from Scripture, and other forms of religious inspiration, all of which is intended to bolster the woman's spirits while simultaneously reinforcing the woman's faith and cultivating a deep and lasting connection between her and the church.

Encounters like this reflect the long, honorable tradition of churches helping the downtrodden through both physical and psychological crises. From the perspective of most churches, the provision of financial and spiritual sustenance is essential to accomplishing their religious

missions, and they back up this judgment with hard work, sincere commitment, and a great deal of cash. Assisting the needy is expensive, and in this country churches historically have financed their charitable aid projects with voluntary contributions from members of the church. The focus of these projects typically has been the church's own parishioners and unaffiliated individuals who voluntarily are drawn to the church's religious message.

But suppose the government rather than the church provided the money that the church distributes to the needy. And suppose the unemployed single mother in the scenario described above does not belong to the church that gives the aid. And suppose that in the woman's town or neighborhood the state has referred her to the church as the primary source of assistance. And suppose the religious message distributed along with the aid directly contradicts the woman's own faith, and openly seeks to convince her to abandon her own church in favor of the church offering the aid.

These suppositions raise disturbing questions about the legitimacy of using public tax dollars to finance religious proselytizing, and these questions are being asked with increasing frequency as some religious groups push hard for the adoption of programs generally lumped together under "charitable choice." United States Senator John Ashcroft of Missouri coined this expression, and he has attempted to attach charitable choice provisions to a wide range of federal social welfare bills during the last decade. These proposals would require the government to offer federal funds to overtly religious organi-

By
STEVEN G.
GEY

Steven G. Gey is professor of law at Florida State University College of Law, Tallahassee, Florida.

us Have Accepted Federal Funding?

CHARITABLE CHOICE

zations that provide health and social welfare services. Under the charitable choice policies proposed by Senator Ashcroft, religious organizations would not have to avoid religious proselytizing while distributing the federally funded benefits, nor would the organizations have to change their structure in any way to diminish the strongly religious character of the groups participating in the federal program.

Senator Ashcroft has succeeded in adding charitable choice provisions to two pieces of federal legislation that already have been enacted into law. The Welfare Reform Act of 1996 and the Health and Human Services Reauthorization

These two charitable choice statutes may be only the beginning. At least 10 other bills with charitable choice provisions are currently pending before Congress. Some of these bills go beyond the language of the Welfare Reform Act and would create even stronger connections between the religious objectives of church groups and government aid programs. One example of the stronger charitable choice language appeared in an early version of the American Community Renewal Act, which would provide government financial assistance to economically depressed communities. Under this provision (which was dropped from subsequent versions of the bill)

church groups distributing federal aid could require substance abuse beneficiaries to "actively participate in religious practice, worship and instruction and to follow the rules of behavior that are religious in content or origin." Similar language

Most members of the general public do not realize how SIGNIFICANTLY these charitable choice proposals would CHANGE current law.

Act of 1998 each contain broad language directing the federal government (and the states that distribute the federal funds) to employ religious groups as well as secular groups to carry out the objectives of the federal program.

The language of the Welfare Reform Act provision is typical of charitable choice statutes. The purpose of the provision, according to the statute, is to "allow states to contract with religious organizations" to disburse welfare assistance "without impairing the religious character of such organizations."⁹ The provision generally prohibits both state and federal governments from refusing to use religious organizations to distribute aid and guarantees the independence of religious organizations that want to participate in government aid programs.

Certain types of government control over these organizations are specifically prohibited. The government is prohibited from regulating the internal governance of the organizations participating in public aid programs, and is also prohibited from interfering with the organizations' religious expression or their use of religious symbols or scripture. Although the federal money cannot be used to pay for the religious aspects of church operations, the atmosphere in which the federal money is distributed can be so permeated with religious overtones that beneficiaries could easily perceive that the religion message is part of the federal program.

can be found in a bill introduced by Senator Spencer Abraham of Michigan addressing federally financed drug treatment programs. Meanwhile Senator Ashcroft has proposed the Charitable Choice Expansion Act, which would apply charitable choice rules to every current social service program that involves the expenditure of federal funds.

Most members of the general public do not realize how significantly these charitable choice proposals would change current law. The sponsors of this legislation have contributed to the public ignorance of the implications of charitable choice by phrasing the provisions in the benign terms of prohibiting discrimination against religious organizations. The proposals' sponsors seek to benefit from the widespread public familiarity and support for the social service work of religiously affiliated organizations such as Catholic Charities USA and Lutheran Services in America, both of which receive government funding. But these organizations are very different from many of the organizations that would benefit from the new charitable choice proposals.

Traditionally, government aid has gone only to those institutions (such as Catholic Charities) that carefully divorce their secular assistance programs from the religious mission of the church with which they are affiliated. This separation has been dictated by the

Supreme Court's longstanding interpretation of the establishment clause of the First Amendment to the Constitution. For many years the Supreme Court has prohibited the government from directly funding what the Court calls "pervasively sectarian" institutions. The Court has held that "even though earmarked for secular purposes, when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission, state aid has the impermissible primary effect of advancing religion."² Thus, the Court has declared unconstitutional any government aid to pervasively sectarian institutions because such institutions cannot separate their secular activities from their religious missions.

Last June the Supreme Court addressed this issue in *Mitchell v. Helms*, a case involving a government program providing computers to private schools, including religious schools.³ Justice Thomas argued forcefully that the Court should abandon the restrictions on aid to "pervasively sectarian institutions" and allow such institutions to receive public money even if they divert that money to religious purposes. A majority of the Court rejected Justice Thomas's proposal. As a member of the Court's majority, Justice O'Connor argued

against Justice Thomas's attempt to rewrite several decades of constitutional law, and noted that the constitutionality of state aid to religious institutions continues to depend on those institutions being able to segregate religious activities from secular activities so that no state aid furthers the religious part of the enterprise.⁴ If a religious institution cannot segregate its religious from its secular activities, then government aid to that institution is therefore unconstitutional.

Justice O'Connor's conclusion in *Helms* is consistent with the Supreme Court's 1988 decision in *Bowen v. Kendrick*, which upheld a provision of the federal Adolescent Family Life Act allowing religiously affiliated institutions to participate in programs funded by the Act.⁵ In *Bowen* the Court emphasized that it was not unconstitutional for religiously affiliated institutions to participate in the program, because the Court assumed that religiously affiliated groups would carry out their functions under

the statute "in a lawful, secular manner." The Court also noted, however, that it would be unconstitutional for any recipient group to use government funds for religious activities.

Against the background of these cases it is difficult to see how charitable choice statutes can withstand constitutional scrutiny. In many respects the thrust of charitable choice seems to be directly contrary to the Supreme Court's insistence that publicly funded secular programs must be kept distinct from private religious activities. Charitable choice statutes allow church groups receiving federal funds to remain structurally independent of government regulation, and allow them to practice their faith without restrictions even as they implement a federal welfare program. Thus, charitable choice statutes seem to permit exactly what the Supreme Court has prohibited—the use of government money to finance religious activities.

Charitable choice infringes on religious liberty in several different ways, which helps to explain the reason the Court has traditionally viewed similar programs very skeptically. First

Charitable choice statutes seem to PERMIT exactly what the Supreme Court has prohibited—the use of government money to FINANCE religious activities.

of all, charitable choice infringes on the right of taxpayers not to fund the religious activities of churches to which they do not belong. The perceived interest of each citizen in being free from mandatory religious assessments was probably the single most important motivation for the adoption of the religion clauses of the First Amendment. At the time the Constitution was framed, several states had controversial taxes to support churches. Indeed, the immediate precursor of the First Amendment was the Virginia Bill for Religious Freedom, which was drafted by Thomas Jefferson in response to a proposal by Governor Patrick Henry to impose a tax on Virginia citizens for the support of religion. In a famous treatise supporting the adoption of Jefferson's Bill, James Madison commented that the government should not be permitted to force a citizen to contribute "even three pence" for the support of religion.

To Madison and Jefferson, the use of tax money to support religion was a quintessential

form of religious coercion, and they believed that religious coercion by government violated the most basic precepts of religious liberty. The coercion of taxpayers by charitable choice legislation is problematic enough, but charitable choice also offers the possibility of an even more direct form of religious coercion. Charitable choice potentially subjects beneficiaries of state social service programs to religious proselytizing as a condition of receiving the government benefits to which they are entitled. Charitable choice legislation carefully preserves religious organizations' right to engage in sectarian practices while participating in a government program, but does much less to protect

religious organizations from discriminating against beneficiaries from other faiths (although the religious organization may refuse to hire anyone but members of the organization's own faith to carry out the organization's duties under the federal program). But the real concern with charitable choice is not that religious organizations will discriminate against members of other faiths, but rather that religious organizations will use the government programs as an opportunity to lure members of other faiths to their own denomination. In any event, it is not difficult to imagine the discomfort of beneficiaries who will be forced to run a sort of religious gamut to obtain government aid.

It is not difficult to imagine the DISCOMFORT of beneficiaries who will be FORCED to run a sort of religious gamut to obtain government aid.

Charitable choice statutes deal with this problem by requiring states to offer alternative providers of aid for beneficiaries who object to the religious character of an organization to which the beneficiary is initially

assigned. But the charitable choice statutes do not require states to inform individual beneficiaries that they are entitled to request alternative, secular providers of aid, so the beneficiaries must learn of this right on their own and take the initiative to object to the religious provider. Charitable choice statutes also do not require that alternative providers be convenient to the beneficiary. The alternative provider may even be in another town from the beneficiary's home. Even in the best circumstances, requesting an alternative provider will result in a delay in the provision of aid. Although the states that coordinate federal aid programs are required to provide alternative providers "within a reasonable period of time" after a beneficiary objects to the initial assignment, this is an imprecise standard that will inevitably disadvantage beneficiaries simply because they do not want to be subjected to a particular religious environment in order to collect federal benefits.

Charitable choice legislation does not prohibit religious organizations participating in government aid programs from engaging in overt religious activities while carrying out their public duties under the programs. Indeed, charitable choice statutes prohibit the government from limiting the religious expression of sectarian organizations distributing federal money and also prohibits the government from forcing such organizations to remove religious symbols or iconography from facilities used to distribute the federal aid. Thus, charitable choice legislation sets up a system in which a public benefits program will often be carried out in a context that is permeated with religious symbols and specifically designed to advance the religious objectives of one particular faith.

In many cases beneficiaries of federal programs such as the Welfare Reform Act will be subjected to subtle (and occasionally not so subtle) religious overtures while simply attempting to obtain benefits to which they are entitled under federal law. In contrast to the explicit protections offered to religious organizations participating in the program, charitable choice statutes only imperfectly protect beneficiaries who may not desire to join the religious activities of the religious group distributing the federal aid. Charitable choice statutes do prohibit

assigned. But the charitable choice statutes do not require states to inform individual beneficiaries that they are entitled to request alternative, secular providers of aid, so the beneficiaries must learn of this right on their own and take the initiative to object to the religious provider. Charitable choice statutes also do not require that alternative providers be convenient to the beneficiary. The alternative provider may even be in another town from the beneficiary's home. Even in the best circumstances, requesting an alternative provider will result in a delay in the provision of aid. Although the states that coordinate federal aid programs are required to provide alternative providers "within a reasonable period of time" after a beneficiary objects to the initial assignment, this is an imprecise standard that will inevitably disadvantage beneficiaries simply because they do not want to be subjected to a particular religious environment in order to collect federal benefits.

Evidence that these problems regularly arise may finally force the courts to confront for the first time the constitutionality of charitable choice. In late July 2000 the American Jewish Congress and the Texas Civil Rights Project filed the first major lawsuit in the country challenging the constitutionality of a Welfare Reform Act charitable choice grant. The lawsuit challenges a state of Texas welfare-to-work grant to an organization called the Jobs

Partnership of Washington County. According to the lawsuit, the Jobs Partnership is a consortium of evangelical organizations and local businesses in Brenham, Texas. According to the Partnership, it is dedicated to helping participants "to find employment through a relationship with Jesus Christ."

The lawsuit cites multiple ways in which religious proselytizing has infused the government-funded Job Partnership program. Among other things, the group operated a 12-week course for job seekers, which included a Monday night Bible study group and a Thursday session applying the Bible lessons to job skills training. According to a 1999 evaluation of the program by the Texas Department of Human Services (which approved the grant and is a defendant in the lawsuit), the materials used for the Job Partnership courses were explicitly Christian and made biblical instruction a centerpiece of the program. The lesson for week five of the 12-week course included the statement "to work is to serve God and man," and the lesson for week six asserted that "all authority comes from God."

Most disturbing of all, the Department of Human Services evaluation revealed that one third of the participants surveyed in the program reported "pressure" from the program "to join a church or change your beliefs." The Reverend George Nelson, president of the Partnership's board of directors, seemed to concede the accuracy of the lawsuit's characterizations in an interview with the *Dallas Morning News*: "We teach them about what the Word of God says about life itself. Work is not your enemy; your boss is not your enemy. Things of that nature—taking away the myths embedded in people about what God says about work. That's basically what it is, using the Bible, of course."¹

The Texas lawsuit may finally give the courts an opportunity to set limits on what charitable choice statutes may allow church groups to do with government funds they have accepted for social service work. Ironically, a ruling that imposes strict restrictions on church-run social services will simply create another kind of dilemma for churches considering succumbing to the strong appeal of federal money. To comply with constitutional restrictions on accept-

ing government money, the churches may have to modify the way they provide the services so radically that they fundamentally alter the nature of their own ministries. The fear expressed so far has been that charitable choice will infuse government services with religion, but the equally grave threat is that charitable choice will create financial incentives to secularize religion. In the end both government and religious institutions will suffer from the experience.

In the larger scheme of things, charitable choice is just another skirmish in the longstanding battle over the proper relationship between church and state. The best outcome of this skirmish would be a stern reminder of the continuing importance of the separation of church and state.

In the social services area, as in other areas where church/state disputes arise, the separation of church and state continues to serve three functions essential to the preservation of religious liberty: It ensures that the government will not be controlled by religious groups; it

The real question posed by charitable choice is whether the abstract VALUE of religious liberty can OVERCOME the concrete allure of easy cash.

ensures that churches will not be controlled by the government; and it ensures that individuals will remain free to decide for themselves the direction of their spiritual quests.

The real question posed by charitable choice is whether the abstract value of religious liberty can overcome the concrete allure of easy cash. For many churches it is easy to quantify the financial enticements of charitable choice, but the potential costs to religious liberty are immeasurable. □

FOOTNOTES

¹ 42 U.S.C. §604a (b) (1996).

² *Meek v. Pittenger*, 421 U.S. 349, 365-366 (1975).

³ *Mitchell v. Helms*, 120 S.Ct. 2330 (2000).

⁴ See *Mitchell*, 120 S. Ct. 2330 (O'Connor, J., concurring in the judgment).

⁵ *Bowen v. Kendrick*, 487 U.S. 589 (1988).

⁶ *Ibid.*, p. 612.

⁷ Christopher Lee and Jeffrey Weias, "Charitable Choice' Gets Challenge," *Dallas Morning News*, July 25, 2000, p. 23A.

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January 12, 2001

Vice President elect Richard E. Cheney
The Bush-Cheney Presidential Transition Office
1800 G. Street NW
Washington, DC 20270

Dear Vice President -elect Cheney:

I write in support of Senator John D. Ashcroft's nomination to serve as the United States Attorney General. I can think of no one better qualified to serve in this position.

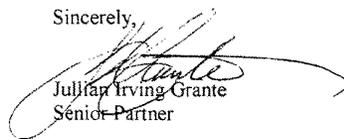
I have been honored to work with Senator Ashcroft in support of several legislative bills impacting education, juvenile crime, child abuse, and domestic violence. In 1999, I worked on behalf of the Frist-Ashcroft IDEA amendment to the juvenile justice bill (S.254). You will recall that the amendment passed in the Senate by an overwhelming vote of 74 to 25.

I can think of no member of the U.S. Senate, past or present, who is more compassionate about the issues impacting American families than Senator Ashcroft.

As an African American, who has fought hard over the past 30 years to increase minority participation in the party of Lincoln, I would not hesitate to speak on behalf of Senator Ashcroft -- a leader, a public servant, and a strong believer in Christian values I share.

Please contact me if I can be of service to you, President-elect Bush or the Senate Judiciary Committee and to Senator Ashcroft.

Sincerely,



Julian Irving Grante
Senior Partner

Enclosures
Background Information

Op-Ed*Rev. Jesse Jackson never tires of pulling out the 'race card'*

I AM CONSTANTLY amazed at the causes that Jesse L. Jackson decides to support. As a man of the cloth, a minister of the gospel, I would think that his first responsibility would be to unify those who disagree.

Seldom does a week pass, though, when the Rev. Jackson is not promoting his personal agenda in the name of the "poor and disenfranchised" for whom he claims to speak. My question is, who elected Jesse Jackson president of "Black America"?



COMMENT
Julian Irving Grante

He hardly represents me and millions of other African-Americans or minorities who love America and work hard every day to succeed and bear social and economic fruit for our families' futures.

In 1995, the Rev. Jackson, a Christian minister, stood shoulder to shoulder with Louis Farrakhan, a Muslim minister, to encourage African-Americans to participate in the Million Man March. Together, they spread a false gospel of men coming together to "atone for their sins."

The Scriptures, in Romans 3:25, say that, "God presented him [Jesus] as a sacrifice of atonement through faith in his [Jesus'] blood." I understand that many in attending that march might not know the truth of the Gospel of Jesus Christ. So, a powerful theme like "atonement" sounded like a good message.

But, how dare any man stand before God and man, and claim to do what the Bible says Jesus has already done. Does not this "man of the cloth" understand this?

This year the Rev. Jackson was nowhere to be found as the Nation of Islam continued to engage in spiritual fraud and separatism. This time under the banner of the Million Family March. As in 1995, I boycotted this event and encouraged others to join me, because I believed these events were merely recruitment tools for the Nation of Islam, who claims their ultimate goal was unity and economic empowerment for African-Americans.

This year Minister Farrakhan asked families to pledge \$100, toward raising a million dollars for social programs. The Nation of Islam has not fully accounted for the hundreds of thousands of dollars collected on the mall in 1995. We have heard no comment from the Rev. Jackson on this year's march, or this new economic empowerment initiative. How strange.



ASSOCIATED PRESS

The Rev. Jesse Jackson (right) does not represent the interests of all African-Americans.

Now the Rev. Jackson has a new cause and is again using the "race card" to challenge the election of George W. Bush as America's next president. Together with such political allies as the Congressional Black Caucus and the NAACP, the Rev. Jackson is attempting to take civil rights back to 1965.

The Rev. Jackson appears to me and to countless other Americans, as a self-promoting opportunist who would use any event or cause to keep his name in lights and in the press. Is his goal to incite race riots across America, like those in 1968?

And, what of the biblical principle of "honoring all authority" since there is none other than that "instituted by God"? He has yet to apologize for characterizing President-elect Bush and my fellow Republicans as "racists hell-bent on dragging black people behind pickup trucks to their deaths." What Bible is he reading anyway?

If Jesse Jackson does not believe in the Scriptures, or in the principles of democracy that make America great, then why doesn't he turn in his passport and move to some other country that will allow him to live his dream.

In a recent interview on "Meet the Press," the Rev. Jackson claimed that President-elect Bush,

"clinched the election through voter fraud and trampled on the 1965 Federal Voting Rights Act." Nothing could be further from the truth.

As in past elections, millions of Americans—black, white and others—decided that their votes would not make a significant difference in the outcome of one of the most important elections in American history. How wrong they were! But, should we hold another election because they have now seen the error of their ways?

Now is time for the Rev. Jackson to truly act like a Christian and not like a false prophet. It's time to offer to break bread with and to work with the new president and his administration. It's time to cease to continue to threaten social unrest as he promotes his newest cause.

In the eight years Americans have lived under the authority of the Clinton presidency, which has contributed to the moral decline of our nation's family and social values, Jesse Jackson has managed to alienate even members of his own party. He has a strained and shallow relationship at most, with the president and members of his administration. Even Senate Minority Leader Thomas A. Daschle, D-S.D., has said recently on ABC's "This Week" that the time has come to put the election behind us.

As a Christian and disciple of Jesus Christ—and as an African-American conservative, proud to be an American—I say to the Rev. Jackson, that enough is enough! I say to Jesse Jackson that today is a good day to set an example of unity and not division between God's people.

Maybe then for the first time since the assassination of Dr. Martin Luther King Jr. in 1968, he can claim the position as heir to his legacy and stand for equal rights, liberty, freedom, justice and opportunity for all through peaceful measures.

JULIAN IRVING GRANTE, of Spotsylvania County, is a motivational speaker, youth and family advocate, and a senior partner with J. Irving & Draper.

JOHN ASHCROFT
MISSOURI

United States Senate
WASHINGTON, DC 20510-2504

May 27, 1999

Julian Irving Grante, Senior Partner
J. Irving & Draper
Judicial Advocates
10803 Heatherwood Drive
Spotsylvania, VA 22553

Dear Mr. Grante:

I want to express to you my deepest appreciation for your support of the Frist-Ashcroft IDEA amendment to the juvenile justice bill (S. 254). As you may know, the amendment passed in the Senate by an overwhelming vote of 74 to 25.

Your views on school discipline and other juvenile issues are extremely valuable to me. I know that you and I share the belief that school officials should have the authority to ensure that our schools are places where teachers can teach and students can learn free from the fear of violence.

You may be aware that in order to avoid a threatened filibuster of S. 254 by Senator Harkin, the floor managers of the bill agreed to accept a Harkin amendment requiring school personnel to provide certain interventions and services to any student removed from school for weapons possession or acts of violence. I strongly opposed the Harkin amendment and will work to have it struck from the juvenile justice bill when it goes to conference committee.

Again, thank you for your support of the Frist-Ashcroft amendment. I hope to work with you again on other measures that help all children across the nation receive a world-class education in a safe and secure environment.

Sincerely,



John Ashcroft
United States Senate

JDA: aeb

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SANTA BARBARA, CALIFORNIA 93106-3130
 FAX: (805) 893-2059

1/9/01

Senator Patrick Leahy
 433 Russell Senate Office Building
 Washington, DC 20510

Dear Senator Leahy:

I write to you in your capacity as the ranking minority member of the Senate Judiciary Committee, perhaps soon to be faced with nominees for appointment to the US Supreme Court. Like many Americans I am concerned that one or two unwise appointments will threaten many of our rights and liberties.

One special concern is the right of choice in the case of pregnancy. My concern is not just the maintenance of the *Roe v. Wade* principle, however. Just as profound is the issue of how abortion opponents argue their case. With few exceptions, the premise of their argument is that "life" begins at conception, which, by their reasoning, makes all abortions murder. Such a premise is not only questionable, but also it unconstitutionally establishes what can only be called one religious conviction over another, and thus violates the religious free exercise of persons not sharing the premise. Let me elaborate.

1. Until such time as a fetus' life can be sustained outside the womb, science cannot say at what point "life" begins. Thus, whatever answer one chooses is a conscientious one, however strongly or weakly it is held.
2. As the US Supreme Court unanimously declared in *United States v. Seeger* (1965), one's convictions or conscience need not be expressed in religious language in order to be recognized as the free exercise of conscience.
3. Thus, any outlawing of abortion *on the grounds that life begins at conception* is an unconstitutional restriction of some people's religious free exercise and an unconstitutional establishment of the religion of others. As Justice John Paul Stevens wrote in dissent in *Webster v. Reproductive Health Services* (1988):

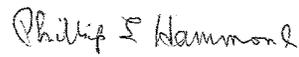
I am persuaded that the absence of any secular purpose for the legislative declaration that life begins at conception . . . makes the [Missouri bill's] preamble invalid under the Establishment Clause.

I hope you will quiz Supreme Court nominees on this issue. In all the arguments I have read regarding abortion, I have seldom seen reference to the *religious* rights of people favoring choice, while there is no lack of efforts by those opposing choice to impose their religious convictions—to which they are of course entitled—on all Americans.

I have written about this matter in my *With Liberty for All: Freedom of Religion in the US*, Chapter Four (Westminster John Knox Press, 1998). A more elaborate case is made by Peter S. Wenz, *Abortion Rights as Religious Freedom* (Temple University Press, 1992).

I am sure that no President and no Court nominee will admit to using a litmus test. It is appropriate in my view, therefore, that discussion disclose whether a potential Justice recognizes that the abortion issue is not just political but religious as well. Any nominee who agrees that this issue has a religious component (on both sides, as it were) can be expected—unless that person is a hypocrite—to uphold the pro-choice position and not trample on religious free exercise.

Thank you for your consideration.

A handwritten signature in cursive script that reads "Phillip E. Hammond".

Phillip E. Hammond

January 16, 2000

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

As the chief law enforcement officer of the nation, the Attorney General of the United States is charged, among other duties, with the criminal enforcement of the federal campaign finance laws.

These laws are of central importance in protecting the integrity of our political process and protecting citizens against corruption and the appearance of corruption of the nation's elected leaders.

Based on the record and positions of Attorney General-nominee John Ashcroft, we believe that basic questions exist about whether he would be a credible and serious enforcer of the nation's anti-corruption laws, and whether he would defend these laws in the courts.

We believe, furthermore, that these questions are all the more important given the controversial track record of the current Justice Department in failing to effectively enforce the campaign finance laws.

We therefore strongly urge the Judiciary Committee, and the Senate as a whole, to carefully examine former Senator Ashcroft's record in this area, in the course of considering his nomination to be Attorney General.

Former Senator Ashcroft's record shows that he disagrees with the federal campaign finance laws he would be charged with enforcing. And he believes that important campaign finance reform measures under consideration in Congress, which he would be charged with defending in the courts if enacted, are unconstitutional.

His record also shows that he engaged in a major evasion of federal campaign finance laws in his Senate race last year by directly raising in his own name soft money contributions that were then channeled through national and state political party committees and spent to help

his Senate campaign. This evasion resulted in the solicitation and receipt of soft money contributions from corporate interests and others with important case-specific matters pending in the Justice Department.

Federal candidates are prohibited from raising and spending soft money in their campaigns. While other Senate Democratic and Republican candidates also engaged last year in the same kind of evasive — and we believe illegal — conduct undertaken by Senator Ashcroft, none of these other individuals is under consideration to be the nation's chief law enforcement officer.

Senator Ashcroft has made clear that he disagrees with core provisions of the existing campaign finance laws.

In 1997 remarks to the Claremont Institute, for example, Senator Ashcroft said, "I don't believe we should limit what people can give to politics."

The limits on what individuals can give to candidates and political parties, however, were enacted in 1974 in response to huge contributions made during the Watergate scandals. These limits have been consistently upheld by the Supreme Court as necessary to protect against corruption and the appearance of corruption.

As Justice David Souter wrote earlier this year, in an opinion joined by Chief Justice William Rehnquist and reaffirming the constitutionality of contribution limits, "[T]here is little reason to doubt that sometimes large contributions will work actual corruption of our political system, and no reason to question the existence of a corresponding suspicion among voters."

Justice Souter further wrote that, "Leave the perception of impropriety unanswered and the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance."

As Attorney General, former Senator Ashcroft also would be charged with defending in the courts the constitutionality of any new campaign finance laws enacted by Congress.

Yet Ashcroft has taken the position that the McCain-Feingold legislation to ban soft money, the principal campaign finance reform measure under consideration in Congress, is "flatly unconstitutional" and constitutes "the banning of political speech."

These remarks raise the basic question as to whether former Senator Ashcroft would act to ensure that the Justice Department defended the constitutionality of the McCain-Feingold bill if it is enacted into law and challenged in the courts.

Former Senator Ashcroft's evasion of federal campaign finance laws in the last election raises basic questions about how vigorously he would pursue campaign finance violators and how credible he would be in carrying out this responsibility.

Ashcroft established for his last campaign the "Ashcroft Victory Committee," a so-called "joint fundraising" committee with his party which was designed to raise and funnel federally illegal "soft money" into his 2000 Senate campaign.

The Committee raised money from sources that cannot legally support federal candidates, such as corporations, and in amounts in excess of the federal contribution limits. The soft money was then transferred to the National Republican Senatorial Committee, which then transferred the money to the Missouri Republican party, which then spent the money on so-called "issue ads" that were clearly designed to promote Mr. Ashcroft's Senate campaign.

In other words, the Ashcroft Victory Fund was simply a vehicle for Senator Ashcroft to raise soft money in his own name and then to knowingly launder this money through his political party into his reelection campaign effort.

We believe this practice violated the federal campaign finance laws. But even if this practice was not illegal, it represents a blatant evasion of federal campaign finance prohibitions and limits designed to protect against corruption by an individual who as Attorney General would be charged with enforcing these laws.

The soft money raised by the Ashcroft Victory Committee also raises serious questions about case-specific conflicts of interest and the appearance of such conflicts for Ashcroft if he were to serve as Attorney General. These questions need to be addressed.

For example, Ashcroft's Victory Committee last year received \$10,000 in corporate soft money from Microsoft Corporation.

How would former Senator Ashcroft resolve the apparent conflict of interest between the corporate contribution he raised from Microsoft and his responsibilities as Attorney General to make decisions regarding the Justice Department's landmark lawsuit against Microsoft, now pending in the federal court of appeals?

Similarly, Ashcroft's Victory Committee received a \$25,000 soft money contribution from the National Rifle Association. The Justice Department is currently defending against lawsuits that have been brought by gun control opponents to challenge federal gun control laws.

How would former Senator Ashcroft resolve the apparent conflict of interest between the soft money contribution he raised from the NRA and his responsibilities as Attorney General to defend gun control laws in these cases and in any other cases challenging gun control laws?

The Justice Department in recent years has had to decide whether to approve mergers between MCI and WorldCom and MCI and Sprint. Ashcroft's Victory Committee received corporate soft money contributions of \$10,000 from MCI WorldCom and \$10,000 from Sprint.

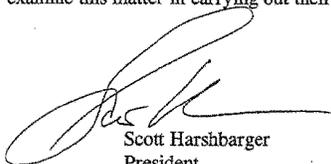
Other telecommunications companies, such as AT&T, have been the subjects of Justice Department decision-making in the past. Ashcroft's Victory Committee received a \$25,000 soft money contribution from AT&T.

How would Ashcroft resolve the potential conflicts of interest between the soft money contributions he raised from MCI WorldCom, Sprint and AT&T and any case-specific decisions he might be faced with as Attorney General regarding these companies or regarding mergers in the telecommunications industry that would affect these companies?

These are three areas where former Senator Ashcroft's evasive soft money operation during the 2000 election raises serious questions regarding Ashcroft responsibilities as Attorney General that need to be carefully examined. There may be other examples as well that stem from the soft money raised by Ashcroft's Victory Fund.

At a time when there has been great controversy over the Justice Department's failure to effectively enforce the nation's campaign finance laws and when Congress may soon take action to strengthen those laws, it is essential that the next Attorney General be a credible enforcer and defender of these laws.

Senator Ashcroft's record raises serious questions about his ability to fulfill this responsibility. We strongly urge the Senate Judiciary Committee and each Senator to carefully examine this matter in carrying out their responsibilities in the confirmation process.



Scott Harshbarger
President
Common Cause
1250 Connecticut Avenue, NW
Washington, DC 20036
202/833-1200

Sincerely,



Fred Wertheimer
President
Democracy 21
1825 I Street, NW #400
Washington, DC 20006
202/429-2008

Of counsel:

Donald J. Simon
Sonosky, Chambers, Sachse, Endreson & Perry
Suite 1000
1250 Eye St. NW
Washington, DC 20005

**Statement of Sen. Hatch in response to the testimony
of Michael Barnes of Handgun Control**

I am troubled by the testimony of Michael Barnes of Handgun Control, and I feel compelled to respond to him at length. Mr. Barnes criticizes Senator Ashcroft for his support for a concealed-carry initiative in Missouri in 1999. Barnes characterizes this initiative as "an ill-conceived and extreme ballot referendum." While reasonable people can differ about concealed-carry laws, I would note for the record that Michigan enacted a statute last month to become the thirty-second state to allow the carrying of concealed weapons for self-protection. Given that a majority of states allow this practice, Senator Ashcroft's support for the referendum in Missouri can hardly be labeled as "extreme."

In addition, Mr. Barnes claims that Senator Ashcroft's record "establishes that he would not vigorously enforce and defend the nation's gun laws that have helped reduce gun violence." Senator Ashcroft's distinguished record demonstrates otherwise. As Missouri Attorney General, Senator Ashcroft did not allow his personal beliefs on the Second Amendment to undermine the enforcement of firearm laws. For example, in a 1977 Attorney General Opinion, Attorney General Ashcroft issued an opinion which interpreted state law to prohibit prosecuting attorneys from carrying concealed weapons *even while engaged in the discharge of official duties*. Attorney General Ashcroft reached this opinion despite the fact that some prosecuting attorneys conducted their own investigations, and as a result, faced dangerous situations. As noted above, Senator Ashcroft supports concealed carry laws, but he upheld the law regardless of his personal beliefs.

In addition, Senator Ashcroft was one of the leading advocates in the Senate of increase federal prosecution of gun crimes. The current Justice Department, unfortunately, has not made gun prosecutions a priority. Between 1992 and 1998, prosecutions of criminals who use a gun to commit a felony dropped nearly 50 percent, from 7,045 to 3,765. To reverse this trend, Senator Ashcroft sponsored legislation to authorize \$50 million to hire additional federal prosecutors and law enforcement officers to increase the federal prosecution of criminals who use guns.

In addition, Senator Ashcroft authored legislation to prohibit juveniles from possessing assault weapons and high-capacity ammunition clips, and he voted for legislation that prohibits any person convicted of even misdemeanor acts of domestic violence from possessing a firearm. Senator Ashcroft voted for legislation to extend the Brady Act to prohibit persons who commit violent crimes as juveniles from possessing firearms. Senator Ashcroft sponsored legislation to require a five-year mandatory minimum prison sentence for federal gun crimes and for legislation to encourage schools to expel students who bring guns to school. Given his legislative record, it is absurd to argue that Senator Ashcroft will not "vigorously enforce and defend the nation's gun laws." It is also disingenuous to argue that Senator Ashcroft has "extreme views on the Second Amendment."

Mr. Barnes also claims that Senator Ashcroft voted to "weaken current law" when he voted for an amendment that I authored to require backgrounds at gun shows. Instead of weakening current law, this bill would have extended the Brady Act to require mandatory instant background checks for all firearm purchases at gun shows. This legislation, however, required the government to complete the "instant" background check within 24 hours because gun shows last only 1-2 days. It is important to remember that 95 percent of all background checks are completed within 2 hours.

Senator Lautenberg also sponsored legislation to require background checks at gun shows. His bill would have allowed authorities three business days to complete the background check, despite the fact that most gun shows do not last for three business days.

The Senate was evenly divided on these two gun show provisions. Senator Ashcroft supported the gun show provision that I authored. Both gun show provisions would have, for the first time, required mandatory background checks for all purchases at gun shows. In short, Mr. Barnes' testimony mischaracterizes Senator Ashcroft's vote on this issue.

Mr. Barnes also questions whether Senator Ashcroft would defend the constitutionality of the assault weapons ban. However, Senator Ashcroft pledged to support the reauthorization of the assault weapons ban in 2004. In addition, he pledged to continue the longstanding practice of the Solicitor General's office to defend the constitutionality of federal statutes so long as a reasonable argument can be made in the statute's defense.

In conclusion, I adamantly object to the testimony of Mr. Barnes. As the past President of the National Association of Attorney Generals, John Ashcroft recognizes the importance of enforcing and prosecuting gun crimes. John Ashcroft has an outstanding record and will make a fine Attorney General.

MERCER COUNTY PROSECUTING ATTORNEY

Mercer County Courthouse
Princeton, Missouri 64673
(660) 748-3332

September 3, 1999

The Honorable John D. Ashcroft
United States Senator
170 Russell Office Bldg.
Washington, DC 20510

Dear Senator Ashcroft:

As Missouri Prosecutors, we work to enforce the laws of our cities, counties, and the state of Missouri on a daily basis. We are aware of significant concern among law enforcement officials regarding the nomination of Missouri Supreme Court Judge Ronnie White to the federal bench. We share this concern.

Judge White's record is unmistakably anti-law enforcement, and we believe his nomination should be defeated. His rulings and dissenting opinions on capital cases and on Fourth Amendment issues should be disqualifying factors when considering his nomination.

Judge White has evidenced clear bias against the death penalty from his seat on the Missouri Supreme Court. He has voted against the death penalty more than any other judge has. In capital cases, he has dissented more than any other judge. Further, he has filed more lone dissents in capital cases than any other judge. Without question Judge White has displayed an anti-capital punishment bias that is second to none on the Missouri Supreme Court.

One of the most terrible examples of this bias came in *State v. Johnson*, when Judge White filed a lone dissent, supporting reversal of the capital sentence imposed on Jim Johnson. Johnson was sentenced to death for the murders of Cooper County Sheriff Charles Smith, Moniteau County Deputy Les Roark, Miller County Deputy Sandra Wilson, and Pam Jones, the wife of Moniteau County Sheriff Kenny Jones. Except for Judge White's dissent, the ruling against this brutal cop killer was unanimous. Judge White was the lone member of the Court to vote to give Johnson a new trial and a second chance to go free.

In *State v. Damask*, and *State v. Alvarez*, the Supreme Court ruled 6-1 that drug checkpoints on main highways in Franklin and Texas Counties were constitutional. Judge White, again, disagreed alone. Judge White voted to throw out evidence against accused drug traffickers who were arrested at checkpoints on Interstate 44 and U.S. 60.

Oct 14, 1999 11:36AM SUBJECT: JUDGE WHITE & NOMINATION TO FEDERAL BENCH

Another troubling concern, while not in itself sufficient reason to disqualify, is Judge White's lack of significant experience in trial courts. Certainly the nomination would be less flawed if he had significant experience as either a criminal litigator or trial judge. He has neither.

On the Missouri Supreme Court, the other six members of the Court routinely override Judge White's outlandish dissenting opinions. In Missouri, we are fortunate to have a Supreme Court that is sympathetic to law enforcement, and prone to interpreting the law as it is written. However, if Judge White is placed on the federal bench, he will be a one-person majority. His flawed opinions will be the only ones that count, and barring an appeal to higher courts, he will be accountable to no one.

People in the law enforcement community are rightly concerned by Judge White's votes in cases like *Johnson* and *Damask*. We urge you to show your support for the hard work of Sheriffs, police officers, prosecutors, and other law enforcement officials, and help defeat the nomination of Judge White to the federal bench.

Sincerely,



Jay Hemenway
Mercer County Prosecuting Attorney

01/05/2001 FRI 18:02 FAX
10/04/99 23:39 FAX 202 353 9103

003



COL. RONALD HENDERSON, CHIEF OF POLICE

Service, Integrity, Leadership And Fair Treatment To All

METROPOLITAN POLICE DEPARTMENT

CITY OF ST. LOUIS - 1200 CLARK AVENUE - ST. LOUIS, MISSOURI 63103

September 15, 1999

The Honorable Patrick Leahy
Ranking Minority Member
Senate Judiciary Committee
Washington, D.C. 20510

Re: The Honorable Ronnie White

Dear Senator Leahy:

It is with great pleasure that I recommend the appointment of the Honorable RONNIE WHITE to the United States District Court for the Eastern District of Missouri.

Judge White has been my friend for more than twenty years. I have watched him advance from a position as City Counselor for the City of St. Louis, through the Circuit Court system, eventually to the bench of the Missouri Court of Appeals and finally the Missouri Supreme Court. He has the unique ability of combining intelligence with compassion when making difficult decisions. His judgments are sound and made after lengthy research and deliberation. His experiences as a prosecutor, a circuit judge, a member of the appeals court and the Missouri Supreme Court give him a solid foundation to serve on the federal bench.

I highly recommend the appointment of Ronnie White to the United States District Court for the Eastern District of Missouri.

Sincerely,

Ronald Henderson
Ronald Henderson
Colonel
Chief of Police

HISPANIC BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

January 19, 2001

**2000-2001
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VIA FACSIMILE

Chairman Patrick J. Leahy
U.S. Senate Committee on the Judiciary
Room SD-224, Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Mr. Chairman:

On behalf of the Hispanic Bar Association of the District of Columbia (HBA-DC), whose membership includes several hundred lawyers practicing in Washington, D.C., Maryland and Virginia, I urge you to oppose the nomination of John Ashcroft for appointment as United States Attorney General. Mr. Ashcroft's record as Missouri's Attorney General, Governor and Senator demonstrates that he is not the right person for the job. We are confident that you will reach the same conclusion after reviewing Mr. Ashcroft's record.

Our opposition to Mr. Ashcroft is not because he holds conservative views, but because we have concluded that the positions he has taken in the past will cast doubt on whether he will be able to enforce key federal laws effectively. His record suggests a level of extremism on and hostility to a wide range of issues of enormous significance to Latinos in the United States.

The Department of Justice is one of the most important agencies affecting the Hispanic community. The Attorney General is charged with overseeing the Civil Rights Division, which enforces civil rights laws in areas such as employment, education, and voting and oversees the Immigration and Naturalization Service (INS) which directly affects the lives of 40% of the Latino community. Our specific areas of concern include Mr. Ashcroft's unfounded opposition to highly qualified judicial and appointed nominees of color; his opposition to bipartisan proposals for fair and just immigration law reforms, and his efforts to thwart voluntary efforts to desegregate the St. Louis public schools.

Letter to Chairman Patrick Leahy
Page 2

Opposition to Judicial and Appointed Nominees of Color

Mr. Ashcroft's staunch and unjustified opposition to nominees of color, who were ultimately confirmed with bipartisan support, calls into question his fitness to serve as Attorney General. Mr. Ashcroft has played an obstructionist role over the last six years in blocking the confirmation of women and minority nominees based on his opposition to their views on affirmative action which he saw as contrary to his own. As a Senator, Mr. Ashcroft was never persuaded by the nominees' pledge to uphold the law. If confirmed as Attorney General, Mr. Ashcroft would play a key role in the selection of judicial nominees and it is our conclusion that he will continue to block well-qualified candidates who would serve the Latino community and America well.

For example, Judge Richard Paez,¹ who was eventually confirmed, was forced to wait longer than any nominee in history (well over four years) before being confirmed. Mr. Ashcroft, voted against the nomination of Judge Paez at every opportunity. Mr. Ashcroft voted against Judge Paez twice at the committee level, once to delay the nomination indefinitely, and was among a handful of Senators to vote against Judge Paez's confirmation. Mr. Ashcroft was also one of a small number of Senators to vote against the confirmation of Sonia Sotomayor to the Second Circuit Court of Appeals². Mr. Ashcroft opposed the nomination of Ms. Sotomayor at the committee level and on the Senate floor without basis.

Mr. Ashcroft also opposed and voted against other qualified minority candidates for judgeships. He opposed Susan Oki Mollway (the first Asian American to become a federal judge) to the District Court of Hawaii.³ As the Senator for Missouri, Mr. Ashcroft led the charge to oppose and ultimately defeat the nomination Missouri Supreme Court Justice Ronnie White to the United States District Court of Missouri. Mr. Ashcroft also took a leadership role in preventing a vote to confirm Bill Lann Lee to become the first Asian American to head the Civil Rights Division of the Department of Justice because of Mr. Lee's support of affirmative action even though he swore under oath to uphold the law.⁴

Fairness for America's Immigrants

A review of a number of Mr. Ashcroft's votes cause serious concern as to how he would handle his administration of the Immigration and Naturalization Service and its treatment of immigrants. During the 1996 legislative session, when considering the various welfare and immigration

¹ Roll Call Vote # 40, 106th Cong., Mar. 9, 2000; Roll Call Vote # 283, 106th Cong., Sept. 11, 1999.

² Roll Call Vote # 295, 105th Cong., Oct. 2, 1998.

³ Roll Call Vote # 166, 105th Cong., June 22, 1998.

⁴ *Id.*

Letter to Chairman Patrick Leahy
Page 3

reforms, Mr. Ashcroft made a number of significant votes that would have either hurt the Latino community if a majority of Senators had eventually joined Mr. Ashcroft or ultimately did hurt the Latino community in cases where sufficient numbers of other Senators joined him in his vote. Mr. Ashcroft voted against an amendment proposed by Senator Dianne Feinstein to the Personal Responsibility and Work Opportunity Act of 1995 ("PRWOA") that would have eliminated the provisions of the original bill denying federal benefits to certain naturalized U.S. citizens.⁵ Ultimately, this provision was stripped out of the bill. Mr. Ashcroft also voted against another amendment sponsored by Senator Feinstein to the PRWOA, which would have allowed legal immigrants to be eligible for federal benefits.⁶ This amendment would have also exempted victims of domestic violence from having their eligibility determined by their batterers' income in order to apply for legal status.⁷

After Congress recognized that the 1996 laws created disastrous consequences for families, it restored some benefits to legal immigrants. Congress restored SSI, food stamp benefits and Medicaid eligibility to most elderly and disabled legal immigrants who entered the U.S. before the enactment of the 1996 welfare law. In 1997, Mr. Ashcroft was one of only eleven Senators to vote against extending SSI and Food Stamp benefits for legal immigrants from August to September of that year to allow those immigrants time to find alternative forms of subsistence to meet their needs.⁸ Mr. Ashcroft also voted against waiving the Budget Act based on his opposition to a provision that would have restored Food Stamps for children of legal immigrants.⁹ In 1998, Mr. Ashcroft opposed restoring Food Stamps for children of legal immigrants.¹⁰

More recently, Mr. Ashcroft opposed the Latino and Immigrant Fairness Act ("LIFA") by voting against a motion to suspend the rules and pass LIFA as an amendment to a high-tech worker visa bill.¹¹ LIFA would have stabilized the immigration status of specific groups of immigrants who have been living, working, and raising their families in the U.S. for many years. Many of these immigrants have been living in legal limbo for over a decade, since being wrongly denied the legal status for which they were qualified in the 1980's. By now, many of them would have been U.S. Citizens had they been allowed adjust their status. Mr. Ashcroft's refusal to support LIFA sends

⁵ Roll Call Vote # 427, 104th Cong., Sept. 14, 1995 (S. Amdt. 2478 to H.R. 4).

⁶ Roll Call Vote # 428, 104th Cong., Sept. 14, 1995 (S. Amdt. 2513 to H.R. 4).

⁷ *Id.*

⁸ Roll Call Vote # 58, 105th Cong., May 7, 1997 (S. Amdt. 145 to S. 672).

⁹ Roll Call Vote # 116, 105th Cong., June 25, 1997 (S. Amdt. 450 to S. 947).

¹⁰ Roll Call Vote # 128, 105th Cong., May 12, 1998.

¹¹ Roll Call Vote # 257, 106th Cong., Sept. 27, 2000.

Letter to Chairman Patrick Leahy
Page 4

the Latino community the message that he will not support equality for long-term residents, keeping families together, and treating similarly situated refugees or immigrants in the same manner.

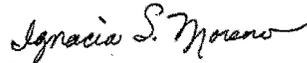
Ensuring Educational Opportunities for America's Minority Children

We are very concerned that as Attorney General for the State of Missouri, Mr. Ashcroft used the power and resources of his office for a divisive and single-minded effort to obstruct voluntary desegregation of the St. Louis public schools. Mr. Ashcroft resisted attempts to shape a voluntary desegregation plan, filing numerous appeals, which earned him widespread criticism from leaders in the community.¹² Even the federal court judge handling the case rebuked Mr. Ashcroft for his actions. The federal court issued a ruling against Mr. Ashcroft's attempts to block payment of plaintiff's attorneys' fees in the case on the grounds that they were excessive. The judge wrote: "If it were not for the State of Missouri and its reckless appeals, perhaps none of us would be here today."¹³ Even after Mr. Ashcroft became Governor, he continued to fight the court-ordered desegregation plan.

We are very concerned about the positions taken by Mr. Ashcroft as Missouri Attorney General and Governor in his staunch opposition to desegregating St. Louis schools. His actions are particularly troubling given that Latino students are the most segregated group of students in America's public schools.

The Attorney General is the principal enforcer of our civil rights laws and other federal laws. The Attorney General has enormous influence and power in determining whether our country will achieve its promise of equal justice for all. It is unfortunate that Mr. Ashcroft's record as Missouri's Attorney General, Governor and Senator demonstrates that he is not qualified to be United States Attorney General. We request that this letter be included as part of the record of Mr. Ashcroft's confirmation hearing.

Sincerely,



Ignacia S. Moreno
President

¹² Special Report, *The Case Against the Confirmation of John Ashcroft as Attorney General of the United States*, Part Two: An Overview of the Missouri Years. People for the American Way, January 13, 2001, Page 17.

¹³ *Id.* Page 19, 20, 23

JAMES C. HOEMEL
NINETEEN SUTTER STREET
SAN FRANCISCO, CALIFORNIA 94104-4801

January 16, 2001

The Honorable Patrick Leahy
The Honorable Orrin Hatch
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Hatch,

I write to express my deep concern regarding the nomination of Senator John Ashcroft for U.S. Attorney General. Mr. Ashcroft's conduct during my own confirmation process leads me to doubt his willingness to serve as an impartial and objective Attorney General and to separate his official responsibilities from his own strongly held personal ideology. While Mr. Ashcroft has the right to believe and to worship as he chooses, it is not appropriate for him to use those beliefs as a litmus test in enacting the public trust. Yet, during the course of my nomination, Mr. Ashcroft seemed to be motivated solely by his ideology.

Mr. Ashcroft should be afforded a full and fair hearing, where his peers can question him and where he will have the opportunity to address their concerns about how he might perform his duties. Nonetheless, the courtesy which is being extended to Mr. Ashcroft - a courtesy he rightfully expects - was not extended to me by the Senator himself.

In 1997, President Clinton nominated me to be the U. S. Ambassador to Luxembourg. Although Senator Ashcroft was a member of the Foreign Relations Committee, he did not attend my hearing. He did not submit written questions for me to answer. Neither he nor his staff attempted to contact me in any way to voice any concerns. He simply voted against me. The Committee, by an overwhelming vote of 16-2, sent my nomination to the Senate floor. As you know, the full Senate was procedurally prevented from voting on my nomination.

Perhaps more revealing of Mr. Ashcroft's propensity to forsake impartiality in favor of ideology was his refusal subsequently to meet with me and give me an opportunity to address his basis for voting against me. I attempted to contact him both by letter and repeatedly by phone. I was never even given the courtesy of a response from the Senator or his staff. I have attached a copy of the letter for your review.

After my repeated attempts to contact Mr. Ashcroft failed, I asked Richard Badger, Assistant Dean of the University of Chicago Law School for his help in arranging a meeting with the Senator. As a former Dean of Students for the Law School myself (and the one who personally admitted Mr. Ashcroft), and as an unofficial honorary member of

his Class of 1967, I thought that the bonds of our mutual alma mater might serve as a means of finally reaching Mr. Ashcroft. Unfortunately, he continued to ignore my requests.

If, as a Presidential nominee with an academic relationship to Mr. Ashcroft dating back to 1964, I was never even granted the courtesy of a response from him, how can I expect that he, as Attorney General, will have the integrity to hear — not to ignore — those who he has prejudged?

If Mr. Ashcroft was willing to vote against my nomination without any personal information about me other than my sexual orientation, how can I expect that he will open his mind to the rich and diverse expression of thought and opinion which we, as Americans, value so deeply?

If Mr. Ashcroft was willing to pass judgment on me based solely upon hearsay, despite his opportunity as a member of the Foreign Relations Committee to question me, and despite my repeated attempts to engage him in a direct and honest personal dialogue, how can I expect that he will weigh other, perhaps far more consequential matters objectively and impartially?

I urge you and your colleagues to take my experience into account when considering Mr. Ashcroft's nomination. Thank you for the opportunity to present my views.

Sincerely,



James C. Horne

Encl: letter dated December 3, 1997

JAMES C. HORNEL
NINETEEN SUTTER STREET
SAN FRANCISCO, CALIFORNIA 94104-4901

December 3, 1997

The Honorable John Ashcroft
316 Hart Senate Office Building
Washington, DC 20510

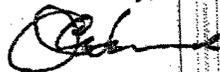
Dear Senator Ashcroft:

You probably don't recall our previous connection, but in 1964, I was the Dean of Students at the University of Chicago Law School and had the privilege of admitting you to the Class of 1967. Since then I have followed your career with interest. Today, however, I am writing in my capacity as President Clinton's nominee to be Ambassador to Luxembourg.

I am aware that you voted against my nomination, when it was considered by the Foreign Relations Committee, and understand that you may have concerns regarding my qualifications. I want you to know that I am available to meet with you at your convenience in either Washington or Missouri, to address and - I trust - allay your concerns. While I am hopeful that I can persuade you to vote in favor of my nomination, I would very much appreciate your support for its consideration by the full Senate.

I can be reached by phone at 415-546-7635 at the above address, or through the State Department's Bureau of Legislative Affairs at 202-647-1048. I fervently hope that we will be able to meet in the near future to discuss whatever questions you may have. Thank you for your consideration of my request.

Sincerely,





HUMAN
RIGHTS
CAMPAIGN

919 18th Street NW
Washington, DC 20006
web <http://www.hrc.org>
phone 202 628 4160
fax 202 347 5323

Testimony Submitted
by Elizabeth Birch
Executive Director
Human Rights Campaign
Hearing Before the
Committee on the Judiciary
United States Senate
Nomination of John Ashcroft
to be Attorney General of the United States
January 18, 2001

Introduction

Thank you for the opportunity to present this testimony to the Senate Judiciary Committee on the nomination of John Ashcroft to be Attorney General of the United States.

The Human Rights Campaign is the nation's largest gay and lesbian advocacy organization, and we have over 400,000 members nationwide. We are a bipartisan organization and supportive of fair-minded republicans and democrats alike. We acknowledge that President-elect George W. Bush is entitled to create a cabinet of his own design. However, he does so against the backdrop of a fundamental promise made throughout his campaign: to unite the nation. We believe the nomination of Senator Ashcroft represents the antithesis of that goal.

There are a number of President-elect Bush's nominees whom we applaud for their moderate and inclusive records. We look forward to working with the Bush Administration and are deeply saddened to feel compelled to oppose any of his Cabinet nominees. This is not a decision we have come to lightly as reflected in the fact that this is the first time in our organization's 20-year history that we have opposed an executive branch presidential nominee.

We are gravely concerned, however, that an Ashcroft tenure would be more about judgment than justice. We live in a broad, complex and diverse nation, and the attorney general must administer justice with a fair and impartial hand for every American. As the top law enforcement officer of the country, the attorney general must ensure the highest standards of safety, dignity and fairness in helping to lead the nation.

Senator Ashcroft's record on gay and lesbian civil rights is very clear. He has scored a perfect zero for the 104th, 105th and 106th Congresses on the Human Rights Campaign voting scorecard which reflects both gay and lesbian civil rights issues and HIV and AIDS issues.

Opposition to Nominees: The Ashcroft Standard

But, it is not just his voting record that concerns us. We are very concerned by Senator Ashcroft's willingness to judge candidates for service to this nation based not on the merits but on labels and categories. Senators on this committee have raised concerns about Ashcroft's "standard" and opposition to several nominees, based on ideology.

- Ronnie White, U.S. District Court nominee, was rejected by Ashcroft for his supposed views on the death penalty;
- David Satcher, U.S. Surgeon General nominee, was rejected for his views on abortion and needle exchange;
- Bill Lann Lee, nominee for Assistant Attorney General for Civil Rights, was rejected for his views on affirmative action; and
- Margaret McKeown, nominee for Ninth Circuit Court of Appeals, was rejected for handling a "pro-gay" court case. Her nomination was held up for two years, and Ashcroft was one of only 11 senators to oppose her. Ashcroft said in a March 1997 speech to the Heritage Foundation that he opposed McKeown because "her ACLU marching orders in hand" she "led the fight to disallow a Washington state ballot initiative denying special rights to homosexuals." McKeown, the first woman partner at Perkins Coie, had handled this case pro-bono for a client, the Washington Association of Churches. Ashcroft called her efforts "sinister" and mocked an apparent argument in the case -- which is backed up by leading medical and mental health professionals -- that discrimination and stigmatization on the basis of sexual orientation can lead to "suffering, suicides, and substance abuse." "Please!" he said. "It's time to expose McKeown and her ACLU friends for the liberal elitists that they are."

Jim Hormel: Rejected Because He is Gay

Perhaps most disturbing is that Senator Ashcroft rejected the notion that James Hormel could serve this country based solely on the fact that Mr. Hormel happens to be gay. President Clinton nominated Hormel in October 1997 to serve as Ambassador to Luxembourg. He had served as a member of the U.S. Delegation to the 51st UN Human Rights Commission in 1995 and had been unanimously approved five months earlier by the Senate as Alternate Representative of the U.S. delegation to the UN General Assembly.

Ashcroft was one of two Senators who voted against Hormel's nomination in the Senate Foreign Relations Committee. He did so without attending the hearing or submitting questions or statements for the record. Hormel's nomination was voted out of committee, 16 to 2.

After the hearing, Hormel sent a letter requesting a meeting with Ashcroft to discuss his qualifications and address any concerns the Senator might have. In the letter Hormel raised a previous connection and appealed to Ashcroft as the former Dean of Students who had admitted Ashcroft to the University of Chicago School of Law in 1964. Hormel followed up with repeated telephone calls and also had the sitting assistant dean call on his behalf. Hormel never even received the courtesy of a return phone call from Ashcroft's staff.

Prior to Hormel's nomination, the Luxembourg government had already indicated they would welcome Mr. Hormel as their ambassador. Yet, in June 1998, Ashcroft said, "People who

are nominated to represent this country have to be evaluated for whether they represent the country well and fairly. His conduct and the way in which he would represent the United States is probably not up to the standard that I would expect. He has been a leader in promoting a lifestyle. . . . And the kind of leadership he's exhibited there is likely to be offensive to . . . individuals in the setting to which he will be assigned" (*The Boston Globe*, June 24, 1998)

Despite strong bi-partisan support in the Senate, Ashcroft allies held up Hormel's nomination for more than a year because of his sexual orientation. President Clinton exercised his constitutional power by appointing Hormel during a congressional recess. Nothing has proved Senator Ashcroft more wrong than Ambassador Hormel's able and distinctive representation of this nation over the past 18 months.

As you know, Senator Ashcroft's treatment of Ambassador Hormel has been a subject raised in the hearing before this committee. When asked directly by Senator Leahy and others, Ashcroft denied that his opposition had anything to do with Hormel's sexual orientation. Ashcroft claimed that he opposed him because he "had known Mr. Hormel for a long time" that Hormel had "recruited him" for law school. He said, "But I did know him. I made a judgment that it would be ill-advised to make him ambassador based on the totality of the record. I did not believe that he would effectively represent the United States in that particular post."

As you know, in response to Ashcroft's testimony before the committee, Hormel sent a letter dated January 18, 2001, unequivocally denying any personal or professional relationship with Ashcroft to support the aforementioned statements and also denying that he directly recruited particular students to the law school in his roll as Dean of Students. This misrepresentation is profoundly disturbing.

Furthermore, if Ashcroft had such grave concerns about the "totality" of Hormel's record and his ability to effectively represent the United States, the American people deserve to know why Ashcroft did not go to the floor of the U.S. Senate when Hormel was confirmed by unanimous consent on May 23, 1997, to be to be an Alternate Representative of the United States of America to the Fifty-first Session of the General Assembly of the United Nations.

This incident, in particular, leaves the burning question that if an individual of James Hormel's stature and reputation was not even granted the respect of a return phone call, much less a meeting, how can the people of our country expect fair and impartial treatment from Senator Ashcroft?

Opposed Hate Crimes Legislation Inclusive of Sexual Orientation

As a group of Americans who are disproportionately at risk for violence, even murder, we are concerned about Senator Ashcroft's opposition to basic hate crime protection at the federal level. Last year, he opposed the Hate Crimes Prevention Act, a bill that would have added sexual orientation, gender and disability to the current federal hate crimes statute, 18 U.S.C. Section 245. It is heartening that Ashcroft told this committee on January 17, 2001, that he believes the Hate Crimes Prevention Act is constitutional; however, it makes his opposition to it last year more puzzling. And while it is true that then-Governor Ashcroft signed Missouri's hate crimes law in 1988, that law did not include sexual orientation.

Gays and Lesbians an At-Risk Population

Clearly, statistics show that the lesbian and gay community should be protected by our

nation's hate crimes laws. On October 15, 2000, the FBI released the Uniform Crime Reports for 1999, the latest year for which statistics are available. As overall serious crime continued to decrease for the eighth consecutive year, hate crimes based on sexual orientation have continued to rise and increased 4.5 percent from 1998 to 1999. Reported hate crime incidents based on sexual orientation have more than tripled since the FBI began collecting statistics in 1991 – comprising 16.7 percent of all hate crimes for 1999. Hate crimes based on sexual orientation continue to make up the third highest category after race and religion, which make up 54.5 and 17.9 percent, respectively of the total, 7,876.

In addition, it is widely known that hate crimes based on sexual orientation are generally underreported, and evidence indicates that FBI data fails to include statistics on all such bias incidents. The National Coalition of Anti-Violence Programs, a private organization that tracks bias incidents against gay, lesbian, bisexual and transgendered people, reported 1,965 incidents in 1999 in only 25 cities/jurisdictions across the country while the FBI collected statistics from 12,122 reporting agencies for the year.

Two federal hate crimes laws currently include sexual orientation, the Hate Crimes Statistics Act and the Hate Crimes Sentencing Enhancement Act. In addition, some anti-bias programs in the Department of Justice (DOJ) and working groups across the country help combat hate crimes aimed at this community.

Given Senator Ashcroft's views on sexual orientation, how can we be assured that he will continue to devote the necessary personnel and resources to proper enforcement of these laws and programs?

Opposed Employment Discrimination Protection on the Basis of Sexual Orientation

In addition, Senator Ashcroft opposed the Employment Non-Discrimination Act (ENDA), a bill that would extend federal employment protection on the basis of sexual orientation. Not only did he vote against ENDA, but he spoke in opposition to the legislation twice on the Senate floor. He used the opportunity to voice some extreme views on the nature of sexual orientation, including that it is a choice and could be changed – something clearly not supported by science or leading medical and mental health authorities.

Currently, gay and lesbian employees at DOJ and throughout the federal government are protected by the President's executive order and other departmental policies. Given Ashcroft's opposition to ENDA, how can we be assured that these even-handed policies will continue and be properly enforced?

Again, we were heartened to hear Ashcroft state at the hearing on January 17, 2001, he would "not make sexual orientation a matter to be considered in hiring or firing" at DOJ. However, we question why he had never taken the opportunity as a Senator to support ENDA or adopt a voluntary written policy to that effect while serving as a U.S. Senator.

Most Americans Support Employment Protection Based on Sexual Orientation

Fairness in the workplace is an American ideal. Individuals who work hard at their job should never be denied a promotion or fired solely because of their sexual orientation. American companies, both large and small and from various industries, have recognized this and have implemented policies banning such discrimination. In fact, currently nearly two thousand employers in our nation prohibit discrimination on the basis of sexual orientation, including a majority of Fortune 500 companies. Those who work for the federal government, the largest workforce in the world, deserve the same protections afforded to those who continue to fuel our

economy in the private sector.

Support for policies banning employment discrimination in the federal civilian workforce remains strong in Congress and with the American public. In a *Wall Street Journal* / NBC News Poll taken following the implementation of the executive order, 72 percent of Americans supported the order. Sixty-three Republicans joined the strong majority of the House of Representatives in defeating an effort to overturn the executive order banning such discrimination by a vote of 252 to 176. In addition, in the 106th Congress 264 members of the House of Representatives, 76 of whom are Republican, and 66 members of the United States Senate, 24 of whom are Republican, had written non-discrimination policies in place for their personal Congressional offices. Yet, Senator Ashcroft refused to issue such a policy.

Bob Jones University: Affiliation with Prejudice

Most people know of Bob Jones University's racially discriminatory policies and anti-Catholic sentiment, but unless they read the *Washington Post*, they might not realize that only a year-and-a-half ago Bob Jones University threatened to arrest gay alumni if they visited the campus. In a letter quoted by the *Washington Post* on Nov. 4, 1998, to a gay alumnus, the University said:

"With grief we must tell you that as long as you are living as a homosexual, you, of course, would not be welcome on the campus and would be arrested for trespassing if you did visit."

The University also ridiculously bans Abercrombie & Fitch clothes and catalogs from their campus because the clothier's catalog has according to a University newsletter become in part a "coffee-table favorite of homosexuals."

While I understand that Bob Jones University has reversed its ban on interracial dating, as far as we know, the anti-gay policies still stand.

Like many members of this Committee, we are gravely concerned with Ashcroft's commencement address and acceptance of an honorary degree from Bob Jones University in May 1999. He even bragged about it in his annual year-end Christmas card. But, we are even more concerned that given the opportunity to do so before this committee and the nation, he has not taken the opportunity to renounce the institution for its extremism.

Choice and Access to Clinics

Finally, as a pro-choice organization, we are extremely concerned with Ashcroft's activism in trying to outlaw abortion throughout his long public career. Given his extreme record in this regard we are concerned about his ability to enforce current law as defined by *Roe v. Wade* and his ability to properly and vigorously enforce the Freedom of Access to Clinic Entrances Act so that women will have access to basic reproductive health care without encumbrance.

The People's Lawyer

The Attorney General is the "people's lawyer" and must instill confidence in all Americans, especially those who have been discriminated against or targeted for violence. We must all know that we can appeal to the Department of Justice to ensure fair and impartial administration of justice.

Senator Ashcroft's discriminatory behavior in the case of Jim Hornel alone causes us to doubt that the Senator is capable of laying aside his judgment for justice. We do not believe that he can overcome this cloud to instill the necessary confidence in gay, lesbian, bisexual and transgendered Americans that he will provide fair and equal access to justice for all.

Based on this, we ask members of the Committee and the full Senate to reject the nomination of John Ashcroft for Attorney General. With us, we hope that you will appeal to President-elect Bush to nominate someone who will help unite this nation and someone who will bring healing and instill trust among vulnerable communities.

Thank you.



January 3, 2001

The Honorable Orrin Hatch
The Honorable Patrick Leahy
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Leahy:

On behalf of the Information Technology Association of America (ITAA), our 450 members, and 26,000 affiliate corporate members throughout the U.S., I urge the confirmation of Senator John Ashcroft as our next U.S. Attorney General.

John Ashcroft has been a champion on issues of fundamental importance to the continued success of America's information technology sector. Just as importantly, he has taken the time to listen and understand the complexities of all issues before making his decision. Senator Ashcroft has demonstrated his attention to the New Economy as Missouri Attorney General, Governor, and as a United States Senator.

As Chairman of the Subcommittee on the Constitution, Federalism and Property Rights, and on the Commerce Committee, he was a defender of the rights of individuals to use encryption to protect their documents and transmissions. He was a vocal proponent for technology as a solution rather than a barrier saying, "There is no greater challenge for concerned citizens inside and outside government to ensure that our great Constitutional traditions are enhanced and not compromised in the face of new technology."

He also stood firm when demanding a balance of responsibilities regarding intellectual property rights, particularly when content was being delivered by an online service provider. In addition, he was an active participant in the development of the Digital Millennium Copyright Act, a key law for the expansion of the Internet. At the same time, he has clearly demonstrated an understanding that technology is not something to cage with undue regulation or burdensome taxation.

His demonstrated bi-partisanship on technology issues comes from truly understanding technology. If his record as Attorney General, Governor and Senator of Missouri serve as an example, we have a right to expect only energy, talent, and intelligence from him as the next Attorney General of the United States.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Miller".

Harris N. Miller
President

cc: Judiciary Committee Members

Information Technology Association of America

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January 8, 2001

Senator Orrin Hatch
Senate Judiciary Committee
SD 224
Washington, DC 20510

Senator Hatch:

ITI is the association of leading IT companies. Our main mission is to promote the understanding of the digital world and advance policies that enhance the competitiveness of our industry.

I am writing today to add our perspective on Senator Ashcroft's nomination to be the next Attorney General of the United States. During his tenure in the Senate and his service on the Judiciary Committee, Senator Ashcroft has been a leader on technology issues. In particular, he helped craft a balanced compromise to a key provision in the World Intellectual Property Organization treaty implementing legislation and has a lifetime score of 92% on the ITI High-Tech Voting Guide.

Senator Ashcroft is someone our industry has worked well with in the past and someone we look forward to continuing to work with during his service in the Bush Administration.

Sincerely,

Rhett Dawson
President

The association of leading IT companies

3Com • Agilent • Amazon.com • AOL • Apple • Canon USA • Cisco • Compaq • Corning • Dell • Eastman Kodak
EMC Corporation • Hewlett-Packard • IBM • Intel • Lexmark • Microsoft • Motorola • National Semiconductor • NCR • Nortel Networks
Panasonic • Pitney Bowes • SGI • Siemens Corporation • Sony • StorageTek • Symbol Technologies • Tektronix • Tyco • Unisys

**The Nomination of U.S. Senator John Ashcroft
For U.S. Attorney General**

U.S. Senate Committee on the Judiciary

Testimony of:
The Interfaith Alliance

Submitted by:
**The Rev. Dr. C. Welton Gaddy
Executive Director**

Thank you, Mr. Chairman and Members of the Committee, for inviting The Interfaith Alliance to submit written testimony to you today. By way of introduction, The Interfaith Alliance is the nation's largest non-partisan, faith-based organization with 130,000 supporters from over 50 faith traditions, including Muslims, Catholics, Sikhs, Protestants and Jews. The Interfaith Alliance organizes people of faith to promote shared religious values: compassion, civility, and mutual respect for diversity and human dignity. These religious principles compel us to take responsibility for both our own communities and our larger national community.

As a non-partisan organization, The Interfaith Alliance offers Americans a mainstream, faith-based agenda committed to the positive role of religion as a healing and constructive force in public life. The Interfaith Alliance draws on shared religious principles to challenge those who manipulate religion to promote an extreme political agenda based on a false gospel of irresponsible individualism.

First let us state that we are pleased with the Committee's dedication to a full and fair hearing on this most important nomination. We are pleased to

be able to submit testimony to you on the nomination of former Senator John Ashcroft to be our nation's next Attorney General.

As a faith-based organization, we have immediate concerns with this nomination. As previously stated in a letter sent to the Committee dated January 11, 2001, we have not taken a position either for or against former Senator John Ashcroft's nomination to be Attorney General.

That being said, we believe our role in this process is to raise concerns held by many of the nation's faith-based communities with the religious liberty record of Senator Ashcroft. As this nomination comes to the Senate, we are asking you to raise questions that fairly and forthrightly address the Senator's public statements that cast doubt on his commitment to upholding the laws of the land regarding the institutional separation of religion and government. Specifically, we ask you to address his views on key religious liberty issues such as state-sponsored prayer in schools, the posting of religious doctrine in public places, government-funded proselytization, and the role of the federal government in the prevention of hate crimes directed at religious minorities.

As you well know, the importance of the Establishment Clause of the First Amendment of our Constitution cannot be overstated or underestimated. For over 200 years this simple language – *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof* – has been a guiding principle of our national government and has been interpreted in numerous Supreme Court decisions to ensure the institutional separation of government and religion and the protection of religious minorities.

It is our concern that Senator Ashcroft, as Attorney General, would be hostile to the vigorous defense of these vital precedents. For example, at a 1998 gathering of the Christian Coalition, Senator Ashcroft said of these precedents, *"A robed elite have taken the wall of separation built to protect the church and made it a wall of religious oppression. They may try to take prayer from our schools, but they can never steal God from our hearts. I believe that we must continue across this land to fight for our God-given right to acknowledge and affirm our Creator."*¹

While Senator Ashcroft is entitled to express his personal beliefs as an individual and a legislator, we have grave concerns about the application of these beliefs in his position as the nation's top legal authority.

As Senators on this Committee know well, the diversity of our nation's religious traditions requires a Department of Justice that will show no preference for one religious tradition over another, and requires an Attorney General who upholds the current laws and Supreme Court precedents that guarantee religious liberty to all Americans. Moreover, as a society, we often judge the priorities of our nation by how we work to protect and strengthen them through the law. If we have a Justice Department that refuses to protect minority religious traditions from the institutional biases of the majority, America's long held belief that every human is worthy of respect and decency will quickly erode.

¹ Goodstein, Laurie. "Ashcroft's Life and Judgments are Steeped in Faith." *The New York Times* 14 Jan. 2000, Late Ed.: A22.

In the past two years alone, we have seen great tests to our nation's tolerance for religious diversity, including a landmark Supreme Court ruling on school prayer. We at The Interfaith Alliance believe that the United States Department of Justice will play a defining role in determining to what extent our country is committed to the principles of religious diversity and tolerance. We believe that the Judiciary Committee needs to investigate the very real possibility, based upon prior public statements by Senator Ashcroft, that the institutional wall between religion and government could be weakened – and further, that the federal government's commitment to neutral treatment of all religious traditions could be challenged by his assumption of the office of Attorney General.

Senators are certainly aware that supporters of this nomination are attempting to dismiss our religious liberty concerns by claiming that anyone who questions John Ashcroft's record is somehow hostile toward religion in American public life. The Religious Right's strategy of using religion as a shield is bad for religion and bad for the nation. A person of faith in a public office is responsible for protecting the rights of all people of faith – even those with whom they disagree – and for assuring that no government office be used to propagate, or to attempt to establish, a particular faith tradition. Senators should feel free, if not obligated, to see through this misguided strategy when the protection of the constitutionally guaranteed separation of church and state is called into question.

The following issue areas relate directly to The Interfaith Alliance's concerns with Senator Ashcroft's nomination:

Hate Crimes against Religious Minorities: Every hour, at least one hate crime is reported to the Federal Bureau of Investigation, totaling over 8,000 a year.² Nearly 18% of these are committed for reasons of religious bias and intolerance. Hate crimes against religious minorities, including Muslims, Jews and Sikhs, are on the rise. Unfortunately, the fear of being a victim in these communities is real and growing. In the 106th Congress, Senator Ashcroft opposed strengthening the current hate crimes law by voting against the bi-partisan Local Law Enforcement Enhancement Act, Senate Bill 622, which was sponsored by Senator Edward Kennedy of Massachusetts and Senator Gordon Smith of Oregon.

During the 106th Congress, The Interfaith Alliance worked vigorously to support and expand existing Hate Crimes prevention legislation because many religious minorities, Muslim communities in particular, have been targets of a growing number of such crimes. In 1994, a nearly constructed mosque in Yuba City, Calif., burned to the ground in what was ruled an arson attack.³ In 1995, arson destroyed a Springfield, Ill., Islamic center.⁴ In 1996, a suspect was charged for involvement in an arson attack on a Greenville, S.C., mosque.⁵ According to the Council on American Islamic Relations, within the last year, acts of mosque vandalism have occurred in Michigan, Tennessee, Indiana, New Jersey, Colorado, Illinois, and Georgia.

² Brogan, Pamela. "Ashcroft, Bond vote against hate-crime bill." *Gannett News Service*, 22 June 2000, ARC

³ Stevens, Jan. "FBI Probe of Mosque Fire Sought." *Sacramento Bee*, 9 Sept. 1994, Final: B1

⁴ The Ethnic Newswatch, Arab-American News, 11 Aug. 1995

⁵ Marquand, Robert. "Muslims Learn to Pull Political Ropes in US." *The Christian Science Monitor*, 5 Feb. 1996

Under present hate crimes law, it is the responsibility of the Justice Department to compile and make available, statistics on hate crimes. It is also in the Department of Justice's purview to make and enforce regulations regarding hate crimes.

We seek assurances that, as Attorney General, John Ashcroft would be committed to ensuring that the Department of Justice, and all the law enforcement agencies under its purview, actively enforce existing hate crimes regulations – including the collection and analysis of valuable hate crimes statistics. Further, we seek assurances that the Justice Department will be committed to the enforcement of hate crimes protections across all religious traditions. While we acknowledge that Senator Ashcroft, as Governor of Missouri, signed a hate crimes prevention law, we want assurances that Senator Ashcroft sees and understands that the federal government plays a crucial role in the prosecution and prevention of these heinous crimes.

Charitable Choice: During the 2000 presidential campaign, both Vice President Al Gore and Texas Governor George Bush spoke about a program to empower faith-based charities called charitable choice. Charitable choice allows faith-based ministries and religious organizations that provide social services to receive federal funding without having to alter the religious character of their organization. The federal funds are directed away from secular organizations, which have been providing these services to the public for years. Charitable choice has been a part of the congressional agenda since the Responsibility and Work Opportunity Reconciliation Act of 1996, with competing versions appearing in the Health and Human Services Reauthorization Act of 1998 and the Substance Abuse and Mental Health Services Administration Reauthorization of 2000. Since its initial federal implementation, charitable choice funding has been made available to every state in the nation. Because religious organizations are often using religious materials and religious locations to supplement their ministries, many clients who are either non-believers, or members of minority religious, are starting to file law suits challenging the law, feeling that they were openly proselytized when they went to seek a social service that depended on their tax dollars.

As a Senator and a state Attorney General from Missouri, John Ashcroft was the principle architect of charitable choice legislation. In Missouri as Attorney General and Governor, John Ashcroft not only sought to deliver public funds to religious ministries, but also to exempt these religious organizations from regulations that secular organizations and private citizens were required to meet.

Presently, such issues have arisen in Texas with a program funded under state-level charitable choice legislation. Responding to then-Governor George W. Bush's proposal to give tax dollars to private religious ministries in order to provide social services to the public, a job-training program was funded by the State of Texas despite its openly proselytizing clients. Of the twelve evaluation forms that were filed at the state's Department of Human Services, four of the respondents indicated they felt pressure to change their religious beliefs. The state is now being sued by the American Jewish Congress and the Texas Civil Rights Project for giving tax dollars to a program that is "permeated" with evangelical Christianity in violation of the Texas and U.S. Constitutions.⁶

⁶ David Ackerman. Congressional Research Service Report: Charitable Choice: Background and Selected Legal Issues, (12/5/00) 4.

As Attorney General, would Senator Ashcroft challenge the funding status of a pervasively sectarian organization that overtly ties the delivery of services to religious proselytizing? Would Attorney General Ashcroft support the inclusion of protections into the legislation? Would he think that the intimate involvement of these religious organizations with a federal benefits program threatens or subverts the independence of the religious organizations? Would Attorney General John Ashcroft be prepared to defend the rights of religious minorities who feel that they were blatantly coerced into reading or hearing a religious scripture or teachings that differed from, or even violated, their own personal beliefs?

State-Sponsored Prayer in Schools: Perhaps no single issue tests our nation's commitment to the separation of church and state more than the issue of school-led prayer. Most recently, in June of 2000, the United States Supreme Court ruled 6-3 in *Doe vs. Santa Fe Independent School District* that a public prayer led by an elected student chaplain at a football game between two public schools violated the Establishment Clause of the United States Constitution.⁷ The Court cited *Lee v. Weisman*, a 1992 opinion in which the Court concluded, "the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way that establishes a state religion or religious faith, or tends to do so."⁸ Through the office of Solicitor General, which reports directly to the Attorney General, the Justice Department plays a key role in shaping the decisions of the Supreme Court and the enforcement of the above opinions – in three distinct and critical ways.

As an elected official, Senator Ashcroft has made statements opposing the Supreme Court precedent on school prayer cited above. In addition, the Senator granted an interview to *Charisma* magazine in which he said, "It's said that we shouldn't legislate morality. Well, I think all we should legislate is morality."⁹

As Attorney General, John Ashcroft would directly oversee the Solicitor General. The Solicitor General's office fulfills the vital function of representing the interests of the United States to the Supreme Court. The Solicitor General is responsible for deciding, with the advice of the Attorney General, when the United States should appeal to the Supreme Court decisions issued by lower federal and state courts. In addition, the Solicitor General has the sole discretion to file briefs as *amicus curiae* on behalf of the United States of America in cases involving federal, state and local law. The Solicitor General also has the responsibility to ensure that all Acts of Congress are constitutional.

As an interfaith organization that treasures religious liberty and fights to strengthen and uphold it, we urge the Committee to ask Senator Ashcroft the following questions: Would a Department of Justice led by John Ashcroft challenge the activities of school districts that violate the spirit of *Doe v. Santa Fe* and *Lee v. Weisman*? Further, would the Solicitor General under John Ashcroft actively try to undermine *Lee v. Weisman* and *Doe v. Santa Fe*? Would the Solicitor General

⁷ *Doe vs. Santa Fe Independent School District*, No. 99-62 (U.S. June 19 2000)

⁸ *Lee v. Weisman*, 505 U.S. 577 (1992)

⁹ Goodstein, Laurie. "Ashcroft's Life and Judgments are Steeped in Faith." *The New York Times* 14 Jan. 2000, Late Ed.: A22

have a policy that favors one faith tradition or moral tradition over another? Would the Solicitor General file amicus briefs that follow an interpretation of the Constitution that ensures religious liberty and the separation of church and state?

Ten Commandments: The posting of religious doctrine in state forums, including public school classrooms, public libraries and public courthouses has been a hotly contested issue since the 1980 Supreme Court decision of *Stone v. Graham*. In this case, the Supreme Court ruled that a Kentucky statute requiring the posting of a copy of the Ten Commandments, purchased with private contributions, on the wall of each public school classroom in the State had no secular legislative purpose, and therefore was unconstitutional as it violated the Establishment Clause of the First Amendment. The Court reasoned that the “preeminent purpose of posting the Ten Commandments, which do not confine themselves to arguably secular matters, is plainly religious in nature, and the posting serves no constitutional educational function.”¹⁰

The similarities between *Stone v. Graham* and a current controversy in Alabama over the actions of a state judge are striking. In 1997, Judge Roy Moore of Etowah County, Alabama, sparked a national outcry when he refused to remove a plaque displaying the Ten Commandments inside his courtroom despite an order from Montgomery Circuit Judge Charles Price ordering him to do so. Just one year earlier, this same Circuit Court Judge had to order Roy Moore not to open up his daily court proceedings with public prayer.¹¹ Last November, Judge Moore was elected to the State Supreme Court with the promise that he would bring his plaque displaying the Ten Commandments with him – ensuring a direct violation of the institutional separation of church and state in the state’s highest courtroom. Since people will be in Moore’s courtroom under the compulsion of the law, they will be forced to view the religious doctrine – whether they agree with the doctrine or not.

Will an Ashcroft Justice Department ensure that America’s judges respect the religious diversity of all people in the court system – even those who follow religious traditions differing from their own? Will an Ashcroft Justice Department ensure that all of our nation’s judges are following the law of the United States and not other laws set by religious doctrine? Will Ashcroft’s Department of Justice challenge the posting of the Ten Commandments in public courtrooms?

In closing, I submit to you that The Interfaith Alliance has a profound respect for the “advise and consent” role that the United States Senate has in the review of presidential appointments. I again want to state that we have not taken a position of opposition to Senator Ashcroft. That being said, our concerns weigh heavily on our collective conscience and those of the diverse people of faith that The Interfaith Alliance charges itself to serve. It is out of this deep respect that we ask you to look at our areas of concern carefully on behalf of all people of faith across this nation.

¹⁰ *Stone v. Graham*, 449 U.S. 39 (1980)

¹¹ Daniels, Malcomb. “Justice Maligned Moore, Attorney Says.” *The Montgomery Advertiser* 3 Dec. 1997, A1



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Joseph M. Folsar
Chief of Police
Garden Grove, CA

Fourth Vice President
Joseph G. Esley
Chief of Police
Hartford Police Department
White River Junction, VT

Fifth Vice President
Mary Ann Viverette
Chief of Police
Gaithersburg, MD

Sixth Vice President
Lonnie J. Westphal
Colonel/Chief
Colorado State Patrol
Denver, CO

International Vice President
Emile Perez
Commissaire Divisionnaire
French National Police
Embassy of France
Washington, D. C.

Treasurer
Donald G. Pierce
Chief of Police
Boise, ID

Division of State Associations of
Chiefs of Police
General Chair
Russell B. Lane
Chief of Police
Altonquin, IL

Division of State and
Provincial Police
General Chair
James McMahon
Superintendent
New York State Police
Albany, NY

Parliamentarian
Jimmy R. Fawcett
Chief of Police
Farmers Branch, TX

Executive Director
Daniel N. Rosenblatt
Alexandria, VA

Deputy Executive Director/
Chief of Staff
Eugene R. Cromarie
Alexandria, VA

January 13, 2001

The Honorable Patrick Leahy
Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Senator Leahy:

On behalf of the 18,000 members of the International Association of Chiefs of Police (IACP), I am pleased to inform you of our support for the nomination of Senator John Ashcroft to be Attorney General of United States. The IACP believes that Senator Ashcroft's years of service in both state and federal government have clearly demonstrated he has the qualifications and experience necessary to be an effective leader of the U.S. Department of Justice.

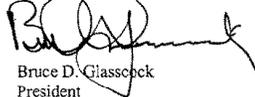
Senator Ashcroft's broad base of experience has provided him with a unique perspective on criminal justice issues. His service as both Attorney General and Governor of the State of Missouri have provided him with not only a thorough understanding of the crucial role played by state and local law enforcement agencies but also with invaluable executive experience. In addition, as a member of the Senate Judiciary Committee, Senator Ashcroft has demonstrated his broad knowledge in matters of importance to the law enforcement community.

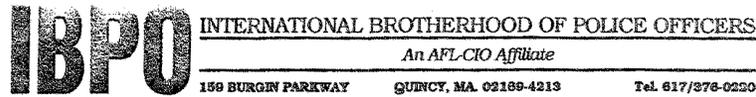
As a result, the IACP believes as Attorney General, Senator Ashcroft's background will allow him to foster and enhance the crucial partnership among federal, state and local law enforcement agencies.

The IACP urges you to rapidly confirm Senator Ashcroft's nomination.

I look forward to your positive response to this request. If you have any questions on this matter, please contact me at (703) 836-6767

Sincerely,


Bruce D. Glasscock
President



KENNETH T. LYONS
NATIONAL PRESIDENT

January 11, 2001

The Honorable Orrin G. Hatch
Chairman
Senate Judiciary Committee
SD-224
Washington, DC 20510

Dear Mr. Chairman:

The International Brotherhood of Police Officers (IBPO) is an affiliate of the Service Employees International Union. The IBPO is the largest police union in the AFL-CIO.

I am pleased to announce that the IBPO has officially endorsed Senator John Ashcroft's selection as the next Attorney General of the United States. The entire membership urges you and your colleagues on the Judiciary Committee to support his nomination.

Simply put, Senator Ashcroft has the experience and integrity to hold the job of Attorney General. The IBPO has had the privilege of working with Senator Ashcroft on issues of crime and punishment.

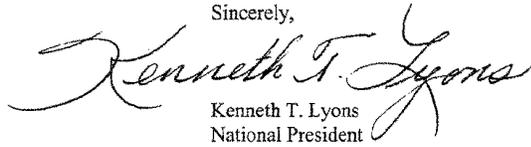
Senator Ashcroft has supported measures in Congress that have resulted in a reduction in crime, specifically support funding for new police officers. Senator Ashcroft knows that more officers on America's streets is an important component of any long-term crime reduction strategy.

Senator Ashcroft's votes on combating crime speak volumes to what a great Attorney General he will be. From cracking down on school violence to making sure the victims of crime are protected, Senator Ashcroft has shown that he was a leader in Congress in the fight against crime.

One particular piece of legislation that Senator Ashcroft sponsored, I must note with pride, was a bill that would extend the eligibility dates for financial assistance for spouses and dependent children of law enforcement officers killed in the line of duty. It is our estimation that without this correction to past legislation, over 5,000 dependents of slain police officers would not be eligible for education benefits. Senators' Biden, Robb, Leahy and Dodd cosponsored the bill signed into law on October 2, 2000.

Mr. Chairman, Senator John Ashcroft's record on crime issues has earned him the support of the people we represent, the cop on the street. As our next Attorney General, the IBPO is confident he will continue to be a faithful advocate for the entire law enforcement community. We urge you to support his nomination for Attorney General of the United States.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth T. Lyons". The signature is written in black ink and is positioned above the typed name and title.

Kenneth T. Lyons
National President

M G



County of **TANEY** State of Missouri

SHERIFF'S DEPARTMENT
Box 1005
FORSYTH, MO 65653

PHONE: 417-546-7250
FAX: 417-546-3348

THON JENKINS, SHERIFF
MEMBER
Missouri Sheriff's Association
August 25, 1999

RECEIVED AUG 31 1999

The Honorable John Ashcroft
United States Senate
Washington, DC 20510

7164216
2421741 10/05

Dear John:

As Sheriff of Taney County, I would like to go on record to OPPOSE the appointment of Judge Ronnie White to the federal district bench.

In December of 1991 James Johnson murdered Pam Jones, the wife of Moniteau County Sheriff Kenny Jones along with Cooper County Sheriff Charles Smith, Deputy Sheriff Lee Roark of Moniteau County and Deputy Sandra Wilson of Miller County. He was convicted and sentenced to death. When the case was appealed and reached the Missouri Supreme Court, Judge Ronnie White voted to overturn the death sentence of this man. He was the only judge to vote this way. He has also voted against capital punishment more than any other judge on the court.

It is vital for society to receive just and fair opinions from federal judges. Law-abiding citizens need the assurance that federal judges will enforce the law, back up law enforcement officers and uphold the difficult decisions reached by those who serve on juries.

This is a very important decision and I feel Ronnie White is clearly the wrong person to entrust with the power of a federal judge who serves for life.

Sincerely,

Theron Jenkins
Theron Jenkins, Sheriff
Taney County



Lincoln County Sheriff's Department

Jim Johnson, Sheriff

Sheriff Name	Served
Burter CROUSE	45-52
Raymond EDDY	53-56
Melvin STANLEY	57-60
Ed BULLITT	61-68
Artie CREECH	69-76
Clifton HILTON	77-80
Everett A. ROTTGER	81-96

65 Business Park Dr.
Troy, MO 63379
Emergency 911
314-528-8546

Jail Division
314-528-6301
FAX 314-528-6502

Central Dispatch
314-528-6100

Detective Bureau
314-528-6284
Fax-328-8664

mk
RECEIVED SEP 08 1999

September 2, 1999

Senator John Ashcroft
170 Russell Office Building
Washington, D.C. 20510

Dear Senator Ashcroft,

This letter is intended to oppose the nomination of Judge Ronnie White, of the Missouri Supreme Court to be a federal district judge.

Judge White voted to overturn the death sentence of James Johnson, a man who murdered 4 people in 1991. Judge White was the only judge who voted to over turn Johnson's death sentence. Please read Judge's White's opinion. Quite seemly I believe he is against capital punishment.

As a law enforcement officer for many years, I strongly feel that Judge White should not be allowed to represent a bench in the federal court. The death-penalty is the strongest form of determent this country has against violent crimes. With Judges like Ronnie White opposing capital punishment, how can we as law enforcement officers, be effective to the public we serve.

In closing, I again ask for the reconsideration of the nomination to allow Judge Ronnie White to seek the bench of the federal court.

Respectfully,


Jim Johnson
Lincoln County Sheriff

7164233
242/1979 10/5 ✓

cc: Missouri Sheriffs' Association
Sheriff Kenny Jones

**The Written Statement of Sheriff Kenny Jones
before the
Committee on the Judiciary**

**The confirmation hearings of John Ashcroft
U.S. Attorney General Designate
January 2001**

Senator Leahy, Senator Hatch, Members of the Judiciary Committee, I am honored and a little overwhelmed to be here today to testify on the nomination of John Ashcroft to be Attorney General of the United States.

Mr. Chairman, my name is Kenny Jones and I am the elected Sheriff of Moniteau County, Missouri, an office I have been privileged to hold for the last sixteen years. For those who may not know, Moniteau County is a very small unusually quiet county in mid-Missouri with a population of approximately 13,000. We are a strong tight knit community in the heartland of America. We believe in traditional values and we have a deep faith. We are small town America at its best.

As you know, much has been said about John Ashcroft and his fitness for this office. I for one support his nomination and urge this Committee to support him as well. Last year, Senator Ashcroft was unjustly labeled for his opposition to the nomination of Judge Ronnie White to federal district court. This one event has wrongly called into question his honor and integrity. Be assured that Senator Ashcroft had no other reason that I know about, to oppose Judge White except that I asked him too. I opposed Judge White's nomination to the federal bench and I asked Senator Ashcroft to join me because of Judge White's opinion on a death penalty case.

In December 1991, James Johnson changed the lives of many families in our small rural community. He held an elderly woman hostage, killed four people, and seriously wounded another. Johnson murdered in cold blood, the sheriff from a neighboring county, two deputy sheriffs, and my wife, Pam Jones. For this, he was tried by a jury, convicted of four counts of first degree murder, and sentenced to death.

To understand just how horrid this event is and to comprehend the devastating impact this crime has on my county, you need to understand the facts of that December night. It is easy to talk about dissenting opinions and legal maneuvering in this case and take the human tragedy out of it. But, that is a mistake. This case is entirely about human tragedy and justice. Not a day goes by that I don't think about what James Johnson did to my family and my community. Can you even imagine how it forever changed life in a small Missouri community?

On the evening of December 9th, Deputy Leslie Roark, was dispatched to the residence of James Johnson on a domestic disturbance call. After arriving on the scene and speaking with Johnson, his wife and his stepdaughter, Deputy Roark apparently ascertained they were all fine. He could not have been more wrong. As Deputy Roark turned to leave, Johnson pulled a gun and shot him in the back. My deputy fell face down, rolled over, and struggled to defend himself. Johnson then shot Les in the forehead at point-blank range. After shooting Leslie Roark, Johnson armed himself with more weapons and drove to my house in rural Moniteau County looking for me. I was not home. I had taken my two sons to their 4-H Club meeting. My wife, Pam, and our two daughters were home, however. They were hosting a Christmas party for a group of local churchwomen and their children. Upon arriving at my house, Johnson opened fire on completely innocent people. He fired several shots through a bay window, hitting my wife who was sitting with my daughter on a bench in front of the window. After the assault on my home, Johnson went to the home of Deputy Russell Borts and shot him, also through a window, as he was talking on the telephone. Russ lives today with several injuries inflicted by Johnson.

During the attack on my family and Deputy Borts, a call for help went out and many officers from surrounding counties responded to my office. Sheriff Charles Smith, from Cooper County personally responded to the call for help. What he did not know was that Johnson had moved down the block from the Borts residence and was laying-in-wait at my office. As Sheriff Smith was getting in his car, Johnson gunned him down in front of the Moniteau County Sheriff's Office. Just moments later, Johnson shot and killed Officer Sandra Wilson who had driven in from Miller County responding to the call for help. It is important to note that this coward never once confronted his victims face to face. Every single person he shot and killed was shot in the

back.

Before Johnson was apprehended, he held an elderly woman hostage until for some unknown reason, he released her. She escaped and told the authorities where Johnson was hiding. A team of negotiators finally convinced Johnson to surrender and he was taken into custody.

After dropping off my boys at 4-H, I found out that Les Roark had been shot. I went to be with him while we waited for the Life Flight helicopter. While there, I received the call that would change my life forever. I was told of an emergency at my own house. I raced home. There I saw an ambulance in the driveway and shocked people standing around. My secretary, Helen Gross, told me that Pam had been shot and our daughters had been taken to a neighbor's home. Pam was flown by helicopter to the University of Missouri Hospital. I gathered my four children and went to Pam's side. She died just a short time later.

James Johnson was tried, convicted and sentenced to death by a jury in February 1993. Every one of his appeals, including his appeal before the Missouri Supreme Court, was denied. In the Missouri Supreme Court, all but one of the judges affirmed the decision of the lower court. The only dissent was from Judge Ronnie White. In his opinion, Judge White urged that Johnson be given a second chance at freedom. I cannot understand his reasoning. I know that the four people Johnson killed were not given a second chance.

When I learned that Judge White was picked by President Clinton to sit on the federal bench, I was outraged. Because of Judge White's dissenting opinion in the Johnson case, I felt he was unsuitable to be appointed for life to such an important and powerful position. During the Missouri Sheriffs' Association Annual Conference in 1999, I started a petition drive among the sheriffs to oppose the nomination. The petition simply requested that consideration be given to Judge White's dissenting opinion in the Johnson case as a factor in his appointment to the federal bench. Seventy-seven Missouri sheriffs, both Democrats and Republicans, signed the petition and it was available to anyone who asked. I have the petition with me and respectfully ask that it be made a part of the record of this hearing. A copy was forwarded to both Senator Bond and

Senator Ashcroft. I also asked that the National Sheriffs' Association support us in opposing Judge White's nomination. They willingly did so and I am grateful that they joined us and wrote a strong letter opposing Judge White's nomination.

While some would have you believe otherwise, this is the only reason sheriffs opposed the nomination of Judge White. We contacted Senator Ashcroft and urged him to oppose this nomination as well. He agreed with our position, but unfortunately, his view on Judge White's nomination was misrepresented in the press and misrepresented to other members of the Senate. People alleged all sorts of reasons for the eventual defeat of Judge White's nomination. I can only speak for myself and can only testify to what I know to be true. I opposed Judge White's elevation to the federal bench solely because of his opinion in the Johnson case. Johnson murdered my wife in cold blood. He killed three close friends and colleagues and seriously wounded a fourth. Offering him a second chance, as Judge White would do, is something that I will never understand. I asked Senator Ashcroft to oppose the nomination based on what I have shared with you here during this hearing. By opposing the nomination of Judge White, Senator Ashcroft did nothing more than properly exercise Constitutional authority based on the information he had available. I hope this information will correct the record and prove that John Ashcroft did not act with an unseemly intent.

To deny John Ashcroft and reject his nomination to be Attorney General based solely on his opposition to Judge White would be wrong and a terrible loss for the country. I hope my testimony today provides the information you seek to make a truly informed decision on John Ashcroft. In my view, he will make a fine Attorney General and I hope that he will be confirmed. Thank you Mr. Chairman and I stand ready to answer your questions.



Kenny Jones, Sheriff

August 11, 1999

Dear Fellow Sheriff:

I am writing to you about Judge Ronnie White of the Missouri Supreme Court, who has been nominated to be a federal district judge. As Sheriffs, we go to work for the people of Missouri every day. Our lives are on the line. Every law enforcement, and every law-abiding citizen, needs judges who will enforce the law without fear or favor. As law enforcement officers, we need judges who will back us up, and not go looking for outrageous technicalities so a criminal can get off. We don't need a judge like Ronnie White on the federal court bench.

In addition to being Sheriff of Moniteau County, I am a victim of violent crime. So are my children. In December 1991, James Johnson murdered my wife, Pam, the mother of my children. He shot Pam by ambush, firing through the window of our home during a church function she was hosting. Johnson also killed Sheriff Charles Smith of Cooper County, Deputy Les Roark of Moniteau County and Deputy Sandra Wilson of Miller County. He was convicted and sentenced to death. When the case was appealed and reached the Missouri Supreme Court, Judge White voted to overturn the death sentence of this man who murdered my wife and three good law officers. He was the only judge to vote this way.

Please read Judge White's opinion. It is a slap in the face to crime victims and law enforcement officers. If he cared about protecting crime victims and enforcing the law, he wouldn't have voted to let Johnson off death row.

The Johnson case isn't the only anti-death penalty ruling by Judge White. He has voted against capital punishment more than any other judge on the court. I believe there is a pattern here.

To me, Ronnie White is clearly the wrong person to entrust with the tremendous power of a federal judge who serves for life. Please write to our U.S. Senators, Christopher S. Bond and John Ashcroft, and ask them to oppose the White nomination. Ask them to persuade other Senators to do likewise. Effective law enforcement saves lives. The deterrent value of capital punishment saves lives. As a federal judge, Ronnie White would hurt law enforcement and he would oppose effective death penalty enforcement.

You can write to Senator Bond and Senator Ashcroft at U.S. Senate, Washington, DC 20510. Please speak up before it's too late.

Sincerely,


Kenny Jones
Moniteau County Sheriff

cc: Senator Christopher S. Bond
Senator John Ashcroft

RECEIVED VIA E-MAIL JANUARY 15, 2001

January 15, 2001

Justice Policy Institute
1234 Massachusetts Avenue, NW
Washington, DC 20005
phone: 202-737-7270

The Honorable Patrick L. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20515

Dear Senator Leahy:

We are writing on behalf of the Justice Policy Institute to urge you to oppose the nomination of Senator John D. Ashcroft (R-MO) for the position of Attorney General of the United States. As the Attorney General, Senator Ashcroft would be the lead law enforcement officer and the chief architect of juvenile justice policy. Senator Ashcroft has a history of pursuing punitive rather than preventative policies, dismissing the importance of rehabilitation, demonizing our nation's children, supporting bills that endanger children by placing them in adult facilities, and politicizing Department of Justice data on falling crime rates. Senator Ashcroft's record demonstrates his opposition to effective and preventative juvenile justice policies, and undermines his qualifications to serve as Attorney General.

Senator Ashcroft has consistently opposed many of the basic protections for children outlined in the Juvenile Justice and Delinquency Prevention Act (JJJPA). The JJJPA was passed by Congress in 1974 after extensive hearings on abuse of children in adult jails and other problems in the juvenile justice system. In a 1995 speech to the Heritage Foundation, Senator Ashcroft made clear his position towards the founding ideals of the juvenile system arguing that the only legitimate response to youth crime was longer sentences and adult trials. Denouncing the juvenile justice system because it "hugs the juvenile terrorist," Senator Ashcroft proposed amendments to the JJJPA that would have weakened protections for children incarcerated with adults in jails, and would have required states and the federal government to prosecute those as young as 14 years old as adults. Senator Ashcroft's campaigns against youth protections came at a time when numerous reports and studies exposed the serious threat to children's physical and emotional safety in adult facilities, and showed that prosecuting youth in the adult system results in more, not less, recidivism.

Senator Ashcroft's supported efforts to weaken provisions of the JJJPA that address disproportionate confinement of minority youth. Research consistently shows that race is a determining factor in treatment and incarceration for youth. A recent comprehensive report by the National Council on Crime and Delinquency revealed that youth of color receive more severe treatment than white youth at every stage of the system, even when charged with the same offense. Without requiring any specific change of policy or practice, the JJJPA directs states to "address" disparate treatment of minority youth. Senator Ashcroft supported amendments to jettison even this modest provision by deleting any reference to "minority" or "race," thereby minimizing glaring inequities in the juvenile justice system.

Senator Ashcroft also introduced legislation that would have threatened protections of the Individuals with Disabilities Act (IDEA), including the very right to public education. Senator Ashcroft's amendment called for the suspension and expulsion of kids from school whose behavior results from their disability, despite the fact that law agencies report that suspending or expelling children without education increases juvenile crime.

Finally, Senator Ashcroft's misrepresentation of Department of Justice crime rates discredits his ability to head the very department responsible for the research that drives our juvenile justice policies. Although Justice Department research has shown that juvenile crime has reached its lowest level in 25 years, Senator Ashcroft argues that juvenile crime is "at its all time record high." Senator Ashcroft suggests that we "update our current juvenile justice laws to reflect the new vicious nature of today's teen criminals" at a time when the proportion of violent crime arrests made up by youth was at its lowest level since the 1970's. Senator Ashcroft's politicization of crime statistics and his aggressive efforts to initiate harsher punishments undermine his ability to enforce and initiate sensible juvenile justice policies in the future.

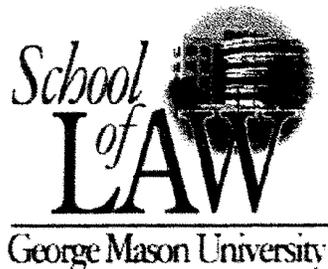
Senator Ashcroft's past positions on juvenile justice have demonstrated that he is not the most qualified candidate to head the department which enforces and shape the nation's juvenile justice policies. We urge you to oppose his nomination for Attorney General.

Thank you for your time and consideration.

Sincerely,

Vincent Schiraldi
President

Jason Ziedenberg
Senior Policy Analyst



3401 North Fairfax Drive
Arlington, Virginia 22201

Michael I. Krauss
Professor of Law
703.993.8024 (x606)
703.993.8124 (fax) mdek
MKrauss323@geck.com

January 9, 2001

Senator Orrin Hatch
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Hatch:

I have never before written to the Senate concerning a Presidential nomination. The series of attacks against Attorney General designee Ashcroft compel me to put petition you today.

I believe, as strongly as I have ever believed anything, that John Ashcroft is an ideal candidate for Attorney General. Anyone who has followed his career objectively must grant that Senator Ashcroft displays precisely that degree of integrity that is needed to direct the Justice Department. Those of us who revere the Rule of Law have often been saddened in the recent past by the seeming lack of objectivity of those federal agencies entrusted with its respect and implementation. No one currently in Congress, in my opinion, is more likely than Senator Ashcroft to enforce the law impartially and faithfully.

Accusations of racial insensitivity or hostility are, to anyone who has followed Senator Ashcroft's career, clearly absurd and/or deceitful. I hope and trust that Senators from both parties, who are familiar with John Ashcroft's values and behavior, will have the courage to set the record straight on this account.

I am not a close friend of the Senator. Indeed, to my knowledge we have never met. Rather, I have observed and admired his career from afar. He is the star of President-Elect Bush's Cabinet. I implore you to help the public understand how fit this great citizen is for the position of Attorney General.

Sincerely,

Charles Krauthammer

W. Post
19 JAN 01

Disqualified by His Religion?

A senator is nominated for high office. He's been reelected many times statewide. He has served admirably as his state's attorney general. He is devout, speaking openly and proudly about his religious faith. He emphasizes the critical role of religion in underpinning both morality and constitutional self-government. He speaks passionately about how his politics are shaped by his deeply held religious beliefs.

Now, if his name is Lieberman and he is Jewish, his nomination evokes celebration. If his name is Ashcroft and he is Christian, his nomination evokes a hue and cry about "divisiveness" and mobilizes a wall-to-wall liberal coalition to defeat him.

Just two months ago I addressed a gathering of the Jewish Theological Seminary arguing that the Lieberman candidacy—the almost universal applause his nomination received, the excitement he generated when he spoke of his religious faith—had created a new consensus in America. Liberals had long vilified the "religious right" for mixing faith and politics and insisting that religion has a legitimate place in the public square. No longer. The nomination of Lieberman to the second highest office in the country by the country's liberal political party would once and for all abolish the last remaining significant religious prejudice in the country—the notion that highly religious people are unfit for high office because they confuse theology with politics and recognize no boundary between church and state. After Lieberman, liberals would simply be too embarrassed to return to a double standard.

How wrong I was. The nomination of a passionate and devout Christian for attorney general set off the old liberal anti-religious reflexes as if Joe Lieberman had never existed.

Of course, the great anti-Ashcroft revolt is not framed as religious. The pretense is that it is about issues. Hence this exchange during John Ashcroft's confirmation hearing:

Sen. Patrick Leahy: "Have you heard any senator, Republican or Democrat, suggest that there should be a religious test on your confirmation?"

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

Sen. Leahy: "All right, well, I'm amazed at that."

At the clumsiness, perhaps. No serious politician is supposed to admit openly that Ashcroft's religion bothers him. The religious test that is implied is not just un-American, it is grossly unconstitutional.

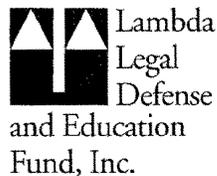
The ostensible issues are abortion and racial preferences, both of which Ashcroft fundamentally opposes. But are they really? In a country so divided on these issues, can one seriously argue that opposing abortion and racial preferences is proof of extremism? It would be odd indeed if the minority of Americans who believe in racial preferences and the minority who believe in abortion-on-demand were to define the American mainstream. In fact, under these issues lies a suspicion, even a prejudice, about the fitness of a truly religious conservative for high office. "Christian Right" is a double negative in the liberal lexicon. It is meant to make decent Americans cringe at the thought of some religious wing nut enforcing the laws. Torquemada at Agriculture perhaps. But not Justice, God forbid.

To the anti-Ashcroft coalition, the Christian Right—numbering at least 30 million, by the way—is some kind of weird fringe group to whom bones are thrown by otherwise responsible Republicans to induce them to return to their caves. Politically, they are a foreign body to be ignored, bought off or suppressed. Hence the charge that the very appointment of a man representing this constituency is, in and of itself, divisive.

Hence the salivation when news broke that there was a tape of Ashcroft's commencement address at Bob Jones University. In it, he declared that Jesus is a higher authority than Caesar. That sent some fundamentalist church-state separationists into apoplexy. This proved, said Barry Lynn, the executive director of Americans United for Separation of Church and State, that Ashcroft "has little or no appreciation for the constitutional separation of church and state" and thus is disqualified from serving as attorney general.

What Ashcroft did was not merely to state the obvious—that the American experiment has always recognized its source in the transcendent—but to restate in his own vernacular what Joe Lieberman had been saying up and down the country throughout the summer and fall.

It was a great day when Joe Lieberman was nominated. And it was even greater that he publicly rooted his most deeply held political beliefs in his faith. It is rather ironic that we now need to go through that same process for Ashcroft's constituency of co-believers. When the Senate confirms him, we will have overcome yet another obstacle in America's steady march to religious toleration.



National Headquarters

120 Wall Street, Suite 1500
 New York, NY 10036-3904
 tel 212.809.8585
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 www.lambdalegal.org

January 17, 2001

Hon. Patrick Leahy
 433 Russell Senate Office Building
 Washington, D.C. 20510

Re: Opposition to the Nomination of John Ashcroft as Attorney General

Dear Senator Leahy:

As the nation's leading legal advocacy groups on behalf of lesbians and gay men and people with HIV, Lambda Legal Defense & Education Fund, Gay & Lesbian Advocates & Defenders, and the National Center for Lesbian Rights urge you to vote against the nomination of John Ashcroft to the important position of Attorney General.

Our opposition is not merely a matter of disagreement with this nominee along the spectrum of policy options, but rather stems from Ashcroft's showing that he does not agree with core American tenets that must be enforced -- not undermined -- by the Attorney General. In particular, because of his bias against, and record of pathologizing, lesbians and gay men; his disturbing and extreme opposition to the rights and equality of many Americans, including his unfair treatment of nominees before the Senate; and his activist agenda against the separation of church and state, we call upon the Senate to reject this troubling nomination.

Summary

One indispensable qualification for the nation's Attorney General, our chief law enforcement officer, is an unequivocal commitment to assure equal justice under law to all Americans, without bias or favor.

Clear disqualifiers for any proposed candidate include (1) the view that civil rights protections are "special rights" that should not be granted to groups that are targets of discrimination; (2) the view, contrary to all reputable, mainstream experts, that gay people are "abnormal" and that efforts should be made to change their sexual orientation; (3) actions that reflect the position that a gay sexual orientation disqualifies an individual from government service; (4) an activist stance that seeks to break down the constitutionally required barriers between church and state; and (5) a singular identification with one particular political faction that has a social policy agenda incompatible with the unique responsibilities of the Attorney General.

John Ashcroft's own words and deeds manifest each of these disqualifying factors of particular concern to our organizations and communities, and demonstrate similar disregard for the constitutional rights and equality of women and people of color. He is unqualified to hold the vast power of the Attorney General, whose role includes serving as a guarantor -- not an opponent -- of this country's

Lambda Legal Defense and Education Fund is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men and people with HIV/AIDS, through impact litigation, education and public policy work.

Opposition to the Nomination of John Ashcroft
Page 2

commitment to the civil rights and equality of all. The Senate should not advise and consent to this nomination for this position.

The Role of the Attorney General

The duties and power of the Attorney General are enormous. As the nation's chief law enforcement officer, the Attorney General heads the U.S. Department of Justice; supervises the U.S. Attorneys in every state; represents the United States in the courts; oversees critical agencies such as the Federal Bureau of Investigation and the Immigration and Naturalization Service, as well as the federal penal system; and works closely with the Solicitor General in representing the United States before the U.S. Supreme Court. The Attorney General provides legal counsel to the President and the executive branch. The Attorney General plays a major role in shaping national policy and law in vital areas such as civil rights; constitutional protections; safe access to reproductive freedom; protections against crime, including bias-motivated attacks and the proper training and supervision of law enforcement officers; immigration and family unification; and the separation of church and state. Moreover, the Attorney General advises the President on, and screens appointments to, the federal judiciary, and directly hires and supervises many other important officials with law enforcement responsibilities.

The Attorney General must hold the confidence of all Americans that he or she will faithfully and impartially enforce the laws, and be fair and respectful to all.

Ashcroft's Bias Against Gay People Disqualifies Him As Attorney General

Ashcroft's often-expressed hostility to gay people, his acceptance of and participation in discrimination based on sexual orientation, and his unfounded belief that we are "abnormal" and should attempt to change our sexual orientation as the price for civil rights protection make it impossible to have trust in his preparedness to ensure the fair and impartial administration of justice for all Americans. Moreover, in pursuing his opposition to civil rights for lesbians and gay men, Ashcroft has time and again trucked in stereotypes and code-phrases that stigmatize and degrade gay people and our aspirations.

1. Disparagement of Equal Civil Rights Protections for Lesbian and Gay Americans
 - Ashcroft has repeatedly labeled as "special rights" civil rights protections against sexual orientation discrimination.¹ The "special rights" canard is a staple of extremist propaganda against gay people, and was rejected by six Justices of the U.S. Supreme Court in Justice Kennedy's majority opinion in *Romer v. Evans*.² *A nominee who falsely characterizes or disparages civil rights aspirations and protections – which even the Rehnquist Supreme Court found to be basic and important for all – is unfit to serve as Attorney General.*

¹ CBS *Face the Nation*, 7/5/98; Congressional Record, p. 10001, 9/6/96.

² *Romer v. Evans*, 116 S. Ct. 1620, 1627 (1996) ("We find nothing special in ... protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society.").

2. Stigmatizing and False Characterizations of Gay People

- Ashcroft has often expressed his view that homosexuality is “abnormal” and “a condition from which relief should be sought and not a condition that should be fostered by the society.”³ Dismissing the unanimous expert judgment of every major U.S. medical and mental health professional organization, Ashcroft instead toes the line of fringe anti-gay organizations, declaring, “I do know that there are thousands of former homosexuals, individuals who once were engaged in a homosexual lifestyle, who have changed that lifestyle and have repudiated it and find themselves to be engaged in heterosexual lifestyles.”⁴ *A nominee who willfully rejects scientific evidence and seeks to base policy and law on prejudice or propaganda is unfit to serve as Attorney General.*
- He characterized the Employment Non-Discrimination Act, a bill to promote civil rights in the workplace for all Americans regardless of their sexual orientation, as “contain[ing] seeds of real instability and inappropriate activity, seeds of litigation which could grow way out of hand and send the wrong signals to young people and provide a special standing and class...”⁵ *Implying that gay people are a threat to children, that we engage in “inappropriate activity,” and that we are asking for “special” protections are all unfounded, dehumanizing, and biased characterizations intolerable in an Attorney General.*
- He has joined in comments that likened gay identity to “kleptomania” or “alcoholism,” and praised football player Reggie White for his anti-gay remarks made during a speech that also included ethnic caricatures. *A nominee who fails to respect and defend all Americans, and instead engages in and applauds degrading attacks on minority groups, is unfit to serve as Attorney General.*

3. Prejudice Against Government Service By Lesbian and Gay Americans

- Ashcroft cast one of the two votes in committee against Senate confirmation of James Hormel to serve as U.S. Ambassador to Luxembourg. Ashcroft invoked Hormel’s identity as an openly gay man as a disqualification to serve our country, notwithstanding a distinguished civic and business career, saying, “[Hormel] has been a leader in promoting a lifestyle.... And the kind of leadership he’s exhibited there is likely to be offensive to... individuals in the setting to which he will be assigned.”⁶ *A nominee for*

³ CBS *Face the Nation*, 7/5/98; People for the American Way, <http://www.pfaw.org/news/gay.pdf>

⁴ Congressional Record, p. 10001, 9/6/96.

⁵ Congressional Record, p. 10001, 9/6/96.

⁶ *The Boston Globe*, 6/24/98. Both before and since his nomination by the President, ultimately taking office under a recess appointment, Hormel has been welcomed by the government and people of Luxembourg. An openly gay man, he has served with honor and distinction.

Opposition to the Nomination of John Ashcroft
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Attorney General who sees gay or lesbian identity as a bar to government service cannot impartially carry out the duties of his office. Moreover, Ashcroft's stereotyping and misrepresentation of Hormel was of a piece not just with his anti-gay record, but also with his treatment of other nominees to office (see below).

- As a sitting U.S. Senator, Ashcroft refused to sign a pledge that he would not discriminate on the basis of sexual orientation in employment in his own congressional office. *A public official unwilling to pledge not to discriminate against qualified individuals in his own employment decisions can hardly be trusted to enforce the nation's civil rights laws and constitutional commitment to equal protection.*
4. Unbroken Record of Opposition to Basic Legal Protections for Lesbians and Gay Men
- He has uniformly voted against or opposed any measure to provide legal protection for lesbian and gay Americans, including bills that would prohibit discrimination in the workplace or bring violence directed against people because of their sexual orientation within the scope of federal hate crimes prohibitions. *This consistent opposition transcends any particular disagreement over policy or legislative drafting, and reflects a deep and abiding hostility to gay people and their legal rights.*
 - Ashcroft has supported measures to declare gay people second-class citizens, including the federal anti-marriage law (the so-called "Defense of Marriage Act" of 1996), and to cut off funding to local gay community health centers that provide services to adults and children with HIV/AIDS. *Ashcroft's unbroken record of antagonism to gay people's inclusion and equality makes him unfit to serve as guardian of our nation's commitment to justice for all.*

Ashcroft's Anti-Gay Bias is of a Piece With His Unfair Treatment of Others

In addition to his alarming record against gay people and against civil rights for Americans discriminated against because of their sexual orientation, we are deeply concerned about Ashcroft's conduct during the nominations of Bill Lann Lee as Assistant Attorney General for Civil Rights, Doctors Henry Foster and David Satcher to be Surgeon General, and, especially, Missouri Supreme Court Judge Ronnie White to serve as a federal judge. As in the case of Ambassador Hormel, Ashcroft showed himself willing to make reckless and unfair charges in an attempt to sabotage the nominations of minority candidates, and to cite a nominee's support for civil rights or a woman's right to choose as a basis for opposition. We are also concerned about his treatment of women judges nominated to the federal bench - as demonstrated by his role in attempting to delay and defeat Judges Margaret Morrow, Margaret McKeown, Sonia Sotomayor, and Susan Oki Mollway.

Given the Attorney General's special role in judicial appointments and law enforcement hiring and supervision, Ashcroft's record is unacceptable. His zeal and willingness to depart from evidence and standards of fairness are dispositively disqualifying, for they undermine core principles that the Attorney General must vigorously guard.

Opposition to the Nomination of John Ashcroft
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Ashcroft's Activism Against the Separation of Church and State and Extreme Identification With the Far Right's Social Crusades Disqualify Him As Our Nation's Chief Law Officer

Addressing the Christian Coalition in 1998, Ashcroft blasted the federal judiciary as a "robed elite" too committed to the separation of church and state.⁷ He has backed tax funding of religion and government sponsorship of prayer. As the primary sponsor of so-called "charitable choice," Ashcroft has campaigned to provide millions of federal tax dollars to religious-affiliated entities without their committing to obey anti-discrimination laws or principles, and without assurances of secular approach or public accountability. Moreover, Ashcroft has demonstrated a startlingly casual willingness to propose amending the Constitution so as to alter our nation's basic guarantees of liberty in a secular state.

Ashcroft's indelible and defining identification is with right-wing groups and causes, and he has long pledged to serve as an agent of their agenda.⁸ His standard-bearing for one faction is contrary to the Attorney General's responsibility to serve all Americans without bias or favor.

Indeed, Ashcroft has demonstrated not only extreme views,⁹ but also a fervor in advancing those views that is unsuited to service as Attorney General. For instance, in 1998, Ashcroft proclaimed, "There are voices in the Republican Party today who preach pragmatism, who champion conciliation, who counsel compromise. I stand here to reject those deceptions. If ever there was a time to unfurl the banner of unabashed conservatism, it is now."¹⁰ The nation's Attorney General cannot be perceived to be -- or,

⁷ In a 1997 speech to the Heritage Foundation, Ashcroft used similarly disdainful language, referring to our nation's judiciary as "renegade judges, a robed, contemptuous intellectual elite, fulfilling Patrick Henry's prophecy, that of turning the courts into, quote, 'nursery[ies] of vice and the bane of liberty.'" Speaking to the Annual Meeting of the Conservative Political Action Conference in 1997, Ashcroft referred to our "judicial tyranny." Failure to appreciate the role of the courts as a safeguard against governmental or majoritarian excesses is intolerable in a nominee to be Attorney General.

⁸ *The New York Times*, 1/7/01.

⁹ Apart from the grounds upon which we call for the Senate to reject this unqualified nominee, we vigorously disagree with his positions in a wide variety of important areas. These include Ashcroft's aggressive campaigns to amend the Constitution and pass legislation that would massively curtail women's reproductive freedom; his opposition to the Equal Rights Amendment; his numerous votes and actions evincing a failure to respect free speech and expression, including his litigation against the National Organization for Women because of their advocacy; and his troubling statements and actions on matters of racial justice (including his praise for the notorious magazine, *Southern Partisan*, his weakening of a federal law protecting minority communities against "redlining" by financial institutions, as well as his unremitting opposition to school desegregation measures in Missouri).

¹⁰ *Human Events*, 4/10/98. Prior to this nomination, Ashcroft has made no secret of his priorities or zeal. In the same *Human Events* article, Ashcroft stated, "If I had the opportunity to pass but a single law, I would fully recognize the constitutional right to life of every unborn child, and ban every abortion except for those medically necessary to save the life of the mother." Ashcroft summed up his extremist agenda in a declaration to the magazine, *Charisma*: "It's said that we shouldn't legislate morality. Well, I think all we should legislate is morality."

Opposition to the Nomination of John Ashcroft
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as in this case, in *fact* be -- the biased, aggressive, and "unabashed" agent of a far-right agenda to the exclusion of the many Americans whom he has attacked over his long career in public office.

As civil rights organizations and legal advocates for the full equality and inclusion of lesbian and gay Americans, Lambda Legal Defense & Education Fund, Gay & Lesbian Advocates & Defenders, and the National Center for Lesbian Rights ask you to refuse your consent to this nomination and vote no. Because we are all entitled to an Attorney General committed to "equal justice under law" for all Americans, we call upon the Senate to reject this extreme, biased, and unqualified nominee.

Sincerely,



Kevin M. Cathcart, Esq.
Executive Director
Lambda Legal Defense & Education Fund

Gary Buseck, Esq.
Executive Director
Gay & Lesbian Advocates and Defenders
294 Washington Street, Suite 740
Boston, MA 02108

Kate Kendell, Esq.
Executive Director
National Center for Lesbian Rights
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January 16, 2001

Senator Orin Hatch, Chairman
Senate Judiciary Committee
Washington, DC 20510

Re: Confirmation hearing of Senator John Ashcroft

Dear Senator Hatch:

I represent an organization fully committed to the assistance of the Vietnamese communities in the Southern District, including Houston, Austin, San Antonio, Ft. Worth, Dallas, New Orleans, Orlando and Tallahassee. Our organization is an extension of the Vietnamese communities in the United States on various social and immigration issues of great concern to our communities.

I am writing to express our communities' deep appreciation of Senator John Ashcroft's position and action in support of refugee protection. His past actions demonstrate his willingness to assist and protect the rights of members of many minority communities such as the Vietnamese communities in the United States. Specifically, his commitment to fairness and justice has helped many thousand refugees escape communist persecution in Vietnam.

The Vietnamese-American community has been most appreciative of his strong support for the protection of the rights of Vietnamese boat people stranded in Hong Kong and Southeast Asia. Under the Comprehensive Plan of Action, these victims of communist persecution had been denied refugee status pursuant to a seriously flawed refugee "screening" procedure implemented by first asylum countries. In 1995 these countries started forced repatriation of these would-be refugees without proper procedure and due process. The US State Department, most regrettably, supported the repatriation of Vietnamese boat people to their place of persecution. That same year, our organization gathered supports from the Vietnamese-American Communities in California, Texas, Virginia and other states supporting the due process protection rights these refugees.

Congressman Christopher Smith introduced a provision in the Foreign Relations Authorization Act, Fiscal Years 1996 and 1997 to prevent this humanitarian catastrophe by establishing a thorough review of all refugee cases that might have been wrongly denied refugee status. Senator Ashcroft fully supported this provision in the Conference Committee.

Although this provision did not survive a Presidential veto, it gave rise to the Resettlement Opportunity for Vietnamese Returnees (ROVR) program. This program re-

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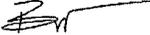
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adjudicates the refugee claims of the boat people after their repatriation to Vietnam. Over 18 thousand of them have since been found to be refugees and resettled to the US.

Senator Ashcroft, along with many of his colleagues in Congress who supported the provision, showed the most commendable commitment to justice without regard to race, religion, nationality, or political opinion. This unconditional commitment to justice has demonstrated his character with respect to the application of constitutional due process for all human being around the world.

We believe that our country will greatly benefit from his integrity, courage, compassion and deep respect for justice. Thus, we ask that you support Senator Ashcroft's confirmation for United States Attorney General.

Sincerely,



Scott K. Bui,
Legal Counsel
Southern Division



THE LAW ENFORCEMENT ALLIANCE OF AMERICA

January 18, 2001

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Lynchbrook, New York
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Director
Rollin A. Kiser
Maysville, Ohio
Chief of Police

Director
Christine Lott
Columbus, Ohio
Chair, LEAA Victims'
Rights Committee

Director
David G. Thompson
Midland, Michigan
Police Lieutenant

Dear Senators:

On behalf of the of the Law Enforcement Alliance of America (LEAA) and the following list of victims' rights groups, we would like to inform you of our strong support for the nomination of John Ashcroft for Attorney General of the United States.

LEAA is the nation's largest coalition of law enforcement professionals, crime victims, and concerned citizens dedicated to making America safer. Victims and victims' rights groups from around the country are also in support of John Ashcroft for his dedication and efforts in upholding the law and recognizing victims of crime.

Specifically, we applaud his record on crime and law enforcement. As Governor and Senator, he helped enact tougher standards and sentencing for armed criminals. While he was Governor, the number of full-time law enforcement officers in Missouri increased by 63%, capacity in state corrections facilities increased by 72%, and average time criminals served in prison was more than 20% above the national average. He supports the Victims' Rights Constitutional Amendment, and encourages lawmakers to pay special attention to the rights and needs of crime victims.

We also praise his opposition to the nomination of Ronnie White to the U.S. District Court. Senator Ashcroft opposed the nomination due to the nominee's unsatisfactory record on criminal justice issues. Efforts to distract attention from that record by false and offensive accusations of racial bias disrespect crime victims and law enforcement officers alike.

There is strong evidence to show that Ronnie White did not deserve a lifetime federal judicial appointment. Many trusted and prominent groups opposed Ronnie White's nomination for some of the very same reasons. The Missouri Federation of Chiefs of Police, the Missouri Sheriffs' Association, the National Sheriffs' Association, two-thirds of Missouri's individual county sheriffs, and 54 U.S. Senators across the ideological spectrum stood in strong opposition to White's record as a Missouri Supreme Court Justice. Senator Ashcroft's role deserves praise, not criticism.

Senator Ashcroft is superbly qualified to be the nation's highest-ranking law enforcement officer. He is a man of the highest integrity and has a strong record supporting crime victims and law enforcement. President-elect Bush has nominated him and now the Senate should confirm him.

Sincerely,

James J. Fottis
LEAA Executive Director

THE LAW ENFORCEMENT ALLIANCE OF AMERICA

The Nation's Largest Coalition of Law Enforcement, Crime Victims and Concerned Citizens Dedicated to Making America Safer.



LEAA

**The following organizations support the nomination of
Senator John Ashcroft for Attorney General
of the United States of America:**

CITIZENS AGAINST HOMICIDE

CITIZENS FOR LAW & ORDER

CRIME VICTIMS UNITED

DORIS TATE CRIME VICTIMS BUREAU

JUSTICE AGAINST CRIME

JUSTICE FOR MURDER VICTIMS

LOS ANGELES COALITION OF CRIME VICTIMS ADVOCATES

MEMORY OF VICTIMS EVERYWHERE

ORGANIZED VICTIMS OF VIOLENT CRIME

VICTIMS & FRIENDS UNITED

FAMILY & FRIENDS OF MURDER VICTIMS

LAW ENFORCEMENT ALLIANCE OF AMERICA



**Lawyers' Committee for
Civil Rights Under Law**

1401 New York Avenue, NW Tel: 202/662-8600
Suite 400 Fax: 202/783-0857
Washington, DC 20005-2124 Web: <http://www.lawyerscomm.org>

Direct Dial:

January 22, 2001

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Cheryl W. Mason
Chesapeake Region
George W. Jones

Hon. Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Hon. Patrick J. Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senators Hatch and Leahy:

As Co-Chairs of the Lawyers' Committee for Civil Rights Under Law, we submit on behalf of 83 Trustees a statement in opposition to the nomination of Senator John Ashcroft as the Attorney General of the United States. This statement is endorsed as well by 12 Board members of our affiliates in Chicago, San Francisco and Washington, D.C., whose names follow the statement as Appendix B.

We also enclose a 26-page memorandum, which summarizes the results of a review of Senator Ashcroft's speeches, writings, interviews and his record as Missouri Attorney General, as Missouri Governor and as United States Senator. We request the opportunity for a designated member of the Board of Trustees to testify at the confirmation hearings, and the statement in opposition and this memorandum would serve as the basis for that testimony.

We believe that the members of the Lawyers' Committee who have joined us in opposition to Senator Ashcroft have done so because the record demonstrates that Senator Ashcroft does not have the commitment to upholding and enforcing the Constitution and civil rights laws, ensuring equal justice under the law and promoting the rule of law. His confirmation would place at the head of the Justice Department a person, who will not be

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Letter to Senators Hatch and Leahy
January 22, 2001
Page 2

a vigorous force in promoting the causes of racial and gender equality to which this nation is committed.

We thank you for the opportunity to submit the statement in opposition and memorandum to the Committee on the Judiciary and hope that our designated member of the Board of Trustees will be offered the opportunity to testify at the confirmation hearings.

Sincerely yours,



Charles T. Lester, Jr.
Co-Chair



John Payton
Co-Chair

ON THE NOMINATION OF SENATOR JOHN ASHCROFT
AS ATTORNEY GENERAL OF THE UNITED STATES

This statement is submitted on behalf of the members of the Board of Trustees of the Lawyers' Committee for Civil Rights Under Law whose names are listed in Appendix A.

The Lawyers' Committee was organized in 1963 at the request of President John F. Kennedy in order to bring the resources of the private bar to bear in solving our nation's civil rights problems. Presidents Lyndon B. Johnson, Richard M. Nixon, Gerald R. Ford, Jimmy Carter, and William J. Clinton each asked the Committee to continue its work. The Committee's members include both Democrats and Republicans, former officers of the Justice Department and leaders of the private bar. Since its inception, the Lawyers' Committee has been committed to vigorous civil rights enforcement, the pursuit of equal justice under law, and fidelity to the rule of law.

It is with this history and mission in mind that we have considered the nomination of Senator John D. Ashcroft as Attorney General of the United States. After careful review of Senator Ashcroft's public record, especially as it pertains to civil rights, we have concluded that he is not qualified to provide the leadership necessary for the Department of Justice to retain its ongoing commitment to enforce and defend our nation's civil rights

laws, promote equality and justice for all Americans, and ensure the rule of law.

The position of the Attorney General is unique in American governance. The Attorney General, with authority over the Department of Justice, is the chief law enforcement officer of the United States, and has the high duty of vigorously enforcing the law. The Department of Justice is the principal institution responsible for enforcing the nation's civil rights laws, which prohibit discrimination in a wide range of fields on the basis of race, national origin, religion, sex, age, and disability. Beyond the responsibility to enforce existing laws -- including civil rights laws -- the Attorney General is an official with extraordinary power and discretion, particularly in the choice of cases to prosecute, or to appeal.

The responsibility entrusted to the Attorney General requires the firmest commitment to enforcing the law, and the most scrupulous adherence to the rule of law. Moreover, the American people have expressed a strong commitment to the cause of racial justice. Congress has reflected this commitment through a series of civil rights laws. The Attorney General must interpret and enforce these laws so as to promote that commitment.

Further, through the Office of the Solicitor General, the Attorney General represents the interests of the United States before the Supreme Court. Given that the United States presents arguments in a substantial majority of all cases heard by the Court, the Attorney General plays a critical role in advocating or opposing before the Court civil rights and other matters of great importance to the American people. As well, the Attorney General determines, through the Office of the Solicitor General, whether to authorize appeals to federal appellate courts, and determines whether to intervene in cases before the federal courts. Continued enforcement of the civil rights laws and efforts to secure equal justice will significantly be affected by the judgments made by the next Attorney General.

Finally, in many crucial ways, the influence of the Attorney General extends beyond the Executive Branch. The Attorney General reviews proposed congressional legislation and renders advice as to whether particular legislative measures violate the Constitution. This places the Attorney General in a unique and powerful position to influence legislation that affects rights firmly rooted in American constitutional principles and established Supreme Court precedent. The Attorney General also is a principal gatekeeper to the federal judiciary, playing a critical role in the judicial

selection process and advising the President in decisions on candidates for seats on the federal bench, including the Supreme Court. Thus, the Attorney General has significant influence over the composition of the federal judiciary. It is critical, therefore, that the Attorney General be committed to an independent and diverse judiciary, positioned to protect the rights and liberties of the American people and to ensure equal justice under law.

In sum, the office of the Attorney General is a unique position endowed with extraordinary power. It is precisely because of the unparalleled nature of the position in the structure of our governance, and its direct impact on the lives of every American, that extreme care must be taken and high standards employed in determining the qualifications of any nominee for the position.

We have reviewed Senator Ashcroft's public record, as Attorney General and Governor of Missouri and United States Senator, and his public statements and writings from this perspective. We conclude that he has not demonstrated the qualities that must be expected of one who would be entrusted with the power, influence and responsibility of the Office of Attorney General.

Throughout his career, Senator Ashcroft consistently has expounded and advocated adoption of an extreme conservative

ideology on civil rights and other issues effecting the lives of Americans, the law and the Constitution. There is no question that Senator Ashcroft stands well outside of the mainstream, and at the far margins, of conservative ideology. More importantly, Senator Ashcroft eschews the notion of reaching across the ideological divide to reconcile or find common ground with those of differing views. Senator Ashcroft has made rhetorical assaults on those with whom he disagrees, including the judiciary, such as his reference to Justices of the Supreme Court as "ruffians in robes." He has expressed support for organizations and institutions that endorse racial bias. His actions and statements have been divisive, have reflected a lack of regard for the concerns and legitimate views of others and, at times, have exhibited a lack of candor. Senator Ashcroft has not demonstrated the temperament, objectivity, and character necessary to discharge the responsibilities of Attorney General and inspire confidence in that high office.

Senator Ashcroft's record reflects forceful and consistent opposition to established Supreme Court precedent and constitutional interpretations on which the rights of Americans rest. In the area of civil rights, Senator Ashcroft has expressed persistent disagreement with long-standing Supreme Court precedent that race-conscious measures are legitimate and appropriate when

tailored to remedy established racial discrimination. His views reject settled interpretations of the Constitution that ensure remedies for those denied the equal protection of the law. In the name of "racial reconciliation," Senator Ashcroft would interpret the Constitution to deny victims of racial discrimination the right to obtain relief.

Senator Ashcroft has acted on this disagreement with established constitutional interpretation by vetoing affirmative action legislation as Governor of Missouri, and by repeatedly proposing legislation that would have barred affirmative action as a Senator. He also asserted his disagreement with precedent as a basis for denying confirmation to nominees for governmental positions. For example, Senator Ashcroft based his opposition to the nomination of Bill Lann Lee as Assistant Attorney General on Mr. Lee's expressions of permissible race-conscious action, despite the fact that Mr. Lee's expressions reflected existing constitutional law.

Senator Ashcroft also has expressed, in words and acts, vigorous opposition to remedies for racially segregated schooling that have been approved in unanimous Supreme Court decisions. As Missouri Attorney General, he described such remedies as "unconstitutional discrimination," and opposed even voluntary

school desegregation remedies. More significantly, in that same office, he failed to comply with the court's orders to propose school desegregation remedies. His resistance resulted in the threat of contempt proceedings and a judicial finding of a "deliberate policy ... to defy the authority of th[e] court." Senator Ashcroft's staunch opposition to both judicially-approved and voluntary school desegregation remedies reflects a departure from an interpretation of the Constitution that would assure equal justice. His defiance of court orders demonstrates a lack of respect for the rule of law.

Senator Ashcroft's record on judicial nominations reflects not merely a lack of commitment to an independent judiciary, but a deliberate effort to impose an ideological bias on the courts. He has openly proclaimed his crusade to re-shape the judiciary to conform to his vision. He has actively opposed well qualified nominees -- particularly minorities and women -- who had the support of Senators across the ideological spectrum and on both sides of the aisle, on the basis of their work as lawyers in arguing positions to which Senator Ashcroft was ideologically opposed. In at least one instance -- Justice White of Missouri -- Senator Ashcroft not only applied an ideological litmus test, but misrepresented to the Senate the judicial record of the nominee in

order to defeat his nomination. Senator Ashcroft's conduct with respect to judicial nominations demonstrates that he lacks the objectivity, balance and candor necessary to ensure the continued vitality of a strong and independent judiciary, so vital to our constitutional democracy.

We recognize that a President ordinarily should be permitted his choice of Cabinet officers. But that prerogative must yield to demonstrated concerns as to the fitness of the nominee for the office in question. The special nature of the office of the Attorney General, and its unique power, influence and responsibility in our form of governance demand high standards. Senator Ashcroft has failed to demonstrate a commitment to upholding and enforcing the Constitution and civil rights laws, ensuring equal justice under the law, and promoting the rule of law. His approach to civil rights issues demonstrates conclusively that the Justice Department, under his direction, will not be a vigorous force in promoting the causes of racial and gender equality to which this nation is committed. Nor has he exhibited the temperament, objectivity or character required for that high office. Accordingly, we strongly urge the United States Senate to reject Senator Ashcroft's nomination for Attorney General of the United States.

APPENDIX A

BOARD OF DIRECTORS AND TRUSTEES OF THE
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
ENDORISING STATEMENT

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Norman Redlich	Robert Ehrenbard	Ulysses G. Thibodeaux
Nicholas T.	Edward E. Kallgren	Albert E. Arent
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D. Stuart Meiklejohn	Robert H. Rawson	
John S. Skilton	Colleen M. McIntosh	<u>Dissenting:</u>
William L. Robinson	Conrad K. Harper	N. Lee Cooper
Robert A. Murphy	Joseph D. Feaster, Jr.	
Hugh R. Jones, Jr.	Brian K. Landsberg	
Marc L. Fleischaker	John E. Hickey	
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Robert MacCrate	Hans F. Loeser	
Thomas D. Barr	Henry L. Marsh, III	
Jon Meyer	John F. Savarese	
Alexander D. Forger	Thomas S. Williamson	

APPENDIX B

LAWYERS' AFFILIATED WITH LOCAL LAWYERS'
COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Denise A. Vanison
Jeffrey L. Taren
David Oppenheimer
Charles R. Both
James H. Heller
James N. Bierman
Harry Silver
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- M. Thomas Arceonous
- Carl L. Asperand
- Dwight T. Baines
- Francis J. Barry, Jr.
- James G. Berry
- J. Barnett Benton
- Thomas B. Bestman
- Patrick J. Bergigan
- Jennifer B. Best
- P. Albert Bibeveanu
- Ann T. Bond
- Irmy Rothagen
- Paul A. Bomm
- Dorinda C. Chastner
- Roy M. Bowes
- Andy Briner
- Laurie Reis Drister
- Thy Brunsard
- Patrick J. Browne
- Patrick J. Browne, Jr.
- Stephen E. Brown
- Edward F. Buckley III
- Stephen G. Bullock
- Murphy J. Burke III
- Clay D. Butera
- G. Walton Caire
- A.J. Cantino
- Robert E. Casaway III
- John W. Carpenter
- Carl W. Cavallone
- J. Charles Collins, Jr.
- Deana Campbell Conrad
- Marc Hale Conrad
- Francis A. Courtney, Jr.
- Mariano Cujonczak
- Keith R. Cresto
- James G. Daffner
- Clyde A. Davenport
- Harold G. Deane II
- Curry J. Deaton
- Bobby J. DeLise
- James E. Diaz, Jr.
- James J. Donohue
- James L. Donovan
- Emilie J. Drenti, Jr.
- William H. Dunderman
- Richard D. Eason II
- Rosty D. Eason
- Nan Roberts Eitel
- Robert S. Eitel
- Kelly Curvan Ellis
- Michael H. Ellis
- Allison S. Elise
- Franklin V. Eubank, Jr.
- Kurt D. Engelbarto
- Rea Fawcett III
- Paul S. Ficozarzo
- John D. Fitzmorris, Jr.
- Harold J. Flanagan
- Susan D. Flanagan
- Thomas Flanagan
- Katharine H. Foster
- Michael G. Gallwey
- Gilbert P. Garabedian, Jr.
- Arthur E. Garity
- Kathryn E. Garity
- Leon Gray
- Stephen M. Grier
- George M. Gilly
- Frederick J. Glavinis, Jr.
- Jane M. Glavinis
- James L. Gray
- Heide A. Greca
- Joseph B. Grullenz
- William J. Grute III
- William J. Grute, Jr.
- William W. Healey, Jr.
- Debra J. Hale
- Ashley E. Hasty
- Elhore M. Harold, Jr.
- Robert Payne Harper
- William Ken Hasbani
- Kevin Heagle
- Carl E. Hammers III
- William Houston
- Robert T. Hughes
- Harry K. Hull, Jr.
- Mark J. Jeanstone
- Greg L. Johnson
- J. Michael Johnson
- Suzanne M. Jones
- Stephanie W. Jumboville
- William J. Kelly III
- Thomas Keffer, Sr.
- Norman R. Keith
- Elan S. Kilian
- Donald R. Kirtz
- Ellen Diane Kovach
- Scott Allan Kroyder
- Omer F. Kuebel, Jr.
- Richard A. Kuntz
- Frank W. Lagarde
- Alex D. Lambert
- John D. Lambert, Jr.
- Nolan P. Lambert
- Harold J. Lamy
- Charles D. Lancaster, Jr.
- Roger J. Laroche, Jr.
- Fani M. Lavakis
- Scott A. LeBlanc III

January 18, 2001

Senate Judiciary Committee
Honorable Orrin Hatch
224 Dirksen Office Building
Washington, D.C. 20510

Dear Senators,

I write on behalf of Louisiana Lawyers for Life, an organization of over 200 attorneys practicing in the State of Louisiana, who have committed themselves to the preservation of life through the law, including the discouragement of abortion, infanticide and euthanasia. I would like to express our support for nominee John Ashcroft of Missouri to be the next Attorney General of the United States.

We, as Louisiana Lawyers for Life, are disturbed that the legitimate and measured exercise of the free speech rights of John Ashcroft on behalf of life issues has led some to question his ability to serve as Attorney General. Attorneys who express concern, and advocate some legal protection, for the unborn, just born, ill and invalid, should not be disqualified from serving in positions of trust either in the executive or judiciary.

Louisiana Lawyers for Life express complete support for the rule of law as we seek in good faith to alter or extend certain existing statutes and judicial rulings. Further, we believe that John Ashcroft will faithfully execute and enforce the rule of law as currently expressed by the courts, even if he may not agree with all of the content of the judicial interpretations. John Ashcroft, as Attorney General and Governor of the State of Missouri, has already done so, as have innumerable other self-described pro-life district attorneys, attorneys general and state and federal judges.

Please do not refuse your consent to the nomination of John Ashcroft to be Attorney General of the United States because he has identified himself as pro-life and acted accordingly. To do so would not only dishonor John Ashcroft, but would also dishonor all of us who act

- Georges M. Legrand
- Lynn L. Lightfoot
- Hans J. Liebberg
- Doris J. Lichner
- Judy Leibman Mueckles
- Guaneve A. Munday, Jr.
- Kimberly A. Mirano
- Stacey Williams Marce
- Edward F. Martin
- Michael Martin
- Kenneth A. Mayeux
- Lynette Guzzino McPaul
- Michael H. Madeline
- Donald E. McKay, Jr.
- Lawrence L. McLamara
- Renald W. Mebeck
- Henry F. Mentayer
- Thomas Milazzo
- Terril M. Miles
- Martin G. Miller II
- Pierre V. Miller II
- Paul Michale
- Christy Moore
- Scott D. Moore
- Thomas S. Moore
- F. Edward Mouton
- James C. Murphy, Jr.
- Joseph N. Naccari
- James P. Nader
- Michelle S. Nader
- Christopher H. Nally
- Paul A. Nally
- Jeffrey C. Napolitano
- Cillian W. Newlin
- Albert J. Nicard
- Marie Louise Omer Nix
- William D. O'Regan III
- John A. Oshroff
- Jude L. Odinet
- Julith Orno
- Anne Moore Orie
- Mark G. Orits
- Dwain D. Palomares
- Antonio E. Pappale, Jr.
- George M. Pappale
- Brian D. Perry, Sr.
- Maury F. Pecklers
- David K. Pessons
- Brigitte M. Pincus
- Ernest Priolo
- Ernest Priolo
- Thomas A. Rayer
- Michael G. Read
- Robert F. Reimann
- Richard E. Regan
- Richard T. Regan
- Lea J. Reynolds, Jr.
- Edward J. Rice, Jr.
- Dan M. Richard
- Brian G. Rieck
- Michael D. Riley
- William E. Robertson
- Jane Woodard Robson
- Sharon B. Rodi
- Stephen B. Rodi
- Jennifer Schay
- Judith Cancelli Schott
- Louis G. Schott
- Amy Chastain Selig
- Louis F. Selig
- John D. Silco, Jr.
- Susan W. Silco
- Martin J. Slaughter, Jr.
- Harry V. Slaughter
- Shirley Beale Slaughter
- Genald F. Slatery, Jr.
- William H. Spangher III
- Mark J. Spangher
- Phillips P. St. Pe
- Paul J. Starosta
- Hill Langry Stoner
- Thomas J. Stuckey
- Daniel J. Suter
- Frank W. Summers II
- J. Douglas Sussner
- Mark C. Surprenant
- W. J. Tene
- Alphonse M. Thompson, Jr.
- Bobby Thull
- Shelly C. Trunfautzi
- Frederic J. Tullis
- Marie D. Turft
- Paul R. Tison
- Basil J. Udoe
- Julie A. Ungarino
- Martina E. Ungarino
- Evangelina M. Vavrick
- Theodore D. Vicomar
- John G. Vukobrat
- Michael S. Weinberg
- Burgess Melis Weller
- Scott F. Whitaker
- Frederick A. Wild III
- Conrad S.P. Williams III
- Robert E. Winn
- Lisa C. Winter
- John Yeagan
- Katherine S. Yeagan
- John F. Young
- Jay C. Zaney

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as officers of the court, participating in a legal system whose conclusions we may not always agree with, but the legitimacy of which we dutifully support in our daily execution of the oaths we swore as attorneys barred by the State of Louisiana.

Sincerely,


Stephen M. Gele
President

*Law Offices**Joel C. Mandelman*

2540 Walter Reed Drive
Suite D
Arlington, Virginia 22206
Telephone: 703 288 4694
Fax: 703 288 1866

January 11, 2001

Ms. Amy Haywood
Committee of the Judiciary
United States Senate
Washington, D.C. 20510

Dear Ms. Haywood:

As we discussed, I would like to assist in supporting Senator Ashcroft's nomination in whatever way you think would be most effective. I strongly share his views on ending reverse discrimination/"affirmative action", in both the public and private sectors. If I to testify on his behalf, it would be primarily on that basis.

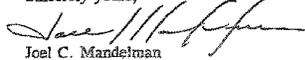
From 1984 to 1986 I served as the Deputy General Counsel to the U.S. Commission on Civil Rights. I worked on issues such as the Grove City legislation, comparable worth (I wrote a portion of the Commission's Report on the issue) and reverse discrimination. I think that I would have real credibility in supporting his nomination because of that position. Perhaps because I am somewhat pro choice (although I am totally opposed to partial birth and sex selection abortions) it makes it harder to attack me as "a right wing extremist".

From 1979 to 1981 I served as Senator Alan Simpson's Counsel on the Judiciary Committee and as Counsel to the Subcommittee on Jurisprudence & Intergovernmental Relations. Prior to that time I was a trial attorney with the Antitrust Division of the Justice Department. Based on my experience, I could speak to Senator Ashcroft's qualifications on wide range of issues that he will face as Attorney General.

I have been in private practice for the past 12 years and I now serve as the General Counsel to a high tech company that manufactures pollution control and water recycling equipment.

Please let me know what I can do to help. Please feel free to call me at my office, or at home, at 703 578 6457

Sincerely yours,


Joel C. Mandelman

Also Admitted in the District of Columbia and New York

CITY OF BETHANY

POLICE DEPARTMENT

MG

PO BOX 344 • 218 N. 16TH ST.

BETHANY, MO 64424

660-425-8888 / 660-425-3511

August 24, 1999

RECEIVED AUG 27 1999

Hon. John Ashcroft
United States Senator
Washington, DC 20510

Dear Senator Ashcroft:

I was Sheriff of Harrison County in December, 1991 when James Johnson murdered Mrs. Pam Jones. Pam was holding a meeting of a church group in her home when Johnson shot through the window of her home and killed her. Pam's children were instantly without their mother and Sheriff Kenny Jones a widower.

Senator, there are only one hundred fourteen sheriffs and the Sheriff of St. Louis County. We met yearly at our annual conference. Our children played with the children of other sheriffs. Our wives became friends. When Johnson cowardly took the life of Pam Jones he took someone good from all of us. But Johnson didn't stop there. Before he was captured he took the lives of three other professionals. Sheriff Charles Smith, Deputy Sheriff Les Roark and Deputy Sheriff Sandra Wilson. During the trials that followed the jurors spoke for all Missourians and rightly sentenced Johnson to death.

Now, Judge Ronnie White has voted that James Johnson should be allowed off death row. This is not the vote of a judge who cares for the victims and families of violent crimes. It is not the vote of a judge who cares about the will of Missourians. Why would Ronnie White care more about our rights if he were allowed to become a Federal judge?

Senator Ashcroft, please speak for all Missourians and Missouri law enforcement officers and oppose Ronnie White's confirmation.

Respectfully,

George W. Martz
George W. Martz
Chief of Police

716 5587
2420 947
10/1 ✓

JAN 11 '01 13:13 FROM

TO 912022281115

PAGE.002



Michael W. McConnell
Presidential Professor

College of Law
 332 S. 1400 E. Front
 Salt Lake City, UT 84112-0730
 (801) 581-6342
 email: mconnellm@law.utah.edu

January 11, 2001

Senator Orrin Hatch
 Senate Judiciary Committee
 224 Dirksen Senate Office Building,
 Washington, D.C. 20510

Re: Confirmation of John Ashcroft for Attorney General

Dear Senator Hatch:

As a constitutional law scholar and former lawyer in the Department of Justice, I write in support of the nomination of Senator John Ashcroft to be the next Attorney General of the United States. I do not know Senator Ashcroft personally, but his record of public service demonstrates that he has the qualifications and integrity to serve in that office with distinction.

The Constitution vests in the President the authority to "take Care that the Laws be faithfully executed." To enable him to discharge that constitutional responsibility, Congress has established various executive offices and departments. The Attorney General and the Department of Justice, which he heads, are among the most central to this responsibility. The Attorney General is charged by law with enforcing the laws of the United States. But it must not be forgotten that in so doing, the Attorney General acts – as a constitutional matter – as an assistant to the President, in whom the Constitution vests the authority for executing the laws. Thus, the President is entitled to broad discretion in choosing an Attorney General in whom he has confidence.

While some Senators may disagree with Senator Ashcroft on various questions of policy, this should not be a factor in the confirmation hearings. The Senate can – and should – satisfy itself that Senator Ashcroft is prepared to enforce the laws of the United States, and that he is a person of proper character and qualifications for the position. It should not withhold consent on account of mere political disagreement.

I am particularly disturbed regarding reports that Senator Ashcroft's religious convictions are being raised as relevant to his appointment. Article VI of the Constitution forbids a religious test for office. Our nation is founded on the premise that religious belief and affiliation is irrelevant to qualification for public service. I would hope that the Senate will give the nation a

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 332 S. 1400 E. Front
 Salt Lake City, Utah 84112-0730
 (801) 581-6883

Page 2

civics lesson in this regard by disregarding attacks on Senator Ashcroft's religion.

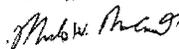
The arguments that have been raised in the public press regarding Senator Ashcroft seem wholly insubstantial. That he opposed a single African American nominee to the federal bench can hardly be treated as evidence of bias, in light of his support for every African American nominee to be confirmed by the Senate during his tenure, as well as his record of diversity hiring as Governor of Missouri. That he opposes abortion rights can hardly be considered disqualifying for the office of Attorney General. Pro-life Senators have voted in favor of confirming appointees who are just as fervent in supporting abortion rights as Senator Ashcroft is in supporting protections for the unborn. This nation is deeply divided on the issue of abortion, and civil harmony requires that neither side treat disagreement as a basis for exclusion from rights of equal citizenship and service. To reject Senator Ashcroft on this ground would be an insult to the many millions of Americans who support limitations on abortion. There is no basis for the scurrilous suggestion that because he supports the rights of the unborn, Senator Ashcroft would hesitate in protecting abortion clinics and their operators and users from violence. Most opponents of abortion do so on principled grounds, which equally exclude violence of this sort.

Critics of Senator Ashcroft have not claimed that there is any reason to doubt his integrity or qualifications. Criticisms have been entirely political and ideological in character. But this is a large and diverse country, with many different views. The Senate should not use its powers of advise and consent to restrict the President's ability to draw upon capable persons merely because Senators may disagree with them on certain high-profile issues.

Since the nomination struggle over the appointment of Robert Bork to the Supreme Court, through the impeachment controversy last year, members of both parties have increasingly departed from this country's traditional practices of cooperation, civility, and mutual respect. The American people are tired of this political rancor. It was the hope for a new tone in Washington that inspired many citizens to vote as they did for President. This nomination can be an occasion for putting aside the new politics of attack, and returning to the older vision of government in which both parties work together to serve the public interest.

I urge the Senate to confirm John Ashcroft as the next Attorney General of the United States. I write in my personal capacity only, and do not represent any group, or the University of Utah.

Sincerely,



Michael W. McConnell
Professor of Law

JAN-11-2001 15:42

212 995 4659 P.01



New York University
A private university in the public service

School of Law
40 Washington Square South
New York, NY 10012

Geoffrey P. Miller
Professor of Law and Director
Center for the Study of Central Banks
212-998-6329 (phone)
212-995-4590 (fax)
geoffrey.miller@nyu.edu

Thursday, January 11, 2001

Sharon Prost
Chief Counsel
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

FAX 202-228-1115

Dear Ms. Prost:

I write to support the nomination of Senator John Ashcroft as Attorney General. As a Professor of Law and former official of the U.S. Department of Justice, I have a strong interest in this matter, and wish to convey to you my deep convictions.

I have met Senator Ashcroft during several of his visits to the University of Chicago Law School, where I was teaching. I found him to be a person of impressive capacities and absolute integrity. His commitment to the rule of law is unquestionable. He is principled, honorable, and straightforward. I have no doubt that, as Attorney General, he will enforce all the laws within the mandate of his office impartially and without regard to his personal views.

Please work hard to ensure the appointment of this capable and dedicated public servant.

Very truly yours,

A handwritten signature in black ink, appearing to read "Geoffrey P. Miller".

Geoffrey P. Miller
Professor of Law
New York University Law School

TOTAL P.01



August 24, 1999

PAUL MILNE
Sheriff of Cooper County
BOONVILLE, MISSOURI 65233

MG
Office: 816-882-2771
Fax: 816-882-7075
Cellular: 816-621-2527

RECEIVED AUG 31 1999

Senator John Ashcroft
316 Hart Office Building
Washington, D.C. 20510

Dear Senator Ashcroft:

I am writing in response to Judge White's recommendation for a federal judge appointment. I say no and hope you as a senator will do the same.

I was in California, Missouri, on the night of December 9 and morning of December 10, 1991. I remember the incident all too well. I served as Chief Deputy for Sheriff Charles Smith for seven years and was a very close friend. Sheriff Smith was going to seek one more term as sheriff, then retire allowing me to seek the office of Sheriff with his blessing. All this came to an end December 10, 1991 at approximately 1:20 am.

I came to Missouri from Kansas and served the people of Boonville as a police officer where I met Charles Smith, then a police officer himself. I was 23 years old and Charles Smith became a father away from home and that relationship lasted for fourteen years. I could go on with fond memories. However, the point is James Johnson murdered Charles Smith. In return, he received the death sentence after being represented by one of the best legal teams in mid-Missouri. I believe in the death penalty. However, this is the only execution I would like to attend.

In regards to checkpoint operations, we engage in the same operation in Cooper County on I-70 which I understand is one of the main drug lines through the nation. This operation is done following its own rules and regulations, supervised by me personally.

Sheriff Jones said it best when he stated Judge White's action is a slap in the face for victims of crime and law enforcement. If need be, I am willing to testify against Judge White's appointment.

Sincerely,

Paul Milne
Cooper County Sheriff

716 3584
2420944 *co/l*

Written Comments Million Mom March President
Mary Leigh Blek
Opposing the Confirmation of John Ashcroft as U.S. Attorney General
Committee on the Judiciary
United States Senate
January 17, 2001

Mr. Chairman and Honorable Members of the Committee:

The Million Mom March, with members in over 225 chapters in 46 states, opposes the confirmation of John Ashcroft as Attorney General of the United States.

We take this position in part because of Mr. Ashcroft's long record of opposition to sensible gun laws. But even more significantly, we believe that Mr. Ashcroft's views on the gun issue, as reflected in this record, will seriously undermine the confidence of our members, and the American people, in the office of the Attorney General. In a nation already deeply divided by the Presidential election, the Senate has a responsibility to restore, rather than weaken, the public's confidence in its government. Therefore, we urge the Committee to reject Ashcroft's nomination.

Ashcroft's Record on Guns: Ideological Extremism

In his tenure as a U.S. Senator, John Ashcroft had many opportunities to demonstrate a concern for the safety of American communities. Time after time, he chose to protect the gun industry instead, and has been handsomely rewarded by the gun lobby for his efforts. In his unsuccessful 2000 campaign to keep his Senate seat, the gun lobby gave Ashcroft over \$350,000. Here's why:

- **Ashcroft on Assault Weapons:** Although an overwhelming majority of Americans supports a federal ban on military assault weapons, Ashcroft disagrees. He'd rather let these guns back into our communities. The current assault weapon ban sunsets in 2004, during the tenure of the next Attorney General. **Can the public be confident that John Ashcroft will put their safety ahead of the special interests of the gun lobby?**
- **Ashcroft on Background Checks:** Although an overwhelming majority of Americans supports fully closing the gun show loophole, which the Department of Justice recently identified as a main source of guns for criminals, Ashcroft disagrees. He'd rather let felons buy guns at gun shows than require thorough background checks for gun show transactions. Closing the gun show loophole will be a prominent issue again in the 107th Congress, and the position of the nation's top law enforcement official will have significant influence over the outcome. **Can the public be confident that John Ashcroft will put their safety ahead of the special interests of the gun lobby?**

- **Ashcroft on Illegal Gun Trafficking:** Although an overwhelming majority of Americans believes in giving law enforcement the tools necessary to enforce laws against illegal gun trafficking, Ashcroft disagrees. He'd rather make law enforcement rely on outdated tools and inadequate information. Ashcroft supported a measure to require the immediate destruction of records from the background check system, despite the utility of those records for identifying dealers who supply the illegal market. **Can the public be confident that John Ashcroft will put their safety ahead of the special interests of the gun lobby?**
- **Ashcroft on High-Capacity Magazines:** Although an overwhelming majority of Americans supports a ban on high-capacity magazines, Ashcroft disagrees. He'd rather make it easy for criminals to amass endless firepower. High-capacity magazines, like those used by the gunmen in a Southern California bank robbery during which several police officers were shot, greatly increase the danger posed to cops on the street. **Can the public be confident that John Ashcroft will put their safety ahead of the special interests of the gun lobby?**
- **Ashcroft as Defender of Sensible Gun Laws:** Although current federal gun laws lag far behind the desire of the American people for a sensible national gun policy, existing measures like the Brady Law and the assault weapons ban represent hard-won advancements in public safety. But these measures have been, and will continue to be, challenged in court by John Ashcroft's supporters in the gun lobby. Ashcroft's record demonstrates his ideological hostility to these life-saving laws, and his deep personal commitment to weakening, or even eliminating, the inadequate but important laws we already have. As Attorney General, John Ashcroft will decide how vigorously, or even whether, to defend these vital public safety measures against gun lobby attacks. **Can the public be confident that John Ashcroft will put their safety ahead of the special interests of the gun lobby?**
- **Ashcroft on Prevention:** Although it is well-established that the threat of punishment is, at best, a weak prevention tool, Ashcroft doesn't get it. Let's not wait until after someone gets shot to act. He opposes holding gun sellers accountable when they sell guns to known criminals. He opposes requiring gun owners to ensure that kids can't get access to their guns. But he supports putting more guns, and more dangerous guns, into our communities. Ashcroft's approach to gun violence sends a dangerous and irresponsible message to our communities and our kids: an armed society is a polite society. **Can the public be confident that John Ashcroft will work to prevent gun death and injury?**

John Ashcroft is not qualified to serve as Attorney General of the United States. His roots in the extreme fringes of American politics are too deep, and his service to the marginal but generous gun lobby too entrenched. **The American people cannot be confident that John Ashcroft will put their safety ahead of the special interests of the gun lobby.** Accordingly, we respectfully urge this Committee to reject the nomination of John Ashcroft for Attorney General of the United States.



Missouri Federation Of Police Chiefs

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(314) 843-7968

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SECRETARY
Chief Paul A. Roy
St. George Police Department

TREASURER
STATE LOBBYIST
Asst. Chief Michael J. Kemp
Augusta Police Department

EXECUTIVE DIRECTOR
Chief William E. Laub
Augusta Police Department

ASSOCIATION COUNSEL
Mr. Will Cheeseman
Attorney-at-Law
Troy, MO

September 2, 1999

Senators John Ashcroft and Christopher Bond
600 Broadway
Suite 400
Kansas City, MO 64105

Dear Senator Ashcroft and Senator Bond:

We have just learned of the nomination of Judge Ronnie White to be a federal district judge.

After reading Sheriff Kenny Jones' letter and seeing Judge White's record, we were absolutely shocked that someone like this would even be nominated to such an important position.

We want to go on record with your offices as being **OPPOSED** to his nomination and hope you will vote against him. A copy of Sheriff Jones' letter is attached.

Sincerely,

Bryan Kunze
Vice President
MFFC

enclosure

cc: Sheriff Kenny Jones

MISSOURI LEGISLATIVE BLACK CAUCUS

THE CAPITOL, HOUSE POST OFFICE, JEFFERSON CITY, MO (573) 751-1309



January 11, 2001

The Honorable Patrick Leahy
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

The members of the Missouri Legislative Black Caucus strongly object to the appointment of John Ashcroft as the Attorney General of the United States of America. The Attorney General is the top law enforcement official of the nation and his appointment would be detrimental to the citizens of Missouri. As a result, we are asking that you not support his confirmation.

We have grave concerns about his willingness to enforce civil rights laws that are under the purview of the Justice Department. As states begin the redistricting process, it is imperative that all Missourians feel that their voting rights are protected, especially in light of the voting irregularities in the recent presidential election.

In 1988, the then Governor Ashcroft vetoed HB200, which would have expanded the number of deputy voter registrars, thereby increasing voter registration opportunities for the citizens of the state of Missouri. Of equal concern would be the Justice Department's ability to investigate and enforce fair housing laws under his leadership. Mortgage lending discrimination and insurance redlining have too often plagued many of our communities.

Lastly, we are very concerned about Mr. Ashcroft's lack of racial diversity in his staff. It is the hope of the Caucus, as well as the hope of our constituents, that we can count on your support in this matter.

Respectfully,

Missouri Legislative Black Caucus



We the undersigned members of the Missouri Legislature join in unanimous support of John Ashcroft for Attorney General of the United States. John Ashcroft is uniquely and infinitely qualified for this position. He has spent his entire life as a student of both the Constitution and the law. He has distinguished himself in the capacities of crafting and executing the law. He knows the difference.

John Ashcroft is a leader among leaders. He is unique among men for being chosen by his peers to lead; first leading the Association of Attorneys General and then the Governors.

John Ashcroft has the impeccable integrity and character that will prevent him from doing anything other than upholding the law of the land to the utmost of his ability.

Signed,



Bill Foster
Chuck Brown
Ray
Patrick M. Johnson
Larry Kohlhaas
W. Brent Woodall
Charles N. Gillum
John

Peter Kinde
Bill Kenney
Anita Yekert
Bob
Roseann Bentley
John
Doyle Childers
Mervin

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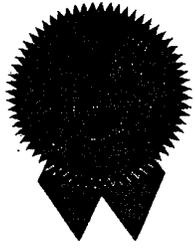
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John Ashcroft has the impeccable integrity and character that will prevent him from doing anything other than upholding the law of the land to the utmost of his ability.

- | | |
|--------------------------------------|--|
| <u>J. Charney</u> 92 | <u>Jim Fulk</u> 111 th |
| <u>John Hunter</u> 137 | <u>Paul May</u> 155 th |
| <u>Bob Ross</u> 149 | <u>Charlie Stille</u> 28 th |
| <u>Bob Bamber</u> 4 | <u>Catherine J. Hanaway</u> |
| <u>John Britton</u> 132 | <u>W. H. J. ...</u> 118 th |
| <u>Carl ...</u> 16 | <u>Missie ...</u> 244 |
| <u>Laurie Moore</u> 20 th | <u>Bob Long</u> 146 |
| <u>... ..</u> 82 | <u>Long ...</u> 117 |
| <u>Catherine Eng</u> 99 | <u>Mark C. ...</u> 88 |
| <u>Lane Cunningham</u> 86 | <u>Carl H. ...</u> 97 |
| <u>Pat ...</u> 92 | <u>Tom ...</u> 13 |
| <u>July ...</u> 141 | <u>Pat ...</u> 47 |
| <u>Gary ...</u> 130 | <u>Bob ...</u> 124 |
| <u>... ..</u> 157 | <u>Charlie ...</u> 140 |
| <u>Tom ...</u> 106 | <u>Jay ...</u> 125 th |
| <u>... ..</u> 158 | <u>Bob ...</u> 124 |
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FRATERNAL ORDER OF POLICE
MISSOURI STATE LODGE

October 21, 1999

Sheriff Philip H. McKelvey
President, National Sheriff's Association
1450 Duke Street
Alexandria, VA 22314

Dear Sheriff McKelvey:

I am writing on behalf of the more than 4,500 members of the Missouri State Fraternal Order of Police to express my great consternation at your organization's recent opposition to the confirmation of Justice Ronnie White to the Federal bench, an opposition which I sincerely hope was not simply politically motivated.

The record of Justice White is one of a jurist whose record on the death penalty has been far more supportive of the rights of victims than of the rights of criminals. While in fact voting 17 times for death penalty reversals, he has voted to do so in far fewer instances than the other Justices on the Court. In addition, Justice White has also voted to affirm the death penalty in 41 cases.

The Fraternal Order of Police is no stranger to fighting to see that justice is served for slain law enforcement officers and their families. Our organization has been at the forefront of bringing to justice Mumia Abu-Jamal, establishing a nationwide boycott of individuals and organizations which financially support the efforts of this convicted cop killer. In addition, the FOP led the fight against President Clinton's clemency of 16 convicted Puerto Rican terrorists responsible for a wave of bombing attacks on U.S. soil and the wounding of three New York City police officers.

Unfortunately however, nothing can undo the needless injury which has been inflicted on the reputation of Justice White, and our nation has been deprived of an individual who surely would have proven to be an asset to the Federal Judiciary.

On behalf of the membership of the Fraternal Order of Police, I would encourage you to exercise greater judgement in future battles of this sort. It is a great disservice to the members of your organization, and the nation as a whole, to choose to do otherwise.

Sincerely,

Thomas W. Mayer
President, Missouri State FOP

Aleta Grimes Mitchell
2909 Shallmar Lane
Shallmar, Florida 32579

January 22, 2001

Honorable Senator Patrick Leahy, Chairman
 U.S. Senate Committee on the Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, D. C. 20510

Honorable Senator Orrin Hatch
 Ranking Member, U. S. Senate Committee
 On The Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, D.C. 20510

Dear Messrs:

MY FILING STATEMENT TO BE ENTRED INTO THE RECORD:

It gives me great pleasure, as an African-American, to write this letter on behalf of Senator John Ashcroft. Without hesitation, I believe Senator Ashcroft to be a man of great dignity, retains a record of high integrity, and in my opinion, would make an outstanding United States Attorney General.

Under Senator Ashcroft's term as Missouri Governor, legislation was passed and signed into law in 1987, to start the Office of Minority Business, within the Missouri Department of Economic Development. I was selected to organize this office as mandated by legislation.

This office was created to provide technical and financial assistance for minorities to gain a foothold in the American economy by starting, expanding and/or retaining a business within the State of Missouri. The office has a national reputation for providing quality assistance to persons who have a interest in becoming entrepreneurs and/or desire assistance for procurement opportunities with the State of Missouri or the federal government.

I was successful in building record numbers of minority businesses in Missouri, only due to the support, direction and desire of Governor Ashcroft, for this program to succeed. As governor, he provided me with the resources necessary to move the program from a vision ...to reality...and made it publicly known.

It was his belief that minority business owners have a tendency to hire other minorities. Therefore, the more minority businesses that are viable and successful meant the greater number of minorities with meaningful jobs. This fact would further allow them [minorities] to develop strong communities, ... become home owners,... provide their children with quality education opportunities.

On one occasion, members from the Congress On Racial Equality (C.O.R.E.) from St. Louis, appeared in the governor's office, without notice, demanding to meet with Governor Ashcroft. The Governor immediately sent for me and requested that I meet with him and this organization's leaders in order to get a clear understanding of their request. After the meeting, Governor Ashcroft's team made it quite clear that I would be provided the resources I needed to deliver quality assistance to this organization.

Judiciary Committee Record
For: Aleta Grimes Mitchell
Ref: John Ashcroft for U.S. Attorney General
January 21, 2001
Page 2

During Senator Ashcroft's term as Governor of Missouri, I was selected to serve as a member of the committee to select the next U.S. Federal Judge for the State of Missouri/Western District.

This committee presented 3 names to Senators Danforth and Bond. One of those names was that of Fernando J. Gaitan, Jr. Based on that committee's recommendation, Judge Gaitan became the first African-American to elected a Federal Judge for Kansas City, Missouri. (Let the record show that Judge Gaitan had been appointed to the Missouri Court of Appeals by Governor Ashcroft).

As Governor of Missouri, John Ashcroft could have entered opposition to this appointment if he felt that Judge Gaitan was not qualified.

Many times, Senator Ashcroft reached out to individuals, such as myself, in search for qualified African-Americans for employment opportunities within Missouri government.

He always said... "Everyone should be given an opportunity to live up to his or her God given potential". Those words have always stuck with me as how I best remember him and a model of how I should conduct my life.

It has been a pleasure and an honor to work with such a man of great leadership and compassion asJohn Ashcroft.

Respectfully,


Aleta Grimes Mitchell

906

MOUND CITY BAR ASSOCIATION
P.O. BOX 1543
ST. LOUIS MISSOURI 63188

PRESS RELEASE

Date: January 12, 2001

For Immediate Release

Contact: Lee Clayton Goodman
(314) 241-4002 ofc.
(314) 241-0042 fax

Re: The John Ashcroft Nomination

Contrary to previous representation by Ashcroft supporters, prior to this letter, the Mound City Bar Association had not taken an official position on the nomination of Mr. Ashcroft for the position of Attorney General of the United States of America.

However, previous reports quote the MCBA leadership in 1991 as they offered words of gratitude to then Governor Ashcroft because of the appointment of an African-American female judge. These reports, quote the association as saying that his (Mr. Ashcroft) commitment to diversity and " track record for appointing women and minorities are certainly positive indicators of your (his) progressive sense of fairness and equity." This quote has been presented in a context that suggest that the MCBA supports the nomination of Mr. Ashcroft today. We'll it is now 2001 and the leadership of the MCBA has of course changed from that which existed in 1991.

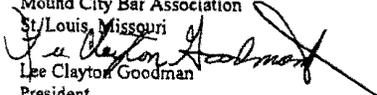
The MCBA of 2000- 2001, is an association that recalls with great clarity the insidious manner in which Mr. Ashcroft handled the Federal Judicial nomination of our own member, Missouri Supreme Court Judge Ronnie White. We at the Mound City Bar Association still recall the words of Mr. Ashcroft as he told the Senate in a speech against confirmation that Judge White was " pro-criminal an activist, with a slant toward criminals and defendants against prosecutors." For many of us, Judge White has been and continues to be a role model and a person of great integrity.

We see the attack on Judge White as an attack on all persons who possess similar values. The MCBA has long stood for the rights of the accused to get a trial free from bias. Thus, Judge White's views are consistent with our own.

Therefore, as we view the nomination of Mr. Ashcroft to be the United States Attorney General, we view this appointment in light of not what he has done in the past, but what he has done lately. Lately, Mr. Ashcroft has spoiled an opportunity for our federal bench to become a more diverse institution.

Consequently, while we have been silent on this nomination up to this point, because of the impression left by previous statements of the association, we must make it clear that this is not a nomination that we can support. Simply put, the chickens have come home to roost. Mr. Ashcroft has demonstrated that his views are inconsistent with the purpose and objectives of MCBA. Thus, he must now be judged by these actions.

Finally, we enter this fray with trepidation, for we are aware that some will view our efforts as being part of some partisan effort to defeat a Republican nominee, but this is not the case. We simply seek to set the record straight.

Mound City Bar Association
St. Louis, Missouri

Lee Clayton Goodman
President

*The Mound City Bar Association is the oldest association of African-American Lawyers west of the Mississippi.

THE HONORABLE
HAROLD RONALD MOROZ
MAGISTRATE COURT OF CAMDEN COUNTY
STATE OF GEORGIA
POST OFFICE BOX 386
WOODBINE, GEORGIA 31569

COURT: 912-576-5658 HOME: 912-673-9270 EMAIL: moroz@eagnot.com

January 11, 2001

The Honorable Patrick J. Leahy
United States Senate
Washington, D.C. 20510

Re: Endorsement of the Honorable John Ashcroft for Attorney General

Dear Senator Leahy:

I write to express my support for the nomination of Senator Ashcroft to serve as Attorney General of the United States. I also offer my testimony regarding my experience with, and personal observations of, Senator Ashcroft when I served as a U.S. Army officer in the State of Missouri.

I am a Judge of the Magistrate Court of Camden County in the Great State of Georgia, licensed to practice law in a multitude of state and federal jurisdictions, but a decade ago, I was ending my service as an Army officer and unit commander in the State of Missouri. It was at that time, I had the privilege and opportunity to witness the then-Governor's respect for all citizens, regardless of standing, race, or gender. I know Senator Ashcroft to be a man of impeccable integrity, exceedingly sound judgment, and strict compliance with the Rule of Law. I believe he will serve well as America's next Attorney General, upholding the Constitution in word, deed and spirit.

My goal here is to inform you of the John Ashcroft that I personally know. If I can be of any assistance in providing testimony in Washington, D.C., before the Senate, I gladly volunteer to do so. In the alternate, I would respectfully ask that this Endorsement of Senator Ashcroft be entered into the *Record* to reflect this citizen's firsthand knowledge of one truly honorable American.

Thanking you for your time, attention, and consideration, I remain,

At your service,


HAROLD RONALD MOROZ, Judge
Magistrate Court of Camden County, State of Georgia

cc: The Honorable Orrin G. Hatch
Vice-President Elect Richard Cheney
The Honorable John Ashcroft

TRANSMITTED VIA FACSIMILE

Statement of Vicki Saporta, Executive Director, National Abortion Federation, Washington, DC

I would like to thank Chairman Leahy and Members of the Committee for allowing me the opportunity to submit testimony regarding the nomination of John Ashcroft as Attorney General of the United States.

I am submitting testimony on behalf of the members of the National Abortion Federation (NAF) and the women they serve. NAF is the professional association of abortion providers in the United States and Canada. Our members include over 375 nonprofit and private clinics, women's health centers, Planned Parenthood facilities, and private physicians' offices. Together they provide over half of the abortions performed annually in the United States. Our mission is to keep abortion safe, legal and accessible.

The National Abortion Federation strongly opposes the confirmation of John Ashcroft as Attorney General of the United States. We have grave concerns that his extreme ideology regarding abortion will prevent him from enforcing the laws protecting abortion providers and their patients from violence.

The responsibilities of the Attorney General directly impact the lives of our members, in a way that no other Cabinet position does. NAF has been compiling statistics on incidents of violence and disruption against abortion providers since 1977. In the last 23 years, anti-choice violence has resulted in more than 2,500 acts of violence, including 7 murders, 17 attempted murders, 40 bombings, 163 arsons, 909 acts of vandalism, 120 incidences of assault and battery, 337 death threats and 3 kidnappings. In addition, there have been 534 bomb threats and 680 clinic blockades. As our statistics so vividly illustrate, unlike any other health care professionals, the providers of abortion services risk their lives daily to provide legal, constitutionally protected reproductive health care to patients.

The importance of the Justice Department, and specifically the Attorney General, in helping to stem this tide of violence against abortion providers cannot be overemphasized. In addition to enforcing the federal Freedom of Access to Clinic Entrances (FACE) Act, the Attorney General in recent years has also created the National Task Force on Violence Against Reproductive Health Care Providers, provided US Marshall Protection to abortion providers in the wake of extreme acts of violence, placed two anti-choice terrorists on the FBI's Ten Most Wanted list, had the Department of Justice participate in local law enforcement educational briefings on FACE, and dispatched federal law enforcement officials to communities where local law enforcement officials were not enforcing the law.

Extreme violence has decreased in the years since the enforcement of FACE and the creation of the Task Force. This has occurred not because Attorney General Janet Reno supports a woman's right to choose, but because of her commitment to enforcing the laws of this country. The National Abortion Federation rejects any assertion that the individual who is chosen to be Attorney General must be pro-choice in order for that person to enforce the laws that protect abortion providers and their patients. Over the years, our members have worked very effectively with those law enforcement officials who have

been committed to upholding the law, regardless of those officials' personal positions on choice. Ideology, for us, only becomes relevant when it hinders the vigorous enforcement of the law.

John Ashcroft's record as Attorney General of Missouri, Governor of Missouri and United States Senator leads us to conclude that his ideology has influenced his priorities and actions in all three of these positions, and that his extreme anti-choice philosophy would prevent him from vigorously enforcing the law.

Not only does Ashcroft oppose forms of contraception and virtually all abortions, even in cases of rape and incest, but he has spent the last quarter century actively working to overturn the *Roe v. Wade* decision. In addition to spearheading numerous legislative attempts while in Missouri to end a woman's right to choose, including signing the legislation that led to the *Webster v. Reproductive Health Services* Supreme Court case that dismantled some of the rights established in *Roe*, he has attempted time and again to use his positions of power to advance his extreme ideology.

For example, in 1981, when Ashcroft was Attorney General of Missouri, he testified before the US Congress in support of legislation that would have banned all abortions. The proposed legislation was aimed at overturning *Roe v. Wade*, and stated that life begins at conception. If it had passed, the bill would not only have opened the door for states to prosecute abortion as murder, but it also could have outlawed contraceptive methods, since some forms of birth control act shortly after conception. Major medical organizations, such as the American Medical Association and the American Psychiatric Association, opposed the bill.

In addition, in 1980, Attorney General Ashcroft issued an opinion essentially repealing a 1976 law enacted by the Missouri State Legislature that expanded the scope of practice available to advanced practice nurses. By enlarging the scope of practice for nurses, the legislature had repealed the requirement of direct supervision by a physician. In his opinion, as Attorney General, Ashcroft concluded that advanced practice nurses could not "engage in primary health care, which would necessarily include some medical diagnosis and treatment of human illness, injury or infirmity and administration of medications under general rather than direct physician guidance and supervision" (MO Atty. Gen. Opinion 32: 1980). This statement was in direct conflict with the legislature's intent to expand the scope of authorized nursing practices.

Ashcroft's actions as Attorney General in this instance, which are part of a pattern of using his authority to work against laws that he does not agree with, eventually allowed the Missouri State Board of Registration for the Healing Arts to threaten two nurse practitioners working at a family planning clinic with prosecution for practicing medicine without a license. These two nurses, who were working to provide basic gynecological care, contraception, and community education to rural Missourians, filed suit against the Board of Healing Arts in 1983 to prevent the state from prosecuting them. On November 22, 1983, the Supreme Court of Missouri issued a strongly worded opinion that the two

nurses were appropriately acting within their scope of practice, as outlined in Missouri state law. Many nurses in Missouri at the time believed that Ashcroft had issued his order primarily because nurses were, among other services, dispensing contraception.

Ashcroft's public statements and actions regarding the FACE Act and anti-choice extremists also suggest that he would be unable to adequately perform the duties of Attorney General.

Ashcroft has criticized the Supreme Court decision that allowed states to restrict harassing and threatening behavior of anti-choice protesters outside of clinics, saying it "weakened the First Amendment's speech guarantees" (*Washington Post*, 1/13/01). Ashcroft also in the last session of Congress voted against a measure in committee that would have prevented anti-choice criminals from discharging their debts incurred as a result of illegal activity. Additionally, in 1998 Ashcroft received an award from the extreme American Life League organization, which, in addition to its opposition to birth control and abortion, has been an outspoken critic of the creation of the Justice Department's Task Force on Violence Against Reproductive Health Care Providers.

During the time that Ashcroft served as a Senator, and a head of the Republican Party in Missouri, a known anti-choice extremist, Tim Drete, was elected by Republican Party officials in Missouri to the Missouri Republican State Central Committee, the policy-making body of the party. That year, 1996, Drete asked the state GOP to add to its platform a murder penalty for abortion providers. The state Republican Party also provided funds to Drete in his race for state representative. Drete was finally ousted from the state committee in 1999, after embarrassing the committee by being one of the defendants who lost a federal lawsuit filed by Planned Parenthood in which the jury awarded \$107 million in damages. Twelve defendants, including Drete, were found guilty of making illegal threats. Drete was cited for distributing "Wanted" posters of abortion providers that threatened violence against them. Other defendants in the case were tied to the Nuremberg Files website that lists doctors' names, with lines through those who have been killed by anti-choice extremists. Ashcroft only called on Drete to resign from the committee after being pressured to do so. In addition, Ashcroft's rhetoric on the subject of abortion matches that of some of the most violent members of the anti-choice movement.

We seriously question whether someone who vehemently believes abortion is killing, as Ashcroft does, would enforce a law protecting abortion providers from violence as the United States Attorney General.

Our statistics clearly show that when laws are enforced, violence decreases. Conversely, when laws are not enforced, violence in communities across the country increases. If FACE is not enforced or is made a low priority by the next Attorney General, there is no doubt that we will see an increase in the levels of violence directed against dedicated health care professionals who provide safe, legal abortion services that were commonplace before the enforcement of FACE and creation of the Task Force.

FACE has had a clear impact on the decline in certain types of violence directed against clinics and providers, specifically clinic blockades. The threat of significant federal penalties for violations of the law has caused the number of clinic blockades to dwindle to their lowest levels since they were first used to prevent women from accessing reproductive health care. At the height of their use in 1989, our statistics show 201 blockades resulting in 12,358 arrests. In 2000 we recorded only 4 small-scale blockades. The dramatic drop is directly attributable both to the deterrent effect of FACE, and the federal involvement in investigation of anti-choice violence that was facilitated by the passage of FACE.

Since the enactment of FACE, the Department of Justice (DOJ) has obtained convictions of 56 individuals in 37 criminal cases for violations of FACE and other federal statutes relating to violence against reproductive health care clinics. They have also brought 17 civil cases against more than 100 defendants seeking injunctions and monetary damages against those who have violated FACE.

In addition to enforcing FACE, the next Attorney General will oversee the National Task Force on Violence Against Health Care Providers. The National Task Force was established by Attorney General Janet Reno in November 1998 in response to the murder of Dr. Barnett Slepian and other acts of violence against reproductive health care providers. The Task Force is led by the Assistant Attorney General for Civil Rights and was established to coordinate and build on ongoing efforts within the Department of Justice and other Federal law enforcement agencies including the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco and Firearms (ATF), the United States Marshals Service (USMS), and the United States Postal Inspection Service (USPIS).

The Task Force and the national organizations representing abortion providers have established an effective and important working relationship. The existence of the Task Force allows the national provider organizations to access the resources, assistance and expertise of all the above law enforcement agencies with one phone call. In addition, the federal law enforcement agencies are better able to coordinate efforts and investigations into abortion-related violence that cross jurisdictional lines.

Our statistics show that since the Task Force was created there has been a decrease in extreme violence against abortion providers. Last year we experienced the lowest level of extreme violence in more than 15 years.

The Attorney General has discretion and authority to affect issues of resources, staffing, and to prioritize which cases to pursue. Given Ashcroft's long record of opposition to abortion, and the way in which he has used his positions to advance his extreme personal agenda, we reasonably conclude that protecting abortion providers from violence will not take priority in a Department of Justice he directs.

We cannot tolerate another increase in violence because an Attorney General will not vigorously enforce the law or allow the Task Force to continue its vital, life-saving work.

The dedicated women and men who risk their lives every day to provide safe reproductive health care to women deserve nothing less than an Attorney General who will vigorously enforce the laws of the land. NAF's examination of John Ashcroft's record leads us to conclude that his extreme ideology has rendered him unable to fulfill that mission.

We urge the Members of this Committee to oppose John Ashcroft's confirmation as Attorney General of the United States.

Thank you.



NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

The Colorado Building, 5th Floor
1341 G Street, NW, Washington, D.C. 20005

Grace Yoo
Executive Director
Tel: 202-628-7660
Fax: 202-628-6327
ED@napaba.org

www.napaba.org

January 15, 2001

Howard L. Halm
President
Wilson, Elser, Moskowitz,
Edelman & Dicker LLP
1055 W. Seventh Street #2700
Los Angeles, CA 90017
Tel: 213-689-3165, Ext. 307
Fax: 213-624-8060
halmh@wened.com

Honorable Patrick Leahy, Chairman
Senate Judiciary Committee

Dear Senator Leahy:

On behalf of the National Asian Pacific American Bar Association (NAPABA), I wish to express our serious concerns regarding the ability of Mr. John Ashcroft to protect the individual rights of all citizens, as required of the Attorney General.

NAPABA believes in judicial independence. It would appear that Mr. Ashcroft does not share this belief, as he has opposed the confirmations of highly qualified individuals such as the Honorable Susan Oki Mollway, Honorable Margaret Morrow, Honorable Sonia Sotomayor and Honorable Ronnie White to the bench.

Further, Mr. Ashcroft opposed Bill Lann Lee as Assistant Attorney General for Civil Rights, a highly qualified civil rights attorney who at the time had over 24 years of experience advocating for equal opportunity and access for all Americans.

In addition, NAPABA is troubled by the extraordinarily long delays for senate confirmation hearings for judicial nominees and Executive Branch appointees during Sen. Ashcroft's tenure. For example, Ms. Dolly Gee was nominated to the Federal District Court in California on May 27, 1999, and has yet to receive a confirmation hearing.

We hope that during Mr. Ashcroft's confirmation hearing we can better understand Mr. Ashcroft's position on matters such as judicial independence, his commitment to enforcing the laws already in place, and protection of the rights of all individuals.

Respectfully,

A handwritten signature in black ink that reads "Howard L. Halm".

Howard L. Halm
PRESIDENT



NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
4805 MT. HOPE DRIVE • BALTIMORE, MD 21215-3297 • (410) 358-8900

KWEISI MFUME
President & Chief Executive Officer

JULIAN BOND
Chairman, Board of Directors

January 8, 2001

The Honorable Patrick J. Leahy
United States Senate
Washington, DC 20510

Dear Senator Leahy:

I am writing on behalf of the National Association for the Advancement of Colored People (NAACP) to urge your strong opposition to the nomination of John Ashcroft as U.S. Attorney General.

Mr. Ashcroft has stated antagonistic views on civil rights protection and has consistently opposed affirmative action initiatives. As Attorney General he would be responsible for enforcing the very programs he opposes.

Mr. Ashcroft received a grade of "F" on each of the last three NAACP Legislative report cards, having voted to approve only three of 15 policy issues supported by the NAACP and other civil rights groups. He also opposed the nomination of Bill Lann Lee as Assistant U.S. Attorney General in charge of the Civil Rights Division even though Mr. Lee was clearly qualified and has proven such.

The Department of Justice has the ultimate responsibility for enforcing this nation's hate crimes laws, yet Mr. Ashcroft has opposed hate crimes legislation and voted against the Hate Crimes Protection Act.

The U.S. Attorney General is responsible for vetting federal court judicial nominees. Mr. Ashcroft has already demonstrated hostility towards some judicial nominees of color.



January 8, 2001
Page 2

The U.S. Attorney General is responsible for overseeing voting rights protection in our nation including enforcement of the Voting Rights Act of 1965, yet in the aftermath of the November 7, 2000 election controversies many citizens have no trust in Mr. Ashcroft's desire or ability in enforcing those laws.

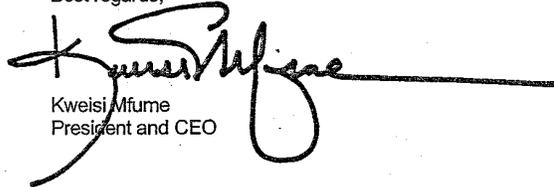
Mr. Ashcroft has been one of the strongest opponents of a woman's right to choose. As governor of Missouri, Ashcroft signed an anti-abortion law that became the basis in a 1989 Supreme Court ruling in the case of Webster vs. Reproductive Health Services, to give the states new authority to limit the rights of women with respect to choice.

Mr. Ashcroft has demonstrated contempt for the history and conditions of African Americans and other Americans of color by making public comments issued in 1998 in *Southern Partisan Magazine* praising Confederate leaders Robert E. Lee, Stonewall Jackson and Jefferson Davis, who fought to preserve the cruel and inhumane institution of slavery.

Lastly, the people of Missouri opposed Mr. Ashcroft's reelection bid to continue his service in the U.S. Senate. Ninety percent of African American voters directly opposed him and voted instead for deceased Governor Mel Carnahan out of their concerns about Mr. Ashcroft's history and record on civil and human rights issues.

The NAACP looks forward to assisting you in defeating this nomination. Please contact me at 410-486-9100 or Hilary Shelton, Director of the NAACP Washington Bureau at 202-638-2269 in order that we might share with you the full magnitude of our position.

Best regards,



Kweisi Mfume
President and CEO



President
Nathaniel A. Khaliq

1st Vice President
Katie McWatt

2nd Vice President
Ora Lee Patterson

Secretary
Leanna Simmons

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Robin McGee
Gracious Msaya
Ventress Roberson
Gloria Sneed
Arthur Sternberg
Rev. James Thomas
William Udoka
Martin O. Weddington

N.A.A.C.P. – SAINT PAUL BRANCH
The National Association for the Advancement of Colored People
1060 West Central Avenue
St. Paul, Minnesota 55104
651-649-0520

CONFIRMATION
COPY

17 January 2001

U.S. Senate Committee on the Judiciary
Room SD-224, Dirksen Senate Office Building
Washington, DC 20510-6275
ATTN: Senator Patrick Leahy (VT)

Dear Senator Leahy:

On behalf of the St. Paul N.A.A.C.P. and its constituents, we urge you to vote against the nominations of John Ashcroft for U.S. Attorney General and Gale Norton as Secretary of the Interior. We believe that a review of the public policy positions and actions taken by both Mr. Ashcroft and Ms. Norton clearly illustrates that these two individuals are unqualified for their respective positions. Considering the circumstances surrounding the 2000 presidential election and the dubious nature of its outcome, we would also like to you recognize that ideology certainly should be an important consideration in your voting decisions in regard to all of the Bush cabinet nominations.

As you partake in the confirmation hearings for John Ashcroft, we would like to impress upon you the disturbing pattern of opposition to civil rights, reproductive rights, labor rights and gun control that this man has demonstrated in his public career in Missouri. Mr. Ashcroft vigorously fought against voluntary desegregation in metropolitan St. Louis as Missouri Attorney General and Governor, has more recently opposed anti-discrimination programs such as the Community Reinvestment Act (CRA), and continues to oppose any form of Affirmative Action. During his Senate tenure, he has promoted regressive anti-labor measures such as the "flex-time" plan, which would have enabled employers to force overtime work without overtime pay upon their workers. His career is also characterized by vehement opposition to reproductive rights, as demonstrated in his attempts to amend the constitution and pass legislation to deny a woman's right to abortion, even in cases of rape and incest. He has also supported the right to carry concealed weapons, while opposing background checks for gun show purchases.

THE ROY WILKINS MEMORIAL BRANCH
A Family of Color, with a Commitment to Justice

17 January 2001
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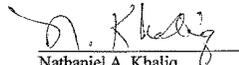
One of the most obvious indications that John Ashcroft is too biased to enforce the law is his pivotal (and disgraceful) role in defeating the nomination of Ronnie White as Justice to the Missouri Supreme Court. While basing his rejection of the nomination of Ronnie White, a defender of reproductive rights, as being "pro-criminal" and having a "poor record on the death penalty," it is a matter of record that other judges who had been appointed by Mr. Ashcroft as governor of Missouri voted as often or more often to reverse death penalty judgments. Through the concerted efforts of a man who accepted an honorary degree from Bob Jones University just last year, Ronnie White, an African-American, was the first District Court nominee to be voted down by the Senate in almost fifty years.

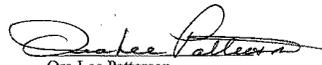
We would also like to impress upon you that the pro-business, anti-environmental positions that Gale Norton has taken throughout her career effectively make her unqualified to become the next Secretary of the Interior. As you know, Ms. Norton has been a strong advocate for oil drilling in the Arctic National Wildlife Refuge since the Reagan years. Demonstrating her disdain for regulations to protect the environment, she also supported Colorado's "self-audit" law to enable businesses to police themselves. Further affiliating herself with business interests in opposition to environmental protection, she worked for the Mountain States Legal Foundation, a group that lobbies for increased logging and mining on public lands and vigorously opposes the Endangered Species Act.

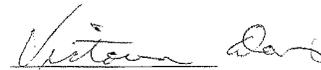
17 January 2001
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Finally, we would like you to recognize that discussions of policy positions and ideology are valid and extremely important in these confirmation hearings. Such questioning on your part is not in opposition with "advice and consent," and is particularly germane in light of the fact that George W. Bush lost the national popular vote by more than a half a million votes. When you vote at these confirmation hearings, we ask you to bear in mind that the American people have not given a mandate to reverse our hard-won gains in the areas of civil rights, reproductive rights, labor rights, and environmental protection.

Signed,


Nathaniel A. Khaliq
President
N.A.A.C.P. - St. Paul Branch


Ora Lee Patterson
Political Action Co-Chair
N.A.A.C.P. - St. Paul Branch


Victoria Davis
Political Action Co-Chair
N.A.A.C.P. - St. Paul Branch

Statement of Edward A. Mallett, President, National Association of Criminal Defense Lawyers, Washington, DC

As the preeminent organization advancing the mission of the nation's criminal defense lawyers to ensure justice and due process, the National Association of Criminal Defense Lawyers appreciates this opportunity to share its concern about justice in America if John Ashcroft is confirmed as Attorney General. The record is voluminous and replete with statements from a variety of public service groups, many of whom have already expressed critical opinions. Today we will confine our comments to three areas of special concern for our organization: the effects of racial prejudice in the criminal justice system, the constitutional protections surrounding criminal proceedings, and the duty of the Attorney General to establish policies for the use of prosecutorial discretion.

We are troubled by John Ashcroft's lack of insight into the vestiges of slavery and how racism often denies citizens equal protection of the law. He has shown insensitivity towards the victims of prejudice. His belated and equivocal renunciations of *Southern Partisan* magazine and Bob Jones University during the confirmation hearings have been widely reported. Adding to the perception of racial insensitivity are his comments regarding *Missouri v. Kinder*, a case in which Missouri Supreme Court Judge Ronnie White dissented. The trial judge in *Kinder* clearly juxtaposed minorities with "the hardworking taxpayers of this country," yet John Ashcroft dismissed these patently racist comments as expressing nothing more than the trial judge's opposition to affirmative action.

To compare, in stating his opposition to Ronnie White's nomination, Mr. Ashcroft used several phrases — calling the distinguished jurist "pro-criminal," "with a tremendous bent toward criminal activity" — intimating that Judge White's jurisprudence is not only misguided

but morally degenerate. The Attorney General's stature in America's law enforcement effort requires a balanced view of criminal justice — one that respects the value of different actors in the adversarial system and recognizes the interdependence of the rights of the accused and the rights of all persons. John Ashcroft's conduct in opposing Judge Ronnie White's nomination to the federal bench is incompatible with fitness for the position of Attorney General.

We believe this pattern must be considered in light of the significant perception and mounting evidence of racial disparities within the federal criminal justice system. Among the factors that contribute to this view are racial profiling, the disproportionate imprisonment of minorities for crack cocaine offenses, and racially disparate application of the federal death penalty. Specifically, with respect to each —

- DEA agents have admitted reliance on drug-courier profiles that include race as an explicit element of suspicion. Leadership Conference on Civil Rights, *Justice On Trial: Racial Disparities in the American Criminal Justice System*, p. 3. In addition, the General Accounting Office recently reported that black female U.S. citizens were nine times more likely to be subjected to x-ray searches by U.S. Customs officials than their white counterparts (although these black women were less than half as likely to be found carrying contraband as white females). U.S. General Accounting Office, *U.S. Customs Service: Better Targeting of Airline Passengers for Personal Searches Could Produce Better Results* (March 2000), p. 2.
- While a majority of crack users in the United States are white, 94 percent of those sentenced under the incomparably severe penalties for crack cocaine are black or Hispanic. United States Sentencing Commission, 1999 Sourcebook of Federal Sentencing Statistics, p. 69. The average sentence for crack cocaine (ten years) is thirty-five percent longer than the average methamphetamine sentence and fifty-two percent longer than the average powder cocaine sentence. *Id.* at 81. Amid widespread criticism directed at the severity and disparate impact of the crack sentencing regime, the Sentencing Commission has twice called for reduced crack penalties, noting “[t]he current penalty structure results in a perception of unfairness and inconsistency.” United States Sentencing Commission, *Special Report to Congress: Cocaine and Federal Sentencing Policy* (April 1997), p. 8.
- Minorities are also blatantly over-represented in the federal death penalty system. A

recent Justice Department review of the federal death penalty found that in seventy-five percent of the cases in which a federal prosecutor sought the death penalty in the last five years, the defendant was a member of a minority group.

“Innocent minorities are harassed more than innocent white Americans, and wrongdoing by minorities is punished more harshly than wrongdoing by whites.” Leadership Conference on Civil Rights, *Justice On Trial: Racial Disparities in the American Criminal Justice System*, p. 7. These disparities breed distrust for our federal criminal justice system, particularly in minority communities. See David E. Rovella, *Scandals Damage Cop Credibility*, *The National Law Journal*, Dec. 11, 2000, at A10 (polling reveals that charges of racial profiling by the New Jersey States Police significantly harm the general credibility of police officers, particularly among minorities). John Ashcroft’s pattern of conduct in racial matters, whether the result of racial insensitivity or poor judgment, threatens to stigmatize the Department of Justice and further erode confidence in the fairness of federal law enforcement.

John Ashcroft’s confirmation as Attorney General would be a disservice to federal law enforcement efforts. While we do not doubt his commitment to vigorous prosecution, he lacks the temperament and credentials to restore confidence in the impartial administration of federal justice. On the contrary, John Ashcroft’s confirmation would likely reinforce the growing distrust for law enforcement within minority communities. His appointment will only serve to divide our great nation even more — not unite it.

Equally important, his non-racial arguments against Judge White show disrespect for the American legal process. Much of his floor speech was devoted to *Missouri v. Johnson*, a case in

which a Vietnam veteran with no criminal history shot and killed three law officers and a sheriff's wife. After describing the underlying murders, Mr. Ashcroft criticized Judge White for "urging a lower legal standard so that this convicted multiple cop killer would be allowed a second bite at the apple." This rhetoric, which suggests that Judge White wants police killed, is outrageous. He further characterized Judge White's dissent as "an opinion which sought to create new ground for allowing convicted killers who had the death penalty ordered in their respect, allowing them a new ground for new trials." The majority opinion plainly reflects that Judge White simply disagreed with his two brethren as to the correct application of the well-established standard for adjudicating ineffective assistance of counsel claims.

Judge White specifically expressed his revulsion for the crime, support for a properly imposed death sentence, and discomfort with a decision granting retrial. Subsequent proceedings reveal that Judge White was not merely a "pro-criminal" voice in the wilderness: Considering Johnson's federal habeas appeal, four judges on the Eighth Circuit Court of Appeals suggested that the issue of whether Johnson was denied effective counsel under the Sixth Amendment was debatable among jurists. *Johnson v. Bowersox*, No. 00-2198WMKC, Order Denying Petition for Rehearing and for Rehearing En Banc (Aug 29, 2000). John Ashcroft's ambush turned Judge White's serious and high-minded review of a capital case into personal slander.

John Ashcroft pointed to Judge White's dissent in *Missouri v. Demask*, dealing with drug search roadblocks, as another example of his "pro-criminal jurisprudence." He defended the roadblocks and complained that Judge White's opinion would have "hamstrung this effective tool in the war on drugs" and "expanded substantially the rights of defendants to object to

searches and seizures.” But Judge White’s view was wholly vindicated when, in November of 2000, the United States Supreme Court held, in a 6-3 decision written by Justice O’Connor, that drug search roadblocks violate the Fourth Amendment. *City of Indianapolis v. Edmond*, 121 S. Ct. 447 (2000). Few would accuse Justice O’Connor or Justice Thomas of “pro-criminal jurisprudence,” yet the former wrote the opinion and the latter would apparently outlaw all suspicionless roadblocks. *Edmond*, 121 S. Ct. at 462 (Thomas, J., dissenting based on the Court’s precedent but stating, “I rather doubt that the Framers of the Fourth Amendment would have considered ‘reasonable’ a program of indiscriminate stops of individuals not suspected of wrongdoing.”).

During the confirmation hearings, John Ashcroft repeatedly emphasized that he would enforce the law. But the job of the Attorney General is not that simple. The Department of Justice has limited resources, and the Attorney General determines which defendants will be prosecuted and which will not; which laws will be enforced more vigorously than others; and the types of agreements for dispositions without trial that may be entered by the trial court prosecutors. Because he is out of the mainstream on social issues, because of his low regard for constitutional protections when in conflict with his preferences, and because he has no experience with the day-to-day realities of federal criminal law and procedure, Senator Ashcroft is simply unqualified.



THE NATIONAL ASSOCIATION OF KOREAN AMERICANS

PRESS RELEASE

FOR IMMEDIATE RELEASE (Embargoed until January 16, 2001)

Contact:

Sean Woo, Esq. -- 202-320-3807, President, NAKA

Phillip J. Foote -- 703-691-2480, Corporate Executive Vice President, STG, Inc.

J. Caleb Boggs III, Esq., -- 202-530-7400, Of Counsel, Blank Rome Comisky & McCauley LLP

NATIONAL ASSOCIATION OF KOREAN AMERICANS (NAKA) SUPPORTS PRESIDENT-ELECT BUSH'S NOMINATION OF SENATOR JOHN ASHCROFT FOR ATTORNEY GENERAL

January 15, 2001, Washington, DC - The National Association of Korean Americans (NAKA), a national nonprofit, nonpartisan Asian Pacific American (APA) civil rights organization with members in over 29 states, supports President-elect Bush's nomination of former Senator John Ashcroft (R-MO) for Attorney General. This support is based on Senator Ashcroft's leadership in the U. S. Senate on legislation protecting individual rights with respect to Internet privacy.

In particular, Senator Ashcroft's lead effort on the E-Privacy Act of 1997 [(S. 2067 introduced jointly with Chairman Patrick Leahy (D-VT)), a bill that would have relaxed government controls on encryption technologies vital to protecting individual privacy as well as enhancing the United States' international competitiveness in this important industry, reflects the kind of balanced judgment necessary for fairly and impartially overseeing the laws of our nation.

NAKA's interest in this area derives from the fact that thousands of APAs, including Korean Americans, are stakeholders in the Internet industry as business executives and owners, employees and users. This interest is clearly shared and supported by Americans in general as the growing Internet usage statistics confirm, and the Attorney General Designee's efforts to enhance the U.S.'s international competitiveness by protecting the right to individual privacy is both courageous—and right.

"The explosive role of the Internet in creating our global digital economy demands that we find innovative ways to safeguard the privacy of businesses and individuals alike," said Mr. Simon Lee, CEO and Chairman of STG, Inc., of Fairfax, Virginia, and a member of NAKA.

"As one of the Nation's leading e-Security solutions companies, STG knows the threats are real, dynamic and pervasive. We need a blend of collaboration between government and industry, enabling legislation, and advanced technologies to stay ahead of the emerging threats to privacy."

For this reason, NAKA is pleased to support the nomination of Senator John Ashcroft as Attorney General.

- #### -

Enclosures

Capitol Hill Headquarters
1340 G Street South East, Washington, D.C. 20003
Tel: 202-543-6800 Fax: 202-543-5700
E-mail: nakausa@naka.org Website: <http://www.naka.org>

N · A · W

January 11, 2001

The Honorable Orrin Hatch
United States Senate
Russell Senate Bldg Room 131
Washington, DC 20510

Dear Senator:

I write on behalf of the National Association of Wholesaler-Distributors (NAW) to express enthusiastic support for the President-Elect's nomination of John Ashcroft to be our next Attorney General.

NAW, the "national voice of wholesale distribution" – is comprised of direct member companies and is a federation of national, regional, state and local wholesale distribution trade associations, whose aggregate membership totals approximately 40,000 firms. There are NAW-affiliated companies located in every state of the United States.

By any objective measure, John Ashcroft has served the public with great distinction as Missouri's Attorney General and Governor, and as a United States Senator. At relevant points in his career, Senator Ashcroft led the National Association of Attorneys General and the National Governors Association and served on the Senate Judiciary Committee and as chair of its Constitution Subcommittee. Over the years, we have had the good fortune to work with Senator Ashcroft on complex public policy matters. We have always found him to be straightforward and fair and a person of superior intellect, impeccable character and unique effectiveness.

We believe Senator Ashcroft will wisely advise the President on matters requiring the attention of the Attorney General and well reflect the President's views on issues within the jurisdiction of the Department of Justice. In light of the record he has built through decades of public service and the professionalism and integrity he has always displayed, we rest assured, as can all Americans, that as Attorney General, John Ashcroft will do an exceptional job of enforcing all of the Nation's laws. There is simply no reason to believe otherwise.

NAW is proud to endorse this exceptionally well qualified nominee to be the Nation's chief law enforcement officer and to urge upon the Senate his swift and overwhelming confirmation.

Sincerely,



Dirk Van Dongen
President

NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS



National Baptist Convention, USA, Inc.

WHITE ROCK BAPTIST CHURCH
5240 Chestnut Street • Philadelphia, PA 19139-3488

William J. Shaw
President

January 19, 2001

Via Facsimile Transmission 202.224.3479

To the Honorable Patrick Leahy, Vermont
United States Senate
Washington, DC 20510

Senator Leahy:

I was shocked to hear the reports that the National Baptist Convention, USA, Inc., has through its Civil Rights Commission endorsed Senator John Ashcroft. The Convention has not authorized anyone to speak for it on this matter and anyone purporting to do so does so in error and without authority.

I would ask that this be corrected for the record.

Sincerely,

William J. Shaw, President
National Baptist Convention, USA, Inc.

JAN-16-2001 21:03 FROM: CLAXTON, SALE, & QUINN 2028875137
 JAN-16-2001 15:31 FROM: CLAXTON, SALE, & QUINN 2028875137

TO: 202 501 2502

P. 002/003

TO: 313 022 2993

P. 001/002



National Baptist Convention, U.S.A., Inc.
Civil Rights and Equal Justice Commission

8173 KENNEY • DETROIT, MI 48234 • (313) 820-2337 FAX (313) 921-8838

DR. LEONARD I.J. YOUNG, J.D.
 Executive Director

January 16, 2001

The Honorable Patrick J. Leahy
 Chairman

The Honorable Orrin G. Hatch
 Ranking Republican

Committee on the Judiciary
 United States Senate
 224 Senate Dirksen Office Building
 Washington, DC 20510-6275

Gentlemen:

The Commission on Civil Rights and Equal Justice of the National Baptist Convention submits this letter in support of the President-Elect Bush's nomination of Senator John Ashcroft to be Attorney General of the United States.

The National Baptist Convention has 8.4 million members in 33,000 Churches, and we are America's third largest religious denomination. With our first Member Church founded in the 1700's, the National Baptist Convention is the world's oldest and largest civil rights organization. Like the Assembly of God Churches in which Senator Ashcroft's father and grandfather were ministers, our Convention's believers are working class Americans who share traditional Christian faith and moral beliefs.

Our Commission takes the position that strongly held religious faith should be not be a disqualifying factor for Attorney General or elected office. In fact, the Commission believes that Senator Ashcroft's Christian faith and morality support his confirmation. As Governor of Missouri, Senator Ashcroft proclaimed Martin Luther King's Birthday a State Holiday without awaiting state legislation and he freely appointed African-Americans to his Cabinet and judgeships. None of Senator Ashcroft's appointees has raised the specter of racism. Senator Ashcroft received 50% more African-American votes in Missouri last fall than President-Elect Bush. Senator Ashcroft's wife taught for many years at Howard University, an institution of higher education venerated by African Americans.

Our Churches serve working class urban and rural neighborhoods that have too long been victimized by drug lords and other violent criminals. We have opposed judges and politicians who seek to put these criminals back on the street where they can claim

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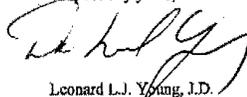
Hon. Patrick J. Leahy
Hon. Orrin G. Hatch
January 15, 2001

more innocent victims. Senator Ashcroft has shared this concern for sheltering our communities from violent crime.

As Attorney General, we are hopeful that Mr. Ashcroft will work with our Commission to end racial profiling, killings of unarmed African-Americans in police custody and the denial of African-American voting rights. Our Commission has not demanded any such prior commitments, but we simply expect that, as a good Attorney General and Christian, Senator Ashcroft will lead us in these morally just crusades.

Thank you for the opportunity to provide you with our views on this important nomination by President-Elect Bush.

Respectfully yours,



Leonard L.J. Young, J.D.
Executive Director
Commission on Civil Rights and Equal Justice
National Baptist Convention.

**Statement of Matthew Myers, President, National Center for Tobacco-Free Kids,
Washington, DC**

Mr. Chairman, and members of the committee. My name is Matthew Myers. I am the President of the National Center for Tobacco-Free Kids, a national organization created to protect kids from tobacco by raising awareness that tobacco use is a pediatric disease, by changing public policies to limit the marketing and sales of tobacco to children, and by actively countering the tobacco industry and the influence of its special interests. The National Center is a membership organization with 140 partners, including many of this nation's major public health organizations and other groups concerned about the health and welfare of our nation's children.

We appreciate the opportunity to present our views on the nomination of John Ashcroft to be the Attorney General of the United States. Tobacco is this nation's number one preventable cause of premature death and disease. Given the lawsuit that the federal government has filed against the tobacco industry and the laws related to tobacco advertising and labeling that the Department of Justice enforces, the Attorney General has an important role to play in determining whether the tobacco industry will be held accountable for its past wrongdoing, and prevented from continuing to engage in the type of wrongful behavior that led both the states and federal government to sue the tobacco companies.

The Pending Lawsuit against the Tobacco Companies

On September 22, 1999, the U.S. Department of Justice filed a lawsuit on behalf of the federal government against the cigarette companies. The suit had two main components. It sought to recover the health care costs paid directly by federal taxpayers to treat tobacco caused disease in individuals covered by federal programs, such as Medicare and health care programs that provide services to veterans and members of the

military. It also sought to require the tobacco companies to pay damages under the federal racketeering statute (RICO) for the harm caused by the companies' decades-long history of fraud, deceit and other intentional misdeeds and to enjoin the companies from certain activities, like marketing to children, that are causing harm to health. The lawsuit alleges that the tobacco companies have known for decades that tobacco use is addictive and causes serious disease and death, but they hid this fact from the American people.

On September 28, 2000, Federal District Court Judge Gladys Kessler ruled that the government could not seek recovery of its health care costs under the two statutes cited, the Medical Care Recovery Act and the Medicare Secondary Payer Provisions. However, this Court held that the government's case could proceed under the civil racketeering laws (RICO).

The Campaign for Tobacco-Free Kids fully supports this lawsuit. No industry should be allowed to conspire to deceive the American public about important health issues as the tobacco industry has done. We believe all decisions regarding this lawsuit, including any decision by a new Attorney General about whether it should continue, should be based on the facts and merits of the case, not on the personal political views of any public official, including the Attorney General. For several reasons, we are concerned that Senator Ashcroft may not pursue this case and vigorously enforce the federal racketeering laws against the tobacco companies.

Importance of the Pending Lawsuit against the Tobacco Industry

The claims made by the Department of Justice against the tobacco companies, if proven, reflect a conspiracy to deceive the American public of an unprecedented scope that has caused massive harm to millions of American citizens. How many Americans would not have died prematurely from tobacco use if the tobacco industry had only told the

truth? We will never know, but we do know that the tobacco industry and other industries will have little incentive to act responsibly if they are not held accountable when they engage in the type of behaviors the tobacco industry has engaged in for decades.

This lawsuit is soundly based on an overwhelming factual record. The question is not why the federal government filed suit, it is why it didn't file suit earlier. The federal claims are based in significant part on the industry's own documents and other evidence, some of which was originally disclosed in the state lawsuits against the tobacco companies. This evidence demonstrates that starting as early as the 1950s the cigarette companies have intentionally:

- withheld information they possessed about the harm caused by smoking and the addictiveness of nicotine, including scientific research done by the companies;
- made false and misleading statements about the health consequences of smoking and its addictiveness to consumers, federal and state governments, and the general public;
- attacked research finding that smoking causes health problems or that nicotine is addictive, despite knowing that the research was valid; failed to take steps to make their products safer; and marketed their product to children and youth.

Senator Ashcroft said during his confirmation hearing that he has not reached a position about the merits of the lawsuit. However, in a letter written to a constituent, dated August 24, 2000, Senator Ashcroft wrote that he is "concerned that the DOJ lawsuit could set an unwise precedent leading to the federal government filing lawsuits against countless other legal industries." The DOJ lawsuit is not about whether the tobacco companies are legal industries or not – the suit is based on allegations of illegal behavior. No other industry has engaged in a comparable decades long pattern of deceit and deliberate misconduct. This lawsuit does not revolve around a few mistakes made by an industry – this is about a deliberate and calculated long-term plan to put profits above the health of

Americans. When a person or business causes serious harm by breaking the law, they can and should be held accountable, and there should be no exceptions.

The State Tobacco Settlements and the Federal Lawsuit

In explaining his opposition to the lawsuit filed by the Department of Justice Senator Ashcroft has also written in the same August 24, 2000 letter to a constituent that "the tobacco companies have already made great concessions to state Attorneys General in the state tobacco settlement. The settlement placed clear limits on marketing techniques aimed at young people..."

The federal lawsuit and the state cases are entirely independent. When the states settled, there was a debate about whether the federal government should assert a claim to any of the money the states were scheduled to receive. Many senators took the position that the federal government should file its own suit because its claims were separate. The federal government should not now be prevented from pursuing its independent claims by the unfounded assertion that there is no need for the federal government to act because the states did so previously.

In addition, the state lawsuits and settlement does not fully address the harms caused by the tobacco industry's ongoing wrongdoing. For example, despite the provisions of the state settlement, tobacco industry marketing that has the greatest impact on children continues to be widespread. Recent studies have indicated that in many respects the tobacco industry's marketing to children has increased since the MSA. Cigarette advertising in magazines with significant youth readership has increased sharply since the MSA and in-store advertising in retail outlets has shot up dramatically.

There is much to be accomplished by a federal remedy to ongoing tobacco industry wrongdoing. The state settlement, for example, does not curtail the following cigarette company marketing practices that have a significant effect on children:

- Outdoor advertising for cigarettes and other tobacco on the buildings or property of any business where tobacco products are sold (including at stores next to schools and playgrounds) and at any events sponsored by the tobacco industry;
- Cigarette or tobacco product advertising *inside* the more than half a million businesses where tobacco products are sold.
- Cigarette or other tobacco advertisements in newspapers and magazines, even if they have large numbers of underage readers;
- Advertising or selling cigarettes or other tobacco products on the Internet;
- Direct-mail advertising of tobacco products;
- Tobacco-product brand-name sponsorship of major events, such as auto racing or rodeo events, that reach millions of kids and are televised;
- The use of human images in tobacco advertising, such as the Marlboro cowboy.

The state settlement also does little to curtail the tobacco industry's ability to continue to withhold critical public health information and therefore to engage in actions that mislead the American public about its own knowledge of the harms of its products. In sum, the state settlements were a step in the right direction, but not a substitute for federal action.

If the federal tobacco lawsuit is successful, it could address many of the areas not fully addressed by the state settlements. Critically, it could bring to an end the continued wrongdoing of the tobacco industry and make sure that it is the tobacco companies, not

the American taxpayer who pays the bill. It could provide financial relief to the federal government which would help drive down tobacco use.

The federal tobacco lawsuit asks the court to require that the cigarette companies provide funding for programs to address the ongoing effects of the companies' unlawful conduct, including funds for smoking cessation, research, public education, and counter-advertising. And the lawsuit seeks to require the companies to give up all ill-gotten cigarette company gains or profits since they began their illegal behavior, which the government claims, began as early as 1954. A successful lawsuit could also result in the disclosure of all relevant cigarette company research on smoking and health not already disclosed through the states tobacco lawsuits and settlements.

Does Senator Ashcroft Hold Views out of the Mainstream That Would Prevent Him from Vigilantly Enforcing the Law Relating to Tobacco?

In April 1998 the Senate Commerce Committee voted 19 to 1 in favor of S.1415, a comprehensive tobacco prevention bill drafted by Senator McCain. Senator Ashcroft was the sole dissenter in the Committee. Senator Ashcroft was one of the most vocal opponents of the bill and his statement often mirrored the rhetoric of the tobacco industry. The issue is whether Senator Ashcroft is so far out of the mainstream and feels so strongly about his positions that the Department of Justice will be prevented from vigorously upholding the law when it comes to tobacco.

Based on his Senate record of opposition to tobacco prevention legislation, the press and stock analysts are predicting the end of the lawsuit if Senator Ashcroft is confirmed. For example, a Credit Suisse First Boston Corporation report entitled "The Stars Are Aligned for Tobacco Stocks in 2001" states "Considering Ashcroft's conservative

legal views, this confirms our belief that the DOJ lawsuit against the tobacco industry will eventually be dropped.”

Other press reports have linked the tobacco industry's campaign contributions to their predictions about what is likely to happen to the lawsuit against the tobacco companies under the new administration. Press reports have noted that the tobacco industry has given more than \$7.4 million in campaign contributions to the Republican candidates in this past election cycle and have predicted the demise of the lawsuit. As a result, tobacco stock prices have risen dramatically in recent months.

In light of Senator Ashcroft's stated opposition to this lawsuit we are concerned about whether he will allow this case to be decided on the merits after a vigorous prosecution or whether he will not permit the Department to carry out its responsibility to uphold the law as it relates to the tobacco industry because of his personal political views about the lawsuit. We urge the Judiciary Committee to seek Senator Ashcroft's assurance that he will pursue vigorously this ongoing action to enforce federal racketeering laws.

Enforcement of Labeling and Advertising Laws

We are also concerned because the Department of Justice has ongoing responsibility to enforce violations of the federal Cigarette Labeling Act and the ban on television advertising. Even today we see tobacco industry signs and logos on T.V. screens as the result of their sponsorship of auto racing and the careful placement of these signs and logos at these events. A vigilant Department of Justice is critical.

Conclusion

The Campaign for Tobacco-Free Kids believes strongly that the federal lawsuit against the tobacco companies should continue. The tobacco companies should not

receive special protections. To drop this lawsuit in midstream would send a signal to other industries that the federal government will not take action and hold an industry accountable even if it engages in a four-decades long effort to deceive and places profits above the health of Americans.

We encourage the committee to inquire in depth about Senator Ashcroft's views on this litigation. It is important to this committee to know how he will review this on-going lawsuit, the standard he will apply in deciding whether it will be continued, and whether he has an open mind about the suit notwithstanding the comments he has already made.

It is one thing to oppose the lawsuit as a Senator. It is an entirely different matter to intervene to stop a meritorious suit as Attorney General unless there are sound legal reason for doing so. Should the Committee determine that Senator Ashcroft can not objectively and fairly evaluate the continuation of the suit and decide on its course based on the law, this matter should weigh heavily in determining his fitness to serve as the next Attorney General.

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OFC REV R SCHENCK

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REV. ROB SCHENCK
PRESIDENT

MEMBERSHIPS
AMERICAN ACADEMY OF MINISTRY
CTR. FOR BIO-ETHICS & HUMAN DIGNITY
EVANGELICAL CHURCH ALLIANCE
NAT. ASSOCIATION OF EVANGELICALS
NATIONAL PRO-LIFE RELIGIOUS COUNCIL

**The National
Clergy Council**
WASHINGTON, D.C.

NATIONAL MINISTRY CENTER
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PO Box 75157
WASHINGTON, D.C. 20013
1-800-551-2830

ADMINISTRATIVE OFFICE
8613 COMMERCE COURT
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703.257.5593
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January 4, 2001

Senator Orrin Hatch
Chair, Senate Judiciary Committee
Room SD-224
US Senate Dirksen Building
First and C Streets, NE
Washington, DC 20510

Dear Senator Hatch:

I write to you in your capacity as chair of the Senate Judiciary Committee. The National Clergy Council represents some 6000 church leaders including those from African-American, Catholic, Evangelical, Orthodox, and Protestant traditions. We have a great interest in the nomination of John D. Ashcroft to the post of attorney general. We are requesting the privilege of speaking in support of his nomination during his confirmation hearing.

In these days when issues related to faith and moral conviction often become matters of review by the Justice Department, church leaders have a growing concern that federal law be carried out in a fair and impartial manner. Many of our members have felt the weight of a formerly politicized Justice Department that abused its power by intimidating people of faith and faith-based organizations that objected to policies on abortion, human sexuality, expression and association. We believe that a Justice Department under Mr. Ashcroft will correct this error.

Over the last several years, a number of our members were summoned to appear before secret grand juries impaneled to investigate alleged "pro-life violence." We have consistently and emphatically denounced all violent acts on both sides of the abortion debate. Yet, some of our members were made to feel that they were criminals simply for supporting pro-life causes. As you know, in most cases, witnesses before a grand jury are not permitted to be accompanied by counsel. This can be a terribly frightening experience. We anticipate that under Mr. Ashcroft's leadership, the Justice Department will execute its legitimate fact finding and prosecutorial powers in a way that is consistent with law and not with political and social agendas.

As a pro-life organization, we expect Mr. Ashcroft to uphold the law, even if we are in disagreement with it. Our opinion is that the burden of changing the law falls to the Congress, and not to the Justice Department. There is no doubt in our minds that Mr. Ashcroft will enforce the Freedom of Access to

Senator Orrin Hatch

-2-

January 4, 2001

Clinic Entrances Act. But, he is also sure to enforce the heretofore-ignored clause to F.A.C.E. that equally protects churches and other houses of worship from pro-choice intimidation and violence.

We are prepared to field an impressive panel of witnesses including outstanding religious leaders, activists, moral philosophers and social ethicists to speak in favor of Mr. Ashcroft's confirmation.

Until I hear from you, I am,

Very truly yours,



Rev. Rob Schenck



January 17, 2001

Honorable Patrick Leahy
 United States Senate
 433 Russell Senate Office Building
 Washington, DC 20510

Re: NCMB's Opposition to Confirmation of John Ashcroft

Dear Senator Leahy:

On behalf of the members of National Coalition of Minority Businesses ("NCMB") nationwide, we would like to formally express our strong opposition to the nomination of John Ashcroft for U.S. Attorney General and **urge you to vote NO on his confirmation.**

As the enclosed January 4th *Wall Street Journal* article effectively states, John Ashcroft is clearly NOT a candidate who could effectively represent and protect all of the diverse populations of this great nation. Of particular concern to NCMB is his opposition to Federal minority business programs. For example, in September 1997, then – Senator Ashcroft convened a hearing mischaracterizing the Supreme Court's decision in *Adarand v. Peña* and advocating the elimination of the Department of Transportation's Disadvantaged Business Enterprise Program originally signed into law by President Reagan. Given his clearly biased views, it is obvious that Mr. Ashcroft is NOT a "compassionate conservative" and could not fairly protect the interests of the minority business community.

As you know, this year's Presidential election was an extremely divisive one. Now is the time for national unity, the healing of fresh wounds and embracing our diversity for the common good. A vote for Ashcroft is a vote for inequality and the rejection of our unique diversity. **We urge you to put politics aside and do what is best for our nation – vote NO for John Ashcroft as U.S. Attorney General.**

Sincerely,

A handwritten signature in black ink, appearing to read "James F. Garrett".

James F. Garrett
 Chairman

A handwritten signature in black ink, appearing to read "Melvin E. Clark, Jr.".

Melvin E. Clark, Jr.
 Vice Chairman

Enclosure

2099 Pennsylvania Avenue, NW
 Suite 100
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Senator Patrick J. Leahy
 SR-433 Russell Senate Office Building
 Washington, DC 20510-4502

Dear Senator Leahy:

Next week, you and the other members of the Senate Judiciary Committee will be meeting to consider the confirmation of former Senator John Ashcroft for Attorney General. One of the most important functions of the Department of Justice is the enforcement of our antitrust statutes. We hope that you will consider appropriate inquiries of the nominee to clarify his position on enforcement of antitrust and competition concerns.

Our economy is driven by competition. As you are well aware, regardless of your personal feelings on the case, a Reagan-appointed federal judge ruled last year that Microsoft Corporation egregiously violated our nation's antitrust laws. This case, which tackles an existing monopoly, seems an ideal litmus test against which you might discern Mr. Ashcroft's commitment to upholding our antitrust statutes. If he is not willing to carry this case through -- after the government has already secured a guilty verdict in the face of overwhelming evidence -- then it would seem that he would not closely examine the potential ill effects of any antitrust violation or future mega-mergers that would come before the Department of Justice.

If Mr. Ashcroft and his staff abandon the case or negotiate it away after the first round in the appeal process, not only would it have disastrous effects on the software and Internet industries, but on all other industries in which a potential monopoly exists. The American consumer will suffer because of the lack of competition, which could lead to increase in price, a diminished quality of goods and services, and lack of incentive for industry to innovate products and services.

We feel that it is important for you to determine from Mr. Ashcroft if he will pursue a just case begun by the previous Administration. For the sake of the economy and for the sake of consumers, we hope that you will use this opportunity to determine his commitment to enforce our antitrust statutes and seriously take this into consideration when you make your decision about confirmation.

Sincerely,

LINDA F. GOLODNER
 President



National Council
of Jewish Women

NCJW

Jan Schneiderman *National President*
Susan Katz *Executive Director*

TESTIMONY OF JAN SCHNEIDERMAN
PRESIDENT, NATIONAL COUNCIL OF JEWISH WOMEN
on the
NOMINATION OF JOHN ASHCROFT FOR ATTORNEY GENERAL
OF THE UNITED STATES
before the
SENATE JUDICIARY COMMITTEE
submitted January 22, 2001

My name is Jan Schneiderman, and I am president of the National Council of Jewish Women (NCJW). NCJW is a volunteer organization, inspired by Jewish values, that works on a variety of public policy issues through research, education, and community service programs initiated by its network of 90,000 volunteers, supporters and members nationwide. NCJW has come to the reluctant conclusion that, although we rarely take positions on Cabinet nominees, we must strongly oppose the confirmation of John Ashcroft to be Attorney General of the United States.

NCJW's Mission Statement pledges the organization to advance the well-being and status of women, children, and families, and to work to ensure individual and civil rights for all. Although we understand that reasonable people may disagree on how to achieve these goals, we are very concerned that Sen. Ashcroft, as indicated by his record over the years, does not share even these basic mainstream commitments.

Mr. Ashcroft's views are extreme, far outside the mainstream of American values, on matters that would bear directly on his responsibilities as the nation's chief law enforcement officer, should he be confirmed for that post. His leadership in the Senate and elsewhere opposing affirmative action, civil rights, a woman's right to choose abortion, and separation of religion and state – critical rights and issues – render him unsuited, in our opinion, to be the chief enforcer of the law and of constitutional rights in our nation and disqualify him from fulfilling this public trust with the diligence it requires.

The Attorney General is the government official more than any other who must act to protect the rights of the powerless and to promote equal justice. He or she stands as a symbol of the commitment of the Executive Branch to the rule of law. He advises the President and executive branch agencies on the interpretation of laws and pending legislation. He sets the law enforcement priorities for the Nation, deciding when to file suit and whom to prosecute. He is ultimately responsible for the operation of the FBI, the INS, the Bureau of Prisons, and all the U.S. Attorneys. The nation needs an Attorney General not only prepared to administer the totality of the Department of Justice, but also with demonstrated sensitivity to the concerns of those who have been the historic victims of public and private discrimination – racial and religious minority groups, women, the disabled, and those identified by their sexual preference.

organize a boycott of Missouri until that state passed the Equal Rights Amendment. He is an ardent foe of equal rights for gay Americans. He voted against the Nondiscrimination in Employment Act and vigorously opposed confirming James Hormel as Ambassador to Luxembourg based solely on the fact of Hormel's sexual preference, refusing even to accord the President's appointee the courtesy of a meeting. He supported an amendment offered by Senator Helms to cut off funding to local gay community health centers that were treating men, women, and children with HIV/AIDS.

NCJW has worked long and hard to end the terrible epidemic of gun violence in our country by restricting the spread of handguns and assault weapons. Senator Ashcroft is an active foe of gun control, supporting a reading of the Second Amendment endorsed by no court. He has been a consistent advocate for the positions promoted by the National Rifle Association. When it came time to close the gun show loophole that contributes to the unchecked spread of weapons around the country, he supported an amendment constricting the ability of law enforcement personnel to conduct background checks of prospective gun buyers. He is in favor of allowing concealed weapons for nearly everyone but felons, and opposes banning assault weapons and high-capacity ammunition magazines brought in from abroad.

He voted no to prohibiting the sale or transfer of guns without safety locks. He has said that Americans need their guns to protect themselves against a "tyrannical government." This is the sort of rhetoric that mindlessly inflames hatred while exposing children to the epidemic of gun violence that pervades far too much of our society.

Finally, Mr. Ashcroft's position on the separation of religion and state is particularly upsetting to NCJW. His general approach is characterized by his remark to Pat Robertson's Christian Coalition that "A robed elite have taken the wall of separation built to protect the church and made it a wall of religious oppression." In NCJW's view, the First Amendment was designed to protect the people from a state-sponsored church and to protect religion in turn from government interference. Rejecting this view, Mr. Ashcroft favors a constitutional amendment in support of organized school prayer. Even without such an amendment, he voted to have the government endorse the Ten Commandments. He supports using tax funds to pay school tuition at religious schools, and tried to impose school vouchers on the District of Columbia, where Congress has ultimate legislative authority. His voucher plan would have given religious schools government money for general tuition for the first time in our country's history.

Mr. Ashcroft is the author of "charitable choice" programs that would use federal tax dollars to fund the provision of social services by overtly religious groups in overtly religious programs. Under current law, religious organizations must form nonsectarian groups to provide federally funded aid. Under Ashcroft's proposal, religious organizations would be funded directly and could require adherence to a particular religious belief or creed in the delivery of services. Such religious agencies would be exempt from federal civil rights law and could discriminate against employees or program clients if they could base such discrimination on their "teachings or tenets."

These are all positions that place Ashcroft outside the mainstream of American opinion. They are positions he has advocated with great vigor, so much so that they call into question his ability to enforce laws and court decisions with which he so vehemently and persistently disagrees.

In recent weeks, we have heard a great deal about how the next President should seek to heal the wounds left by the election's extraordinary aftermath by selecting moderates for high office. Rather than unite us, this appointment is divisive. It sends a message to women and minorities that the new Administration favors policies far outside the mainstream of American values and jurisprudence. It calls into question whether the new Administration intends to defend the policies in place that have been enacted at the behest of the American people and tested in the courts over the decades. On behalf of the members of the National Council of Jewish Women, I call upon you to defeat this extreme and unsuitable nominee.

In the wake of a contentious election that ended in a disputed outcome, President-elect Bush vowed to be "a uniter, not a divider." In that context, what are we to make of this nomination? What signal does it send to the vast majority of Americans? To accept this nomination in that spirit requires a leap of faith not justified by Ashcroft's record in public office. Mr. Ashcroft's attempted repudiation of his own words and actions during his confirmation hearings is not convincing. One's record of action while in positions of leadership is much more revealing of one's beliefs and more indicative of one's future conduct than campaign or confirmation rhetoric.

I have chosen to highlight four issues of special concern to NCJW in my testimony: reproductive rights, civil rights, gun control, and the separation of religion and state.

Mr. Ashcroft opposes allowing women the right to choose abortion, a right NCJW believes is fundamental and that the Courts have upheld on many occasions. His view denies women the right to control their own reproductive lives and to make moral decisions on their own. He believes that abortion is murder. As Senator, he co-sponsored a constitutional amendment that would ban abortion even in cases of rape or incest. He has co-sponsored legislation to declare that life begins at conception, thus giving the "unborn" – beginning with the fertilized ovum – equal status under the law. This measure would criminalize abortion procedures used throughout pregnancy when the life or health of the mother is at stake. He voted against a sense of the Senate resolution supporting *Roe v. Wade*, a matter he recently claimed was "settled law," and he opposes the use of federal funds to help poor women gain equal access to abortion.

As Senator, Mr. Ashcroft made it his mission to defeat Clinton Administration nominees who believe in a woman's right to choose. He has said, "Those who devalue life must not be placed in authority over policies affecting our most vulnerable. I have repeatedly, and in many instances alone, fought President Clinton's anti-life nominations and appointments, including activist federal judges and Surgeon General nominees Henry Foster and David Satcher."

Equally disturbing to NCJW, Senator Ashcroft also voted in committee against a provision of the bankruptcy act that would have prevented persons found liable for clinic violence from declaring bankruptcy to avoid paying the fines and damages assessed against them, although he and other opponents later switched their votes and supported the amendment and the bill for political reasons (the provision was removed in conference).

Mr. Ashcroft's extreme views are not limited to the issue of abortion. His human life amendment would ban commonly used contraceptives, such as the pill and the intrauterine device, or IUD. He also voted to bar the use of tax funds for emergency contraceptives, or the so-called "morning after" pill. And Senator Ashcroft, as state Attorney General, sued nurses in Missouri who dispensed birth control information and when he lost, appealed the decision all the way to the U.S. Supreme Court. These are the views of someone who is not simply against abortion but is on the far edge of the anti-abortion movement.

Mr. Ashcroft's civil rights record is abysmal. He opposes affirmative action as it is now defined by the federal courts. He voted in Congress against the Hate Crimes Act, which would have added crimes based on sexual preference to the list of covered acts, and he argued vociferously over many years against school desegregation, even voluntary school desegregation, as governor and attorney general of Missouri.

Mr. Ashcroft asserts his belief in racial equality, but appears tone-deaf on this issue. He gave an interview to *Southern Partisan* magazine – a neo-Confederate voice – in which he defended the Confederate cause, and he accepted an honorary degree from Bob Jones University, an institution that considers Catholicism and Mormonism to be cults, and which until recently banned interracial dating. He misled the Senate when he succeeded in blocking the nomination of Ronnie White, the first African American to serve on the Missouri Supreme Court, to a federal judgeship, making spurious allegations about White's record.

Mr. Ashcroft opposed the Equal Rights Amendment and as Missouri Attorney General sued the National Organization for Women, attempting to infringe on that group's First Amendment right to



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PRESS RELEASE

SUPPORT FOR SENATOR JOHN ASHCROFT

AT THEIR WINTER MEETING THE EXECUTIVE COMMITTEE OF THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION HAS UNANIMOUSLY ENDORSED SENATOR JOHN ASHCROFT AS THE NEXT ATTORNEY GENERAL OF THE UNITED STATES.

THE UNANIMOUS VOTE WAS PREDICATED UPON SENATOR ASHCROFT'S DEMONSTRATED INTEGRITY AND HIS DEDICATION TO ENSURING THE SAFETY OF THE AMERICAN PEOPLE THROUGH STRONG, BUT FAIR, LAW ENFORCEMENT.

BECAUSE THE MAJORITY OF THE WORKLOAD OF THE CRIMINAL JUSTICE SYSTEM IS THE RESPONSIBILITY OF LOCAL PROSECUTORS AND POLICE AGENCIES, A STRONG WORKING RELATIONSHIP BETWEEN FEDERAL LAW ENFORCEMENT AGENCIES AND LOCAL PROSECUTORS IS VITAL TO BOTH MAXIMIZE THE EFFICIENCY AND EFFECTIVENESS OF OUR CRIMINAL JUSTICE SYSTEM AND SEE THAT JUSTICE IS TRULY AVAILABLE FOR ALL.

AS A FORMER STATE ATTORNEY GENERAL AND GOVERNOR, SENATOR ASHCROFT APPRECIATES THAT A STRONG SYSTEM OF LOCAL LAW ENFORCEMENT IS THE ONLY MEANS TO ACHIEVE THIS END.

THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION LOOKS FORWARD TO THE OPPORTUNITY TO WORK WITH SENATOR ASHCROFT IN THE COMING YEARS TO ENSURE THE SAFETY OF OUR CITIZENS.

**Point-of-Contact:
Jim Polley, Director of Government Affairs, NDA A
(703)519-1651 email: james.polley@ndaa-apri.org**



NATIONAL
FAMILY
PLANNING &
REPRODUCTIVE
HEALTH
ASSOCIATION

January 11, 2001

Honorable Patrick J. Leahy
Committee on the Judiciary
SD 224 Dirksen
Washington, D.C. 20510

Honorable Orrin G. Hatch
Committee on the Judiciary
SD 224 Dirksen
Washington, D.C. 20510

Dear Senators:

On behalf of the Board of Directors and the membership of the National Family Planning and Reproductive Health Association, I am writing to ask you to oppose the confirmation of Senator Ashcroft as Attorney General of the United States.

Much has been written about the high principles of John Ashcroft and we do not in any way impugn his views. However, his strongly held beliefs with regard to women's reproductive health are in stark contrast to established law. It is our belief that he would be hard pressed to uphold the laws of the United States without violating his own oft-noted principles.

Senator Ashcroft's record with regard to a woman's right to choose is abysmal. However, it goes much further, including his support for constitutional amendments that would in effect make the most popular form of contraception, illegal. This strongly held view is so far from the mainstream of American thought as to be radical and unacceptable.

We know that we can count on you to hold balanced hearings that will allow the Senator's full record to be placed before the public. I ask you to put before the Senator the full range of difficult choices he will have to make as Attorney General and reconcile the upholding of laws guaranteeing abortion and access to abortion services and his personal convictions.

Thank you.

Sincerely,

Judith M. DeSarno
President/CEO

For thirty years, The National Family Planning and Reproductive Health Association (NFPFRA) has acted as the voice and advocacy arm of professionals, public and private non-profit providers, and consumers of publicly subsidized family planning and reproductive health care in the United States. NFPFRA's mission is to assure access to voluntary, comprehensive, culturally appropriate family planning and reproductive health care services and to support reproductive freedom for all.



c/o National Puerto Rican Coalition ■ 1700 K Street, NW, Suite 500 ■ Washington, DC 20006

Tel: 202-223-3915 ■ Fax: 202-429-2223 ■ Website: www.bateylink.org/nhla.htm

TESTIMONY

OF THE

**NATIONAL HISPANIC LEADERSHIP AGENDA (NHLA),
A NON-PARTISAN COALITION OF
MAJOR HISPANIC NATIONAL ORGANIZATIONS**

CONCERNING

**THE NOMINATION OF JOHN ASHCROFT
TO THE POSITION OF ATTORNEY GENERAL**

SUBMITTED TO THE

SENATE JUDICIARY COMMITTEE

JANUARY 19, 2001

BY

**MANUEL MIRABAL, CHAIR
NATIONAL HISPANIC LEADERSHIP AGENDA**

&

**MARISA J. DEMEO, REGIONAL COUNSEL &
AISHA QAASIM, LEGISLATIVE STAFF ATTORNEY OF THE
MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND (MALDEF)**

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National Hispanic Medical Association
National Puerto Rican Forum
National Latina/o Lesbian, Gay, Bisexual &
Transgender Organization
Puerto Rican Legal Defense & Education Fund
Society of Hispanic Professional Engineers
Southwest Voter Registration & Education
Project
U.S. Hispanic Chamber of Commerce

Individuals

Rudy Betezza
Henry Cisneros
Eiza DiMartino
Frederick Fernandez
Francis Gómez

I. Introduction

The National Hispanic Leadership Agenda (NHLA) appreciates the opportunity to submit testimony regarding the nomination of John Ashcroft to the position of Attorney General of the United States.¹ For the reasons set forth in this document, a majority of the member organizations of the NHLA voted to oppose Mr. Ashcroft's nomination, thus allowing the NHLA to take a formal position of opposing the nomination. NHLA is a non-partisan coalition of major Hispanic national organizations. The NHLA represents all major ethnic groups in the Hispanic community: Mexican Americans, Puerto Ricans, Cuban Americans, and Americans whose countries of origin are in the Caribbean and Central and/or South America. NHLA's mission calls for a spirit of unity among Latinos nationwide to provide the Hispanic community with greater visibility and a clearer, stronger voice in our country's affairs.

It is expected that a Republican President will nominate not only Republicans but candidates who are conservative. Our opposition to Mr. Ashcroft is not because he is conservative, it is because we conclude that the positions he has taken in the past will prevent him from forcefully and effectively enforcing a number of federal laws and from supporting the appointment of executive and judicial nominees who would protect fully the civil rights of our community, to the detriment of our community.

II. Ashcroft has little, if any, experience working with Latinos or immigrants or on issues affecting Latinos and immigrants.

Background: Between 1973 and 1993, Ashcroft served at the state level in Missouri in a number of positions: Auditor of the State (1973-75), Assistant Attorney General (1975-76), Attorney General (1976-85), and Governor (1985-93). Most recently, Ashcroft served one term as a Senator representing Missouri but his career as a Senator ended when he lost his election to former Governor Mel Carnahan who won posthumously. Because most of Ashcroft's career was spent in Missouri or representing the State of Missouri as its one-term Senator, it is important to reflect on some relevant statistics as to the number of Latinos and immigrants in the state of Missouri when evaluating Ashcroft's qualifications of working with and knowledge of the Latino community.

¹ *Acknowledgments:* This document was written by Marisa J. Demeo, Regional Counsel, and Aisha Qaasim, Staff Attorney, of the Mexican American Legal Defense and Educational Fund (MALDEF), 202-293-2828. Contributing to this document were Angela Maria Arboleda and Charles Kamasaki, National Council of La Raza; Brent Wilkes and Gabriela Lemus, League of United Latin American Citizens (LULAC); Larry Gonzales, National Association of Latino Elected and Appointed Officials (NALEO); and Patricia Loera, National Association of Bilingual Education (NABE). In addition, the People for the American Way report *The Case Against the Confirmation of John Ashcroft as Attorney General of the United States, Part One: An Overview of the Senate Years* served as a critical resource in preparing Section II of this document.

At the time of the 1990 census, Missouri had more than 61,000 Latinos living in the state.² By 1999, census estimates placed the Latino population of Missouri at over 91,000.³ While overall, Hispanics are only about 1.7% of the Missouri population, the increase over the last 10 years shows a growth of over 48%.⁴ Also significant is the fact that the Latino population is concentrated mostly within two areas in the state. The estimated Hispanic population in Jackson County, Missouri in 1999 was 26,800, and in Clay County, Missouri, it was 6,000.⁵ These are the two counties surrounding Kansas City, Missouri. The 1999 estimates of the Hispanic population in St. Louis County, Missouri was 13,800, and the county surrounds St. Louis City, Missouri, where the Hispanic population was 5,900.⁶

Despite this growing Latino population in Missouri, particularly in the areas in and surrounding Kansas City and St. Louis, Missouri, Ashcroft paid little attention to the Hispanic population of Missouri. Based on contacts that national Latino organizations have in Missouri, the record that Ashcroft established in Missouri with the Hispanic community was one of neglect. According to local Hispanic leaders and community based organizations, Ashcroft did not pay any attention to them. Even when he was running for re-election for the Senate seat he did not speak to the issues that were affecting the Latino community. By contrast, the same local contacts felt that former Governor Carnahan went out of his way to reach out to the Latino community and endeavor to address their issues. In addition, the sense of the local communities was that Carnahan affirmatively appointed Latinos to various positions within the state government whereas they did not report the same about Ashcroft.

With regard to the immigrant population in Missouri, not limited to Latino immigrants, the most recent census data available indicated that Missouri had close to 84,000 foreign-born residents in 1990, equaling 1.6% of the total state population at that time.⁷ Similar to his record in Missouri on Latinos, Ashcroft did little, if anything, significant on immigration issues.

It was not until Ashcroft came to serve as a Senator in the United States Senate that he began to deal directly with Latino and immigrant issues, so his Senate record is an important indicator of how he

² See U.S. Bureau of the Census, States Ranked by Hispanic Population, 7/1/99, <<http://www.census.gov/population/estimates/state/rank/hisp.txt>> (visited Sept. 5, 2000).

³ *Id.*

⁴ *Id.*

⁵ See U.S. Bureau of the Census, Counties Ranked by Hispanic Population, 7/1/99, <<http://www.census.gov/population/estimates/county/rank/hisp-a.txt>> (visited Jan. 13, 2001).

⁶ *Id.*

⁷ U.S. Census Bureau, Nativity of the Population for Regions, Divisions, and States, 1850-1990, 3/9/99, <<http://www.census.gov/population/www/documentation/twps0029/tab13.html>> (visited Jan. 13, 2001).

would handle issues that affect our community as the United States Attorney General. Ashcroft's record with other minority and women's groups as well as on general civil rights issues are also important indicators of how he would handle important civil rights issues as the Attorney General, if confirmed. One of the most visible measures of Ashcroft as a Senator is how he treated judicial and administrative nominees that national Latino organizations supported and believed would have served well our community.

How This Will Affect the Department of Justice: The Department of Justice is one of the most important agencies affecting the Hispanic community. The Attorney General is charged with overseeing the Civil Rights Division which enforces civil rights laws in areas such as employment, housing, education, and voting; the Immigration and Naturalization Service (INS) which directly affects the lives of 40% of the Latino community; and a number of other federal enforcement agencies such as the Drug Enforcement Agency (DEA) and the Federal Bureau of Investigation (FBI), among others.

Mr. Ashcroft has essentially ignored the Latino community in Missouri. While one might dismiss this as a case of a small Latino community in Missouri, it was clear that former Governor Carnahan reached out to the Latino community and made sure Latinos were included in his appointments, among other measures. It is a deep concern that Mr. Ashcroft will be equally insensitive to the Latino community and our needs at the Department of Justice. On the one hand we need vigorous enforcement of the civil rights laws as they apply to our community, and on the other hand we also need to be treated fairly by federal law enforcement whether it is the INS, FBI, or DEA. Ashcroft has not developed the record to give us assurance that Latinos will be treated fairly under his charge.

Ashcroft has sent other signals of his treatment of minorities which provide no comfort. Ashcroft gave the commencement address at and accepted an honorary degree from Bob Jones University, which has become infamous for banning interracial dating and whose founder characterizes Catholicism as "a cult." At best, this suggests an extraordinary degree of insensitivity to minorities and Catholics, and at worst may demonstrate a willingness to tolerate and give deference to views that are far outside the mainstream.

III. Ashcroft opposed vigorously judicial and administrative nominees that national Latino organizations supported and believed would have served the Latino community and the country well, whether or not they were Latino themselves.

Background:

Ronnie White

As the Senator for Missouri, Mr. Ashcroft led the charge to oppose and ultimately defeat the nomination to the federal District Court of Missouri of Judge Ronnie White, who serves on the Missouri Supreme Court. Judge White was nominated by President Clinton in 1997. More than two years passed before Judge White's nomination was considered by the Senate, and the media reported

that Senator Ashcroft was the Senator holding up White's consideration.⁸

When Judge White's nomination was finally considered by the Senate, Mr. Ashcroft led the fight to defeat White's confirmation by urging the members of the Republican party to vote all together with him to oppose the confirmation. It was the first time a judge was defeated on the floor of the Senate since the defeat of Robert Bork for the Supreme Court. It was also an extremely unusual defeat since the Senate rarely defeats district court judges on Senate floor votes. What raised concerns and outrage from civil rights groups, including national Latino organizations, at the time of the defeat was the mischaracterizations Ashcroft created and promoted of Judge White that led to White's defeat. Mr. Ashcroft and other Republicans argue that Ashcroft's characterizations of White were accurate; however, the facts point in the opposite direction.

Senator Ashcroft made various claims that Judge White was not suited for the bench because he was "procriminal," an "activist," and with a "serious bias against a willingness to impose the death penalty."⁹ Ashcroft claimed that White was the most anti-death penalty judge on the Missouri Supreme Court.¹⁰ In fact, after the defeat which occurred with little forewarning, reports came out that Judge White had affirmed the death penalty in 41 of 59 capital cases that came before him.¹¹ Furthermore, three of the judges whom Senator Ashcroft had appointed to the Missouri Supreme Court had voted to reverse the death penalty more often than Judge White.¹²

There is one particularly heinous capital case to which Ashcroft refers often (*Missouri v. Johnson*¹³); however, the issue in White's dissent was not whether a healthy, normal person who committed such a terrible act should receive the death penalty. The issue for Judge White was the defendant's mental state.¹⁴ This has never been accurately portrayed by Senator Ashcroft.

In addition, Senator Ashcroft made statements that law enforcement organizations contacted him to oppose Judge White's nomination; however, after the vote, reports came out that Senator Ashcroft's

⁸ See, e.g., *Confirm Ronnie White*, St. Louis Post-Dispatch, Aug. 11, 1999.

⁹ 145 Cong. Rec. S11872 (daily ed. Oct. 4, 1999) (statement of Sen. Ashcroft).

¹⁰ *Id.*

¹¹ Ralph Neas, People For the American Way, *The Case Against the Confirmation of John Ashcroft As Attorney General of the United States, Part One: An Overview of the Senate Years 7* (2001).

¹² *Id.* at 8.

¹³ 968 S.W.2d 123, 138 (Mo. 1998) (White, J., dissenting).

¹⁴ *Id.*

office solicited opposition from the law enforcement officials.¹⁵

Other Judicial Nominees

Judge White's nomination was not the only judicial nomination that Ashcroft actively opposed. Ashcroft played a lead role to block the nomination of Margaret Morrow to serve on the district court of Los Angeles in 1996.¹⁶ Despite his opposition, Ms. Morrow finally secured confirmation after two years of waiting.¹⁷ Ashcroft also opposed and voted against Margaret McKeown to the Ninth Circuit Court of Appeals in 1998;¹⁸ Susan Oki Mollway (the first Asian American to become a federal judge) to the District Court of Hawaii;¹⁹ Ann Aiken to the District Court in Oregon;²⁰ and Marsha Berzon to the Ninth Circuit Court of Appeals.²¹

Ashcroft has been associated with G.O.P. efforts to block Clinton administration judicial appointments,²² and has a pattern of opposing judicial nominees as judicial activists without evidence that the nominees have ever taken activist positions on the bench and in disregard of the nominees' own testimony. Ashcroft has made many comments sharply criticizing the Ninth Circuit specifically as an "activist court"²³ and sponsored legislation designed to restrict the ability of federal court judges to review the constitutionality of state law.²⁴ The judicial candidates opposed as activist

¹⁵ 145 Cong. Rec. S11872 (daily ed. Oct. 4, 1999) (statement of Sen. Ashcroft); *Law Enforcement's Opposition to White Was Courtied by Ashcroft; Police Group's President Says it Rejected Senator's Request to Oppose Judge*, St. Louis Post-Dispatch, Oct. 8, 1999.

¹⁶ See, e.g., Cong. Rec. S646-49 (daily ed. Feb. 11, 1998) (statement of Sen. Ashcroft), <<http://thomas.loc.gov/cgi-bin/query/D?r105:4./temp/-r1057OvICs:e53673:>> (visited Jan. 13, 2001).

¹⁷ Roll Call Vote # 11, 105th Cong., Feb. 11, 1998.

¹⁸ Roll Call Vote # 48, 105th Cong., Mar. 27, 1998.

¹⁹ Roll Call Vote # 166, 105th Cong., June 22, 1998.

²⁰ Roll Call Vote #1, 105th Cong., Jan. 28, 1998; also, see, Cong. Rec. S80 (daily ed. Jan. 28, 1998) (statement of Sen. Ashcroft), <<http://thomas.loc.gov/cgi-bin/query/D?r105:1./temp/-r1057OvICs:e58053:>> (visited Jan. 13, 2001).

²¹ Roll Call Vote # 38, 106th Cong., Mar. 9, 2000.

²² Libby Quaid, *Ashcroft, Brownback Listed as Blocking Nominees But Deny They're on Board*, Associated Press, Feb. 1, 2000.

²³ Cong. Rec. S11878 (daily ed. Oct. 8, 1998) (statement of Sen. Ashcroft).

²⁴ Cong. Rec. S6186 (daily ed. June 11, 1998) (statement of Sen. Hatch introducing the Judicial Improvement Act of 1998 with original co-sponsors Senators Ashcroft, Abraham, and Thurmond).

judges by Ashcroft were usually politically moderate and ultimately confirmed with bi-partisan support.²⁵

During Judge Morrow's confirmation hearing, Ashcroft acknowledged her as an outstanding lawyer with an excellent record of service as president of both the State Bar of California and the Los Angeles County Bar Association. Ashcroft stated that his only reservation was her interpretation of what the role of judge should be and whether or not she will recognize that it is the legislature's role to make law.²⁶ Hardly an activist, Morrow was a corporate litigator and was supported by several conservative senators.²⁷ Ashcroft concluded that Morrow was an activist judge based in part on a comment to a journal article she made at a Women and the Law Conference four years earlier among other writings.²⁸

Ashcroft opposed Judge Ann Aiken's nomination based on an early decision sentencing a rapist to 90 days in jail instead of substantial prison time in order to ensure that the prisoner would also receive psychological treatment. He described the sentencing as the kind of "social engineering" that should not be left to judges.²⁹ She was also confirmed with strong bi-partisan support.³⁰

Of particular importance to national Latino organizations, Ashcroft voted twice against the confirmation of the appointment of Judge Richard Paez to the Ninth Circuit Court of Appeals.³¹ The vote in 2000 was a vote on the nomination itself, and the earlier vote was a procedural vote to try to move the nomination. Ashcroft also voted against Sonia Sotomayor, who had been nominated to the 2nd Circuit Court of Appeals.³²

Judge Sonia Sotomayor was nominated by President Clinton in 1996 to fill a vacancy on the Second

²⁵ See Roll Call Vote # 11, 105th Cong., Feb. 11, 1998; Roll Call Vote # 48, 105th Cong., Mar. 27, 1998; Roll Call Vote # 166, 105th Cong., June 22, 1998; Roll Call Vote # 1, 105th Cong., Jan. 28, 1998; Roll Call Vote # 38, 106th Cong., Mar. 9, 2000; Roll Call Vote # 40, 106th Cong., Mar. 9, 2000; Roll Call Vote # 295, 105th Cong., Oct. 2, 1998.

²⁶ Cong. Rec. S646 (daily ed. Feb. 11, 1998) (statement of Sen. Ashcroft).

²⁷ Morrow was also supported by Senate Judiciary Committee Chair Orrin Hatch. See Editorial, *Mean Game in the Senate: Disclosure Reflects Indifference in the Chamber to Courts' Plight*, Los Angeles Times, Oct. 20, 1997, at B4.

²⁸ *Id.*

²⁹ Cong. Rec. S81 (daily ed. Jan. 28, 1998) (statement of Sen. Ashcroft).

³⁰ Roll Call Vote # 1, 105th Cong., Jan. 28, 1998.

³¹ Roll Call Vote # 40, 106th Cong., Mar. 9, 2000; Roll Call Vote # 283, 106th Cong., Sep. 11, 1999.

³² Roll Call Vote # 295, 105th Cong., Oct. 2, 1998.

Circuit Court of Appeals. A highly qualified nominee, Judge Sotomayor was originally appointed to the federal bench in 1992 by Republican President George Bush after a successful career as a federal prosecutor. After being approved by the Judiciary Committee, her nomination was placed on hold delaying a final vote on the Senate floor.³³ Ashcroft was one of only two senators on the Judiciary Committee to oppose her nomination.

During her confirmation hearings, she clearly testified that she did not believe the Constitution should be bent under any circumstance.³⁴ Ashcroft focused on an earlier decision of hers involving a discrimination claim by a prisoner who was removed from his food service position based on his sexual orientation to inquire whether she believe there could be special constitutional rights for individuals based on sexual orientation. She pointed out that case was actually decided in favor of the prison officials at trial and responded that it would be inappropriate to create any constitutional rights greater than they exist today. There was nothing in her record or hearing testimony to suggest that she was an activist judge or held extreme views out of the mainstream that would interfere with her ability to fairly interpret the law, yet Ashcroft voted against her in the final vote. She was ultimately approved by a large majority of Senators.³⁵

Ashcroft has not publicly explained the reasons behind his opposition to Judge Paez, nor do the transcripts of the confirmation hearings reveal any basis for Ashcroft's opposition except perhaps a difference in ideology. Judge Paez was the first Mexican American to serve as a federal trial court judge in Los Angeles. He was nominated by President Clinton to serve on the Ninth Circuit Court of Appeals in 1996 after serving 12 years with the California Municipal Court and two years as a Federal District Court judge. Despite his prior confirmation to the Federal District Court by the full Senate, and broad support including support by Republican Sheriff Sherman Block of Los Angeles, Judge Paez waited a record four years before he was eventually confirmed by the Senate for a seat on the Ninth Circuit. When questioned directly about his views on judicial activism, he responded that he had tremendous respect for the separation of powers and that it is the role of Congress to legislate and the sole responsibility of the executive to enforce those laws.³⁶ Judge Paez' record does not contain one instance of judicial activism, but based on Ashcroft's opposition to other nominees, it is likely that he labeled Paez a judicial activist because of his views regarding diversity on the bench. Ashcroft voted against Paez in committee and again in the full Senate vote.³⁷

³³ See Cong. Rec. S6521 (daily ed. June 18, 1998) (statement of Sen. Leahy).

³⁴ *Pending Nominations Hearing Before the Senate Comm. on the Judiciary*, 105th Cong. (Sep. 30, 1997) (statement of Sonia Sotomayor).

³⁵ Roll Call Vote # 295, 105th Cong., Oct. 2, 1998.

³⁶ *Confirmation Hearings on Federal Appointments Before the Senate Comm. on the Judiciary*, 105th Cong., 105-205, Pt. 3, 323 (Feb. 25, 1998) (statement of Judge Paez).

³⁷ Roll Call Vote # 40, 106th Cong., Mar. 9, 2000.

Ashcroft's strong opposition to these nominees was out of step with many senators inside and outside of the Republican party. He has routinely latched on to isolated comments made in speeches or in other writings to characterize nominees as unwilling to objectively interpret the Constitution as a basis for opposition to candidates with political views that differ from his. During the time that Paez and Sotomayor were awaiting confirmation by the Senate, both the Second and Ninth Circuits had to declare judicial emergencies as a result of the long-standing vacancies for which they were nominated.³⁸ Ashcroft's opposition to Paez and Sotomayor indicates that he is willing to jeopardize the smooth functioning of the judicial system in order to advance a partisan agenda.

Executive Branch Nominees

Ashcroft joined an unsuccessful fight in 1998 to defeat the nomination of African-American Surgeon General Dr. David Satcher, primarily because Dr. Satcher supported reproductive choice.³⁹ Ashcroft had previously joined a successful effort to block the nomination of Dr. Henry Foster in 1995 again over the issue of reproductive choice.⁴⁰

Ashcroft took a leadership role in preventing a vote to confirm Bill Lann Lee to become the first Asian American to head the Civil Rights Division of the Department of Justice because of Lee's support of affirmative action.⁴¹ He also joined with Jesse Helms to block a vote on James Hormel to be Ambassador to Luxembourg because Hormel was "gay and a prominent advocate of gay rights."⁴²

How This Will Affect the Department of Justice: The Attorney General will play a key role in selecting and pushing judicial nominees. Historically the process of selecting potential candidates for judicial appointments has been delegated to the Attorney General and Department of Justice staff.⁴³ A report by the Twentieth Century Fund Task Force on Judicial Selection, states that, "The choice of a federal judge is the attorney general's to make-- provided that he makes it within the

³⁸ See *Partisan Nonsense*, Argus Times, June 15, 1998; See also *Confirmation Hearings on Federal Appointments Before the Senate Comm. on the Judiciary*, *supra* note 35 (statement of Sen. Leahy).

³⁹ See 144 Cong. Rec. S540 (daily ed. Feb. 10, 1998) (statement of Sen. Ashcroft).

⁴⁰ Neas, *supra* note 10 at 12.

⁴¹ *Id.*

⁴² Time Magazine, May 11, 1998.

⁴³ Presidents Eisenhower, Kennedy, Nixon, Ford and Reagan all delegated the responsibility to find candidates for judiciary positions almost entirely to the Attorney General and Department of Justice Staff. See David O'Brien, *Judicial Roulette*; Report of the Twentieth Century Fund Task force on Judicial Selection 49 (1988).

framework of relevant norms of behavior which operate on the selection process.”⁴⁴ These responsibilities may include, compiling lists of potential candidates to submit to the president, helping to develop selection standards, reviewing the background and written record of each candidate and otherwise advising the president regarding the nomination process.

Ashcroft has been an extremist over the last six years against women, minority, and gay nominees for views they have held which he saw as contrary to his own. Ashcroft’s practice of opposing nominees to the judiciary based on isolated statements or writings that include views with which he disagrees raises serious concerns regarding whether he will be able to manage fairly the process of selecting candidates for the judiciary. For Ashcroft, the presence of competing ideas signals activism. Ashcroft threatens to become that which he criticizes so strongly- an activist attorney general. The selection of federal judges should focus on the merit, reputation and skill of each potential candidate. As director of the Department of Justice it is likely that Ashcroft will appoint staff and pursue candidates for judicial positions who share his narrow views on social policy creating an ideological screening process, instead of one focused on the merit and legal ability of each nominee.

It is our conclusion that Ashcroft will continue to block well-qualified candidates and potential nominees for judicial positions as well as administrative positions within the Department of Justice who would serve our community well. While he will pursue this agenda under a philosophical and ideological premise, it will have a negative disproportionate effect on both minorities and those non-minorities who have supported our community’s interests. In particular, Ashcroft’s votes against moderate Latino judges for appellate court positions should be closely scrutinized. It is likely he will unjustly rule out at least some highly qualified Latinos based on his past actions.

In addition, his opposition to affirmative action and the nomination of Bill Lann Lee raises questions about his willingness to support the appointment of an Assistant Attorney General to head the Civil Rights Division who will be committed to affirmative action and other civil rights measures that we support. Further, it raises the real possibility that he will pursue an anti-affirmative action agenda as the Attorney General turning back the clock for Latino gains in employment and education.

IV. Ashcroft has had a largely negative record on immigration issues in the Senate, and he took a number of positions that cause serious concern for national Latino organizations.

As was mentioned in Section I. above, Ashcroft did not establish a record on immigration issues until he reached the Senate. While he did vote favorably in some cases on immigration issues, a number of his votes raise serious concern as to how he would handle his administration of the Immigration and Naturalization Service in its treatment of immigrants as well as how he would handle policy and legislative questions on the treatment of immigrants that will certainly come

⁴⁴ *Id.* at 51-61.

before him as the Attorney General, if confirmed. With 40% of the Latino population being immigrants, the decisions and positions the Attorney General holds has a disproportionate impact on our community.

In 1996, the 104th Congress passed legislation that severely restricted welfare benefits for legal residents. The welfare and immigration reform laws denied immigrants critical nutritional and medical safety net benefits regardless of how long they had worked in this country. These laws caused legal immigrants to face significant restrictions in qualifying for most major federal public benefits programs, including Supplemental Security Income (SSI), Food Stamps, Medicaid, the state Child Health Insurance Program (CHIP), and Temporary Assistance to Needy Families (TANF).

During the 1996 legislative session when considering the various welfare and immigration reforms, Ashcroft took a number of significant votes that either would have hurt the Latino community if a majority of Senators had eventually joined Ashcroft's actions or ultimately did hurt our community in cases where sufficient numbers of other Senators did join him in his vote. Ashcroft voted against an amendment put forward by Senator Dianne Feinstein to the Personal Responsibility and Work Opportunity Act of 1995 (PRWOA) that would have eliminated the provisions of the original bill denying federal benefits to certain naturalized U.S. citizens.⁴⁵ Ultimately, this provision was stripped out of the bill.

Ashcroft voted against another Feinstein amendment to the PRWOA, which would have allowed legal immigrants to be eligible for noncash federal benefits by removing deeming requirements for the programs not traditionally considered federal welfare programs.⁴⁶ It also would have exempted victims of domestic violence from a ban on SSI assistance and deeming requirements for all programs.⁴⁷

Congress has since recognized that the 1996 laws created disastrous consequences for families, and has restored some benefits. In 1997, Congress restored SSI and Medicaid eligibility to most elderly and disabled legal immigrants who entered the U.S. before the enactment of the 1996 welfare law. Food Stamp benefits were also restored to some immigrants in 1998. In 1997, Ashcroft was one of only eleven Senators to vote against extending SSI and Food Stamp benefits for legal immigrants from August to September of that year to allow those legal immigrants who were being thrown off of government assistance some time to find alternative forms of subsistence to meet their needs.⁴⁸ Ashcroft also voted against waiving the Budget Act for a provision which would have restored Food Stamps the 1996 welfare law cut for children of legal immigrants.⁴⁹ In 1998, Ashcroft voted for

⁴⁵ Roll Call Vote # 427, 104th Cong., Sept. 14, 1995 (S. Amdt. 2478 to H.R. 4).

⁴⁶ Roll Call Vote # 428, 104th Cong., Sept. 14, 1995 (S. Amdt. 2513 to H.R. 4); Cong. Rec. S13596-98 (daily ed. Sep. 14, 1995) (statements of Sen. Feinstein), <<http://thomas.loc.gov/cgi-bin/query/D?r104:1:/temp/~r104ND9Xhd:e111654:>> (visited Jan. 15, 2001).

⁴⁷ *Id.*

⁴⁸ Roll Call Vote # 58, 105th Cong., May 7, 1997 (S. Amdt. 145 to S. 672).

⁴⁹ Roll Call Vote # 116, 105th Cong., June 25, 1997 (S. Amdt 450 to S. 947).

prohibiting the restoration of Food Stamps for certain legal immigrants.⁵⁰ By the time of the Food Stamp vote in 1998, most Senators recognized the harshness of the 1996 law on immigrants and were willing to admit errors had been made. And yet Ashcroft along with less than a quarter of Senators still refused to recognize the harsher effects of the 1996 law on the Latino community and other immigrant communities.

More recently, Ashcroft voted against the Latino and Immigrant Fairness Act (LIFA) by voting against a motion to suspend the rules and pass LIFA as an amendment to a high-tech worker visa bill.⁵¹ LIFA would have stabilized the immigration status of specific groups of immigrants who have been living, working, and raising their families in the U.S. for many years. LIFA would have made defined groups of immigrants—who are already here and already working and contributing to our booming economy—both permanent and legal. Many of these immigrants have been living in legal limbo for over a decade, since being wrongly denied the legal status for which they were qualified in the 1980's. By now many of them would have been U.S. citizens. Others would have become legal residents if a law passed three years ago had treated them equally to refugees under similar circumstances. Still others are prospective immigrants already in the U.S. and in the process of obtaining their "green cards," but a provision of current law requires these immigrants to leave the country and remain separated from their families for as long as 10 years before being allowed to reenter.

How This Will Affect the Department of Justice: The Immigration and Naturalization Service (INS) falls under the Department of Justice. Ashcroft's votes in the area of immigration give us serious reason to be concerned, since he voted against immigrants' interests in a number of very important areas. His positions raise questions of whether he will ensure the policies and positions the INS takes under his charge will be fair to immigrants.

Distinctions Made Between Naturalized Citizens and Native Born Citizens

One of the most troubling votes of Ashcroft's is in the area of how naturalized citizens should be treated under our laws. The law is clear that the only significant difference between a naturalized citizen and a native born citizen is that a naturalized citizen cannot become the President of the United States. The Supreme Court has repeatedly held that there are no other significant distinctions allowed under our laws.

We start from the premise that the rights of citizenship of the native born and of the naturalized person are of the same dignity and are coextensive. The only difference drawn by the Constitution is that only the "natural born" citizen is eligible to be President. Art. II, Section 1.

While the rights of citizenship of the native born derive from Section 1 of the

⁵⁰ Roll Call Vote # 128, 105th Cong., May 12, 1998.

⁵¹ Roll Call Vote # 257, 106th Cong., Sept. 27, 2000.

Fourteenth Amendment and the rights of the naturalized citizen derive from satisfying, free of fraud, the requirements set by Congress, the latter, apart from the exception noted, "becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the constitution, on the footing of a native. The constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national Legislature, is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual."

Schneider v. Rusk, 377 U.S. 163, 165 (1964) *citing to* Osborn v. Bank of United States, 22 U.S. 738, 9 Wheat. 738, 827 (1824). And *see* Luria v. United States, 231 U.S. 9, 22 (1913); United States v. MacIntosh, 283 U.S. 605, 624(1931); Knauer v. United States, 328 U.S. 654, 658 (1946).

Citizenship obtained through naturalization is not a second-class citizenship. It has been said that citizenship carries with it all of the rights and prerogatives of citizenship obtained by birth in this country "save that of eligibility to the Presidency." Luria v. United States, 231 U.S. 9, 22 (1913). There are other exceptions of a limited character. But it is plain that citizenship obtained through naturalization carries with it the privilege of full participation in the affairs of our society..."

Knauer v. United States, 328 U.S. 654, 658 (1946).

Senator Ashcroft's support for legislation to deny benefits to naturalized citizens, in contravention of settled precedents on the matter, is highly disturbing. It suggests that, as Attorney General, he could pursue policies and practices that treat naturalized Americans as second-class citizens, in violation of constitutional and other legal guarantees.

Distinctions Made Between Legal Immigrants and Citizens

On more than one occasion, Ashcroft voted to deny government benefits to legal immigrants which are afforded citizens even though these immigrants are here legally. While the Supreme Court has ruled that states cannot make distinctions between legal immigrants and citizens on its own, they can do so if the federal government sanctions such distinctions.⁵²

Ashcroft's repeated votes to deny legal immigrants benefits afforded citizens cause Latino organizations serious concern. We are left thinking that Ashcroft will not only continue to support proposals that deny legal immigrants government benefits in the welfare context, but that he might

⁵² Compare *Graham v. Richardson*, 403 U.S. 365 (1971) (held that states could not deny welfare benefits to legal immigrants while granting such benefits to citizens) with *Mathews v. Diaz*, 426 U.S. 67 (1976) (held that Congress may condition an immigrant's eligibility for participation in the federal Medicare program on admission for permanent residence and continuous residence in the United States for five years).

extend that thinking to other areas of the law as well. Legal immigrants are citizens-in-training. If the Attorney General pursues policies and pushes the law to deny legal immigrants of more benefits and rights then they will become more and more vulnerable in this society and feel less connected to the society. This would take us down a dangerous path for not only the Latino community but society at large.

Providing Relief for Long-Term Residents of This Country By Allowing Them to Adjust Their Status As a Matter of Equity

Ashcroft's vote against LIFA sets a bad precedent for a number of issues important to the Latino community. LIFA was designed to provide long overdue relief to long-term residents who were either wrongly denied a chance to adjust their status, unjustly treated differently than similarly situated refugees, or not given the opportunity to wait with their family while their "green card" was being processed. LIFA was introduced at a time when our country is experiencing a record demand for workers with all levels of specialization. Normalizing the status of these essential immigrant workers would have ensured that they continue contributing to our economy and paying their fair share of taxes. By taking a common sense approach, this legislation would have kept these workers working, their families together, and contributing in a legal manner to keep our economy strong.

In the closing hours of the 106th congressional session, Ashcroft and other Senators did not pass LIFA but did pass a much more restrictive piece of legislation. Despite the strong equitable claims to relief presented by the three categories of long-term residents little of the sought-after relief was attained. In particular, Central American and Caribbean refugees seeking to be treated the same as similarly situated refugees were given no relief. A troubling sign for our community was that in the original bill which LIFA sought to remedy, Salvadorans and Guatemalans were treated differently than Cubans and Nicaraguans based primarily on ideological distinctions - remnants of cold war thinking - rather than on a factual determination of the home country conditions and circumstances that caused the refugees to come to the U.S. in the first place. Ashcroft's vote against this provision of LIFA demonstrates his potential to continue allowing ideology to play an improper role in his immigration decisions.

For those immigrants who have been here working since the 1980's, only those covered by certain class-action lawsuits and few others will be provided relief instead of the more comprehensive relief sought. When Ashcroft initially voted against LIFA, he ignored the circumstances of these immigrants who but for the errors of the INS, they would have had an opportunity to legalize their status. As Attorney General, Ashcroft will be charged with overseeing the operations of the INS. This vote in Congress suggests he may ignore INS' violations and noncompliance with the law.

Ashcroft's refusal to support the three provisions in LIFA sends the Latino community the message that on issues of equality for long-term residents, on issues of keeping families together, and on issues of treating similarly situated refugees or immigrants the same he will not be on our side. Furthermore, and more troubling, we are concerned that Latinos will not have a fair hearing and a just result from Ashcroft if confirmed as Attorney General.

- V. **Ashcroft has opposed a wide array of legislation in areas such as education, economic opportunity, and criminal justice, that national Latino organizations have supported during the last six years.**

Background: In a number of areas important to the Latino community, Senator Ashcroft voted against our interest most of the time. This section highlights some of the Ashcroft votes during his one term as Senator in the areas of education, economic opportunity, and criminal justice. NHLA issues score cards on the members of Congress evaluating how they vote on issues of importance to the Latino community. As some indication of how Ashcroft generally rates with national Hispanic groups, NHLA gave Ashcroft a score of 25% for the second session of the 106th Congress, 14% for the first session of the 106th Congress, and 0% for the entire session of the 105th Congress.

Education

Looking at a variety of indicators, Latino students are not faring well in the public school system. The quality of the teachers is perhaps one of the greatest predictors of quality of education. Unfortunately, the higher the minority enrollment of a school, the lower the percentage of high-quality teachers. Latino students are more likely than white students to be in schools that are segregated and poorly funded. Latino students have, over time, repeatedly scored lower than whites on national standardized tests such as the National Assessment of Educational Progress (NAEP). When Latino students take the SAT, the primary examination to apply for entrance to college, on average they score 127 points below whites. Latinos have a 30% dropout rate, which is more than double the rate for whites, and tend to dropout of school at a younger age. It has been estimated that \$332 billion is needed to repair and modernize public schools across the country. Most of this money is needed for basic infrastructure improvements including the need for heating, plumbing, roofs that do not leak, sprinklers, and fire alarms. Many of the school districts where the majority of Latino children attend are in dire need of funding for repairs and construction.

In the area of education, Ashcroft voted against programs enabling states and local educational agencies to place qualified teachers in every classroom.⁵³ He voted against reducing class size.⁵⁴ He voted for a provision which would allow states to ignore requirements intended to hold schools accountable for helping students, including limited English proficient students, meet rigorous academic standards.⁵⁵ He voted against a motion to prevent the block granting of K-12 education funds,⁵⁶ and for an amendment to block grant education funds.⁵⁷ Ashcroft voted for preventing an increase in school construction bonds to assist with funding school construction projects.⁵⁸ He voted

⁵³ Roll Call Vote # 25, 106th Cong., Mar. 2, 2000.

⁵⁴ Roll Call Vote # 93, 106th Cong., May 4, 2000.

⁵⁵ Roll Call Vote # 30, 106th Cong., Mar. 1, 1999.

⁵⁶ Roll Call Vote # 232, 105th Cong., Sep., 11, 1997.

⁵⁷ Roll Call Vote # 91, 105th Cong., Apr. 22, 1998.

⁵⁸ Roll Call Vote # 90, 105th Cong., Apr. 21, 1998.

against an amendment to fund drop-out prevention programs.⁵⁹

Economic Opportunity

Latino men are the most likely group of workers to be in a job or looking for one. However, a substantial segment of Latinos face serious economic challenges. Nearly three in ten Latinos and two in five Latino children are poor. Most Latinos in poverty are part of "working poor" families - those that have at least one full-time worker, yet earn wages below the official poverty level; often, they receive no health insurance or other important benefits.

While the overall workforce in the United States is getting older, the Latino workforce is getting younger. This younger workforce has led to the need for greater job opportunities for Latinos in the workforce. The current economic condition, changing labor market and continuation of discriminatory hiring and retaining policies provide little hope for Latino economic advancement without significant changes in national policy.

Wage and income disparities continue to exist for Latinos. Latino workers are over represented in industries where the typical pay is relatively poor. That includes agriculture, especially crop production; some sectors of light manufacturing, such as toys and small electronic or metal parts, as well as food processing, textiles and apparel; and such low-paying service industries as household and janitorial services and hotels. Conversely, Latinos are under represented in well-paying sectors, including motor vehicle manufacturing (where they make up just 5.1 percent of the workforce) and machinery. There are relatively few Latinos employed in the delivery of professional services, such as education and health care. Latinos hold only 152 (less than 1.4%) of the 11,101 board seats of the Fortune 1000 companies. Of the same companies, only 15 have a Latino president, CEO, and/or chair.

In the area of economic opportunity, Ashcroft voted three times against increases in the federal minimum wage.⁶⁰ He voted for a motion to end consideration of an amendment which would have preserved Community Reinvestment Act Protections in the Financial Services Modernization Act of 1999.⁶¹ By voting for this provision, Ashcroft was hurting community groups' ability to comment on banking and commerce mergers that could hurt the Latino community. Ashcroft voted for preventing increases in child care funding.⁶² He voted against counting education as "work" under the welfare program of Temporary Assistance for Needy Families (TANF).⁶³

In particular, we want to highlight that Ashcroft voted against preserving the Disadvantaged Business

⁵⁹ Roll Call Vote # 101, 105th Cong., Apr. 23, 1998.

⁶⁰ Roll Call Vote # 76, 106th Cong., Apr. 7, 2000; Roll Call Vote # 356, 106th Cong., Nov. 9, 1999; Roll Call Vote # 278, 105th Cong., Sept. 22, 1998.

⁶¹ Roll Call Vote # 100, 106th Cong., May 5, 1999.

⁶² Roll Call Vote # 157, 105th Cong., June 11, 1998.

⁶³ Roll Call Vote # 191, 105th Cong., July 9, 1998.

Enterprise Program in the Department of Transportation which, if passed, would have denied equal access to federal contracting dollars to small and disadvantaged minority- and women-owned businesses.⁶⁴

Criminal Justice

Hate crimes against Latinos in the United States increased drastically in the 1990s. According to the 1998 Hate Crime Statistics Uniform Crime Reports issued by the Federal Bureau of Investigation, 482 of the 754 single-bias incidents based on ethnicity/national origin were anti-Hispanic cases.⁶⁵ Out of a total of 956 victims of ethnic/national origin hate incidents, 620 were Hispanic; and out of a total of 863 known offenders in the ethnic/national origin category, 580 were anti-Hispanic offenders.⁶⁶ Intimidation, simple assault, and aggravated assault were the top three reported forms of crime against persons in 1998.⁶⁷ The FBI reports that 110 of the 144 aggravated assault cases based on ethnicity/national origin were anti-Hispanic, and 221 of the 372 intimidation cases were anti-Hispanic.⁶⁸ These figures reveal the distressing status and future risk of hate crimes against Latinos in the U.S.

Ashcroft voted against strengthening laws against hate crimes, a major priority of many national Latino organizations.⁶⁹ The Hate Crimes Prevention Act of 1999 (S.622), would have expanded federal criminal civil rights jurisdiction under current law for hate crimes based on race, ethnicity, and national origin. Furthermore, the bill, if passed, would have provided authority for federal officials to investigate and prosecute cases in which violence occurs on the bases of a victim's disability, gender, or sexual orientation.

Racial profiling is another serious problem for Latinos in the United States. Studies show that Latinos are disproportionately identified as potential criminal suspects on the basis of skin color and accent alone. The INS and the police have been the main source of this discrimination, perpetuating assumptions that most minorities are criminals and that minorities commit the majority of crimes. An end to racial profiling would help secure the rights of Latinos and other targeted groups in our country.

According to a Leadership Conference on Civil Rights' (LCCR) report, immigration laws have been more selectively enforced by the INS against Latinos than any other group.⁷⁰ Those that look Latino

⁶⁴ Roll Call Vote # 23, 105th Cong., Mar.6, 1998.

⁶⁵ U.S. Department of Justice, Hate Crime Statistics (1998).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Roll Call Vote # 136, 106th Cong., June 20, 2000, voted on as a Kennedy amendment (Amdt. No. 3473) to S. 2549, National Defense Authorization Act for Fiscal Year 2001.

⁷⁰ Leadership Conference on Civil Rights, Justice on Trial: Racial Disparities in the American Criminal Justice System (2000).

are more prone to interrogation, detention, or arrest for suspected immigration violations. Ninety percent of those subjected to INS enforcement actions are Latino, even though Latinos constitute 60% of all undocumented persons in the U.S. Just this past year, the Ninth Circuit Court of Appeals in *United States v. German Espinoza Montero Camargo* and *United States v. Lorenzo Sanchez Guillen*, 208 F.3d 1122 (9th Cir. 2000), cert. denied, 121 S.Ct. 211 (2000), reaffirmed the constitutional right that Hispanics have not to be targeted even by the Border Patrol simply because they are Hispanic. This right derives from the fifth amendment to the United States Constitution and is made applicable to the states through the fourteenth amendment.

LCCR's report also found that African Americans and Latinos are treated more harshly than similarly situated whites at every level of the criminal justice system. In general, Black and Hispanic youth are more likely than whites to be arrested, prosecuted, held in jail without bail, and sentenced to long prison terms.⁷¹

Recognizing the problem of racial profiling on a national level, President Clinton, in June of 1999, instructed federal law enforcement agencies to begin collecting data on the race, ethnicity, and gender of individuals subject to traffic and pedestrian stops, inspections of entries into the United States, and certain other searches.

As Chair of the Senate Subcommittee on the Constitution, Ashcroft refused to move the Traffic Stops Statistics Study Act of 1999, (S. 821), a major priority of a number of national Latino organizations. This bill directs the Attorney General to conduct a nationwide study of stops for traffic violations by law enforcement officers. It requires the Attorney General to: (1) perform an initial analysis of existing data, including complaints alleging, and other information concerning, traffic stops motivated by race and other bias; (2) gather specified data on traffic stops from a nationwide sample of jurisdictions, including data on the alleged infractions, identifying characteristics of the drivers, immigration status questions and inquiries, searches instituted and alleged criminal behavior that justified the searches, items seized, and citations or arrests resulting from stops; and (3) report the results to Congress and make such report available to the public.

How This Will Affect the Department of Justice: The Civil Rights Division of DOJ enforces a variety of civil rights laws, including in the areas of education, employment, and criminal justice, among others.

Education

The Education Section of the Department's Civil Rights Division is charged with enforcing Title IV of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974, among other laws, with respect to students in public schools. This includes challenging discrimination and disparities in higher education systems, not just at the elementary and secondary level. The Section may intervene in private suits which allege violations of education related anti-discrimination statutes

⁷¹ *Id.*

and the Fourteenth Amendment of the Constitution. The Section also represents the Department of Education in certain types of suits filed either against or on behalf of the Secretary of Education.

While Ashcroft's votes were not specifically about the anti-discrimination laws enforced by the Department, they were votes against measures we believe would help eliminate discrimination and inequities in our public school system. His votes send a signal that he would not pursue aggressive relief when discrimination is found.

Economic Opportunity

The Employment Litigation Section of the Department's Civil Rights Division enforces, against state and local government employers, the provisions of Title VII of the Civil Rights Act of 1964 and other federal laws prohibiting employment practices that discriminate on the bases of race, sex, religion, and national origin. The Section also represents the Departments of Labor and Transportation and other federal agencies when they are sued for what is alleged to be overzealous enforcement of federal laws that prohibit discrimination and/or require affirmative action by government contractors or recipients of federal financial assistance. In addition, the Section has authority to prosecute enforcement actions upon referral by the Department of Labor of complaints arising under Executive Order 11246, which prohibits discrimination in employment and requires affirmative action by federal contractors.

Of particular importance for economic opportunity for the Latino community and the work of the Employment Litigation Section is Ashcroft's strong opposition to affirmative action. Ashcroft opposed Bill Lann Lee for the position of Assistant Attorney General because Lee had been an advocate for affirmative action measures to address discrimination. Ashcroft also showed his opposition to affirmative action through his vote opposing the continuation of the Disadvantaged Business Enterprise program in the Department of Transportation. This is one of the very programs which the Employment Section has had to defend in the courts on behalf of the Department of Transportation. Ashcroft's continued and strident opposition to such programs brings into question his willingness and commitment to defending such programs which *are* still allowed under Supreme Court law.

Criminal Justice

Under current law, the Department of Justice has limited authority over hate crime prosecutions. DOJ can only prosecute defendants in situations where the victim is targeted because he or she is engaging in specified federally protected activities, such as serving on a jury or voting, and for a limited number of protected bases excluding gender, disability, and sexual orientation. Nevertheless, the Department currently has some jurisdiction over hate crimes. The Department can also pursue claims of law enforcement misconduct, such as patterns and practices of using racial profiling to target minorities. The two sections within the Civil Rights Division which have jurisdiction over these areas of law are the Criminal Section and the Special Litigation Section.

The Criminal Section prosecutes cases involving the deprivation of personal liberties which either

cannot be, or are not, sufficiently addressed by state or local authorities. These are matters involving acts of racial violence and misconduct by local and federal law enforcement officials, among other areas. Allegations of official misconduct constitute the majority of all complaints reviewed by the Section. Defendants have included state and local police officers, federal law enforcement officers, prison superintendents and correctional officers, and state and county judges. These officials have been charged with using their positions to deprive individuals of constitutional rights, such as the right to be free from unwarranted assault, illegal arrest and searches, and the right to be free from deprivation of property without due process of law.

The Special Litigation Section enforces, among other laws, the Omnibus Crime Control and Safe Streets Act of 1968, which authorizes the Attorney General to initiate civil litigation to remedy a pattern or practice of discrimination based on race, color, national origin, gender or religion involving services by law enforcement agencies receiving federal financial assistance.

Ashcroft's vote against the Hate Crimes Protection Act and his stopping the Traffic Stops Statistics Act from moving forward through his committee are troubling signs for how he would run the Criminal and Special Litigation Sections of the Department. His actions raise questions of whether he would vigorously enforce existing hate crimes laws, and whether he would support expansion of that law if the bill were reintroduced. It is common practice for the Department to submit testimony and feedback to the Congress on proposed legislation in the areas that would ultimately be enforced by the Department. In addition, Ashcroft's failure to move the Traffic Stops Statistics Act is equally troubling. All the act would have required was a collection of data to determine if and where racial profiling was occurring. Already the federal government is collecting such data with regard to federal law enforcement agencies. Ashcroft's blocking the Traffic Stops Statistics Act raises questions as to whether he opposes not just steps to address racial profiling practices, but even the collection of the data to determine the extent and location of the problem.

VI. Conclusion

It is widely accepted that Presidents should be given substantial deference in Cabinet nominations. However, it is equally true that the Senate's "advise and consent" power should be exercised with respect to nominees whose views fall outside the mainstream. This is especially true regarding the position of Attorney General, who, more than any other Cabinet official, has a responsibility to ensure the equal application and protection of the law to all Americans.

We believe that any fair and impartial review of Senator Ashcroft's record, at a minimum, raises serious questions regarding his ability to fairly and equitably enforce the law on behalf of Hispanic Americans. These questions go far beyond isolated and legitimate differences over questions of public policy. As documented herein, Senator Ashcroft has demonstrated opposition to virtually every policy position supported by Latino organizations.

Moreover, on several important issues Senator Ashcroft's record demonstrates a pattern of insensitivity to the interests of Hispanic Americans. His willingness to single out Latino and other

minority judicial nominees for harsh treatment; undermine Constitutional protections of naturalized citizens and deny public benefits to legal immigrants; implicitly condone racial intolerance and religious bigotry as practiced by Bob Jones University; and his refusal to even investigate the extent of racial profiling demonstrate an inability to fairly and equitably enforce the law on behalf of Hispanics.

NHLA urges the Senate to reject Ashcroft's nomination.



NATIONAL LATINO PEACE OFFICERS ASSOCIATION
 POST OFFICE BOX 4244
 DIAMOND BAR, CALIFORNIA 91765

Jose Carlos Miramontes January 17, 2001
 President

Mary Lantes Republican National Committee
 Secretary

VIA FACSIMILE

Lou Espindola Dear Members of the Republican National Committee:
 Vice President West Region

Gil Cerda It is with sincere pleasure that I write on behalf of the men and women of the National
 Vice President Central Region **Latino Peace Officers' Association (NLPOA) in support of Senator John Ashcroft's**
appointment as the next United States Attorney General.

J. Luis Lopez
 Vice President East Region

Joe Castillo As Attorney General, Senator Ashcroft will be tasked with enforcing the letter and spirit
 Treasurer of the laws of our nation, and ensuring that justice is carried out in a fair, consistent and
 impartial manner. Moreover, he will be tasked with ensuring that all segments of
Felipe Ortiz society are protected from the scourge of crime. With that said, it is clear that Senator
 Historian Ashcroft's experience makes him eminently qualified for the task at hand.

Lorenzo Provencio Senator Ashcroft's history of public service and keen sense of personal integrity will
 Parliamentarian serve him well in this undertaking. His tough stance on crime will go a long way in
 ensuring the safety of the men and women of law enforcement and the communities we
Joe Lopez serve.
 Sergeant-At-Arms

Art Acevedo The NLPOA and its members look forward to working with Senator Ashcroft and the
 Secretary Governmental Affairs Bush/Cheney Administration on issues of mutual interest. More importantly, we look
Andy Cruz forward to exploring ways to reach out to the diverse communities we serve and
 Editor - Web Master building bridges therein. Please feel free to contact me or Mr. Art Acevedo, Secretary
 Governmental Affairs should you have any questions at (310) 871-3376.

John Messina, Jr. Sincerely,
 General Counsel

Vicente Calderon Jose Carlos Miramontes
 Founder President

Adrian Garcia
 Past President

TESTIMONY OF PATRICIA IRELAND, PRESIDENT
NATIONAL ORGANIZATION FOR WOMEN
CONFIRMATION HEARING OF SEN. JOHN ASHCROFT,
NOMINEE FOR ATTORNEY GENERAL
SENATE JUDICIARY COMMITTEE
January 18, 2001

Based on his record, the National Organization for Women (NOW) has concluded that as U.S. attorney general, John Ashcroft would likely seek to dismantle, rather than protect, women's rights, civil rights, civil liberties, and reproductive freedom. NOW's concerns center on the extremism of Sen. Ashcroft's policy positions and on examples of his misuse of power and disingenuous distortions of fact to advance his political agenda and career.

Ashcroft's Views Are Sufficiently Extreme to Disqualify Him As Attorney General

As U.S. attorney general, John Ashcroft would have an obligation to enforce federal law, but also an opportunity to help shape its development. Even with the best of good faith intentions, Sen. Ashcroft's extremely conservative and deeply held political beliefs would unavoidably be reflected in his performance of this powerful, broad-ranging job.

The attorney general must set law enforcement priorities for the entire Department of Justice. The department's resources are not, after all, unlimited, and not all of the many federal civil and criminal laws can be given equal emphasis. How could the political views of the attorney general *not* be reflected in decisions of how U.S. attorneys and FBI agents spend their time, what cases they pursue, what issues are appealed, and on which side of a case the government enters?

The attorney general also advises the president on nominations to the federal trial courts, circuit courts of appeal and Supreme Court as well as for U.S. solicitor general, assistant attorneys general and others in the Department of Justice. With all the potential nominees available to serve, how could the political views of the attorney general *not* be reflected in these recommendations?

Surely points exist at each of the far ends of the ideological spectrum beyond which a nominee for U.S. attorney general is disqualified. Surely the U.S. Senate would reject a nominee, for example, who was a hardline communist or a neo-Nazi.

Of course, the National Organization for Women does not argue that Sen. John Ashcroft falls within either of these two categories, but rather that as a matter of public policy, Senators would be well advised not to set the bar for disqualification so high that Cabinet nominees could never be rejected based on ideology, no matter how extreme.

Sen. Ashcroft's positions are sufficiently extreme to disqualify him for attorney general of the United States. To take but one example, his views on reproductive rights are far outside the mainstream of this Senate and this country. Sen. Ashcroft advocates a ban so sweeping that it would bar use of some of the most effective forms of birth control, as well as abortion, with an exception only to save a woman's life. He would deny emergency contraception to a woman who has been raped and force a young girl, pregnant as a result of incest, to carry the pregnancy to term, even at the risk of her health.

Sen. Ashcroft's extreme views are also illustrated by his praise of a white supremacist publication and his acceptance of an honorary degree from Bob Jones University, without at the very least using the opportunity to denounce the university's policy against inter-racial dating and its history of calling the Pope the "Anti-Christ" and identifying the Catholic and Mormon religions as "cults."

Ashcroft has misused power to advance his political agenda and career

Sen. Ashcroft's suitability to serve as U.S. attorney general must also be questioned in light of his record as attorney general of Missouri. In the late 1970s, Ashcroft, who opposed the Equal Rights Amendment (ERA) to the U.S. Constitution, used the power of the state attorney general's office to try to deny NOW's First Amendment rights to advocate a boycott of unratified states as part of a campaign to pressure state legislatures to ratify the ERA. He took his unsuccessful effort all the way to the U.S. Supreme Court.

Similarly, Sen. Ashcroft's dogged determination as state attorney general to fight voluntary desegregation in St. Louis seems less in the interest of the students and their families than that of advancing his own political agenda and career.

The most disturbing and disqualifying misuse of power by Sen. Ashcroft is his deliberate distortion of Judge Ronnie White's record on the death penalty. In his opposition to confirmation of Judge White to the federal bench, Sen. Ashcroft's language was so intemperate as to imply that Judge White himself had a bent toward crime. "Pro-criminal" was one way he described the judge.

In justifying his 180 degree turn-around from praising Judge White in committee to vehemently opposing him on the Senate floor, Sen. Ashcroft said that he had been unaware of Judge White's record on crime until law enforcement officers in Missouri raised red flags. It appears, on the contrary, that Sen. Ashcroft's staff initiated the contacts with law enforcement and did the flag raising, not the other way around. The timing and the use of the soft-on-crime accusation by Sen. Ashcroft in his election campaign against Gov. Mel Carnahan seem more than coincidental.

Finally, Sen. Ashcroft refused to answer questions under oath about fund-raising in his 1984 campaign for Missouri governor. A Missouri company filed a civil lawsuit arguing that Sen. Ashcroft, as attorney general for the state, brought charges against the company for the purpose of gaining positive political coverage. That suit was ultimately settled out of court. In a deposition in the case, the administrative assistant to then-Attorney General Ashcroft acknowledged in sworn testimony that he had raised election campaign funds and carried out other election activities during the business day from the attorney general's office. Ashcroft invoked the Fifth Amendment.

Clearly Sen. Ashcroft had the constitutional right to refuse, on advice of counsel, to answer questions about election campaign fund-raising. However, a jury in a civil lawsuit would have been allowed under law to conclude from the refusal that, if answered, the response would have been adverse to Sen. Ashcroft. The U.S. Senate must draw that same unfortunate conclusion if Sen. Ashcroft provides no answers to such questions.

Conclusion

Sen. Ashcroft has made every effort to assuage the concerns raised by Senators on the Judiciary Committee. But Sen. Ashcroft's lengthy record attests to his extreme ideology and his willingness to use the power of office to advance his political agenda and his own interests. That record stands in contradiction to his assurances before this panel. His confirmation as U.S. Attorney General should be rejected.



1522 K STREET, NW, SUITE 550, WASHINGTON, D.C. 20005 (202) 326-0040 FAX (202) 589-0511

January 10, 2001

Dear Senator,

NOW Legal Defense and Education Fund, the nation's oldest and largest legal advocacy organization for women, opposes the nomination of John Ashcroft for Attorney General of the United States.

Senator Ashcroft has had a long public career, and his views on the law have been frequently articulated and are well known. His stances on civil liberties and women's rights run counter to a half-century of American legal progress. His perspective is a reactionary one, which, if put into practice, will literally move America backwards, away from a deepening of rights, and toward a limitation of rights.

With John Ashcroft as Attorney General, we fear a Justice Department:

- that will fail to defend women from violence by vigorously implementing all provisions of the Violence Against Women Act, including the maintenance of the Violence Against Women Office and the National Domestic Violence Hotline;
- that will fail to act with determination to defend abortion clinics, their employees and their patients, from terrorism;
- that will not protect even the victims of rape and incest from the unwanted pregnancies that result;
- that will fail to protect from discrimination employees who are victims of domestic violence, sexual assault, or stalking;
- that will not keep guns out of the hands of wife batterers;
- that will not protect immigrant women from physical harm and deportation when they are being battered by their husbands.

We fear a Justice Department that erodes the wall separating church and state and that funds social services through zealous faith-based organizations that hold to antiquated notions of the proper roles of women and men.

We fear a Justice Department that will not wholeheartedly support the Family and Medical Leave Act and will not vigorously defend the Equal Pay Act.

We fear a Justice Department that doesn't take sexual harassment seriously.

In his first speech as President-elect, George Bush announced, "I was not elected to serve one party, but to serve one nation." Extremism does not serve the nation, and Senator Ashcroft is an extremist, representing one small segment of the American public. Since President-elect Bush has already, with the Ashcroft nomination, dishonored his promise to be the "President of every single American, of every race and every background," we call upon the Senate to reject this nomination.

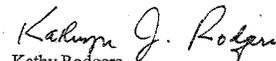
Senator Ashcroft has vigorously opposed any form of affirmative action for women and racial minorities. For the Senate to approve his nomination largely because he is a member of "the club" would be the worst kind of preferential treatment.

We at NOW Legal Defense have prepared a comprehensive list of issues and questions pertaining to Senator Ashcroft's record on civil rights and women's issues. We believe his answers to these questions will reveal the nature of how he will or will not protect and defend the laws of our nation.

We deserve an Attorney General who shares in a dream of a unified America, one who will protect the civil liberties of all American women and men, and who will not divide us one against the another.

If you want a copy of these questions or need any information, please contact Jackie Payne or Bulbul Gupta in our Washington, D.C. office, (202) 326-0040.

Sincerely,


Kathy Rodgers
President
NOW Legal Defense and Education Fund


Patricia Blau Reuss
Vice President, Government Relations
NOW Legal Defense and Education Fund

Sheriff Jerry "Peanuts" Gaines
NSA President
Bowling Green, Kentucky

Thomas N. Faust
Executive Director
Alexandria, Virginia



NATIONAL SHERIFFS' ASSOCIATION

1450 DUKE STREET • ALEXANDRIA, VIRGINIA 22314-3490
Telephone (703) 836-7827 • Fax (703) 683-6541
nsamail@sheriffs.org • www.sheriffs.org
January 11, 2001

The Honorable Sam Brownback
303 Hart Senate Office Building
Washington, DC 20510

Dear Senator Brownback:

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

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

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

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

Sincerely,

Jerry "Peanuts" Gaines
President

Charles B. Meeks
Executive Director Emeritus

Richard M. Weintraub
NSA General Counsel
Washington, D.C.

Sheriff Dwight E. Radcliff
NSA Corporate Representative
Circleville, Ohio

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Richard M. Weintraub
 NSA General Counsel
 Washington, D.C.

Sheriff Dwight E. Radcliff
 NSA Corporate Representative
 Cincinnati, Ohio

NATIONAL SHERIFFS' ASSOCIATION

1450 DUKE STREET • ALEXANDRIA, VIRGINIA 22314-3490
 October 4, 1999 Telephone (703) 836-7827 • Fax (703) 863-8541
 nsamail@sheriffs.org • www.sheriffs.org

The Honorable John Ashcroft
 United States Senate
 316 Hart Senate Office Building
 Washington, D.C. 20510

Dear Senator Ashcroft:

I am writing to ask you to join the National Sheriffs' Association (NSA) in opposing the nomination of Mr. Ronnie White to the Federal Judiciary. NSA strongly urges the United States Senate to defeat this appointment.

As you know, Judge White is a controversial judge in Missouri while serving in the Missouri Supreme Court. He issued many opinions that are offensive to law enforcement; one on drug interdiction and several involving the death penalty. Judge White feels that drug interdiction by law enforcement is too intimidating. He is more concerned with his personal view of drug interdiction practices than with the legitimate law enforcement effort to prevent the trafficking of illegal drugs. Drug interdiction is a cornerstone in the fight against crime, and this reckless opinion undermines the rule of law.

Additionally, Judge White wrote an outrageous dissenting opinion in a death penalty case. In 1991 Pam Jones, the wife of Sheriff Kenny Jones of Monticau, Missouri, was gunned down with three other law enforcement officials while hosting a church service at home. The assailant, who was targeting the Sheriff, was tried and convicted of murder in the first degree. He was subsequently sentenced to death for the four murders. During the appeals process, the case came before the Missouri Supreme Court where six of the seven judges affirmed the conviction and the sentence. Judge White was the court's lone dissenter urging a lower legal standard to allow this brutal cop killer a second chance at acquittal. In our view, this opinion alone disqualifies Judge White from service in the Federal courts. He is irresponsible in his thinking, and his views against law enforcement are dangerous. Please read Judge White's dissenting opinion in this case.

We urge you in the strongest possible terms to actively oppose the nomination of Judge White. He is clearly an opponent of law enforcement and does not deserve an appointment to the Federal Judiciary. His views and opinions are highly insulting to law enforcement, and we look forward to working with you to defeat this nomination.

Respectfully,

Patrick J. Sullivan, Jr., Sheriff
 Chairman, Congressional Affairs Committee and
 Member, Executive Committee of the Board of Directors, NSA



NATIONAL TAXPAYERS UNION

January 12, 2001

Senator Patrick Leahy
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Orin Hatch
Ranking Minority Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Minority Member Hatch:

On behalf of the 300,000-member National Taxpayers Union (NTU), I write to express our enthusiastic support for the nomination of Senator John Ashcroft to be the next Attorney General of the United States. We are hopeful that the confirmation hearings to be held in your Committee will uphold the historical tradition of determining the qualifications of the nominee and will avoid digression into a debate over whether Senators agree with Senator Ashcroft on every issue.

NTU believes strongly that Senator Ashcroft's record as Missouri State Attorney General, Governor of Missouri, and United States Senator – combined with a distinguished law practice and law degree from the prestigious University of Chicago Law School – make Senator Ashcroft one of the best qualified candidates for the position of U.S. Attorney General in many years.

Furthermore, during his many years of public service, Senator Ashcroft has demonstrated himself to be a man of exceptional integrity and competence. We have every reason to believe that this tradition would continue during his service at the Department of Justice.

This infusion of integrity and competence at the DOJ would be a welcome change. After eight years of law and order taking a back seat to political activism and economic statism, taxpayers can look forward to a new era where the Justice Department will use its authority to pursue justice for American citizens, instead of abusing its authority to pursue a big government economic agenda. Under John Ashcroft, we believe taxpayers will see an end to the current anti-taxpayer, anti-free market lawsuits and frivolous antitrust cases.

Once again, NTU strongly endorses the candidacy of Senator John Ashcroft to be the next Attorney General of the United States and urges all Senators to support his nomination.

Thank you for your attention to this letter and please feel free to contact us if you have any questions or comments.

Sincerely,

John Berthoud
President

TESTIMONY BEFORE THE SENATE COMMITTEE ON THE JUDICIARY

January 17, 2001

Testifying

Johnny L. Hughes
National Troopers Coalition
12 Francis Street
Annapolis, Maryland 21401
(301) 489-1795 (410) 679-6276

James J. Doyle, III
Rich and Henderson, P.C.
844 West Street
Annapolis, Maryland 21401
(410) 267-5900

Johnny Hughes is Director of Government Relations for the National Troopers Coalition, a law enforcement association composed of state police and highway patrol officers throughout the United States. The Coalition has a membership of approximately 45,000 troopers of all ranks, troopers through colonel. Mr. Hughes is retired from the Maryland State Police after twenty-nine years with that department, retiring with the rank of major. He has testified before this Committee and other committees regarding matters important to the law enforcement community.

James J. Doyle, III is a former Assistant Attorney General for Maryland, and former counsel to the Maryland State Police. He is now in private practice, in the Annapolis, Maryland law firm of Rich and Henderson, P.C. Mr. Doyle has also testified before this Committee on other nominations.

TESTIMONY BY MR. HUGHES

Mr. Chairman, honorable members of this distinguished Committee, I would like to thank the Committee for giving me this opportunity to speak on this matter of great public interest.

The National Troopers Coalition, which is composed of 45,000 law enforcement officers throughout the country, strongly supports the nomination of John Ashcroft as Attorney General of the United States. Though our members are state law enforcement officers, the Coalition's troopers and highway patrol officers are directly impacted by the policies and tone set by the nation's top law enforcement official. Our members are involved, on a daily basis, in traffic stops, criminal arrests, drug interdictions, arrests of fugitives, criminal investigations, and enforcement of a wide range of criminal laws. We believe that one of John Ashcroft's top priorities as Attorney General will be to closely cooperate with state and local law enforcement, given the fact that he has held positions as Governor and Attorney General of Missouri.

The National Troopers Coalition believes that John Ashcroft is the right man, and the best man, for this job. Our NTC members know John Ashcroft well. Missouri is a member state of our Coalition. He is well known to Missouri troopers, and well respected by them. As you know, John Ashcroft has held important positions at the state and federal level in which he has demonstrated his strong support for law enforcement. John Ashcroft served two terms as the distinguished Missouri attorney general, two terms as Missouri governor, and one term in the United States Senate. During his two terms as governor, John Ashcroft increased the number of full-time law enforcement officers in Missouri by 63% from 1985 to 1992. Governor Ashcroft put over 3800 more full-time police officers on the streets in Missouri, and in so doing, has shown his commitment to effective law enforcement.

In addition, Governor Ashcroft adopted tough standards and sentencing for crimes. He built needed capacity at Missouri correctional facilities, increasing capacity by 72% from 1985 to 1993. Moreover, during his terms, Missouri was above average in the length of time criminals had to serve

for all sentences. The Criminal Justice Institute concluded that in 1991, the national average for time served for all crimes was 23.7 months, while in Missouri the average length of a sentence was 28.9 months.

Governor Ashcroft enacted the first hate crimes legislation in Missouri creating penalties for ethnic intimidation and crimes committed for motives based on race, color, religion, or national origin. The legislation also creates penalties for institutional vandalism for damages to ethnically related buildings and property. Governor Ashcroft also enacted the Missouri Victims Bill of Rights which allows crime victims to be informed of and present at criminal proceedings, the right to restitution, the right to protection from the defendant, and the right to be informed of the escape or release of a defendant. As Missouri attorney general, Ashcroft enforced the Missouri Brady Bill that was enacted in 1981.

While in the United States Senate from 1994 to 2000, Senator Ashcroft was a strong proponent of tougher laws on criminals. Mr. Doyle, counsel for the NTC, will address some of the specifics of the more important proposals put forward by Senator Ashcroft before this body, and generally his approach toward enforcement of the criminal laws.

The NTC would like to, in addition to endorsing Senator Ashcroft, publically commend him for the fine work that he has done not only to strengthen the criminal laws, but also to protect citizens, protect law enforcement officers, and, in those unfortunate cases where a law enforcement officer is killed, to provide some additional financial assistance to the surviving family. In that regard, I refer the bill sponsored by Senator Ashcroft in the 106th Congress, Senate Bill 1638, which amended the Omnibus Crime Control Act and extended retroactive eligibility dates for financial assistance for higher education for spouses and children of federal, state and local law enforcement officers killed in the line of duty. Under Senator Ashcroft's bill, which was enacted into law, eligibility for financial assistance was extended back to January 1, 1978. As you know, each year too many law enforcement officers at all levels of government are killed in the line of duty. The NTC appreciates the successful efforts of Senator Ashcroft to assist the spouses and children of those

officers.

The NTC hopes that this Committee will review the record of Senator Ashcroft, which is strong and unwavering in its support for law enforcement and the victims of crime. We hope that this Committee will unanimously endorse Senator Ashcroft to be the next Attorney General of the United States.

Thank you.

OUTLINE OF TESTIMONY BY MR. DOYLE

Before endorsing John Ashcroft for Attorney General, the NTC looked carefully at his record, including as Missouri Attorney General, Governor of that State, and the U.S. Senator from Missouri serving on this Committee. Many allegations have been made concerning this nominee, but frankly very few facts have been given to support the allegations.

We have reviewed Senator Ashcroft's record, and have come to the conclusion that John Ashcroft should be strongly endorsed for the position of Attorney General. We have made the following conclusions regarding this nominee:

1. John Ashcroft Will Uphold and Enforce the Laws of the United States.

We believe that John Ashcroft will enforce the laws of the United States, whether this involves violence against abortion clinics, enforcement of gun laws, or investigations into illegal campaign contributions. John Ashcroft has a history of enforcement of laws, as both Attorney General and Governor of Missouri. In fact, Missouri has had a Brady Bill since 1981, which prohibits a purchaser of a firearm from having a criminal record, or being mentally incompetent or having been committed to a mental health facility. There is no evidence that has been suggested, for example, that John Ashcroft, as Attorney General or as Governor, did not properly enforce that statute, or any other provision of Missouri law.

2. John Ashcroft Will Be Tough On Crime.

John Ashcroft has proposed tough but fair laws while serving as a U.S. Senator. Last week, for example, *The Baltimore Sun* published a front-page article setting forth the growing problem of methamphetamine throughout the country, and the use of drug gangs in making and distributing this substance. John Ashcroft, in a series of legislative proposals, sponsored legislation (1) to increase punishment for methamphetamine lab operators; (2) to increase the penalties for trafficking in

methamphetamine, and to make those penalties equal with trafficking in crack cocaine; (3) to increase resources to the DEA and HIDTA; and (4) to deny federal benefits including housing assistance, for those who manufacture methamphetamine.

John Ashcroft has also been instrumental in other proposals to deal with the serious problem of drugs in our country, including proposals to require performance measures for ONDCP, and to require drug testing of federal prisoners before release.

In addition, to deal with the growing problem of juvenile crime, Senator Ashcroft had sponsored a series of proposals regarding violent juvenile. His proposals would have increased penalties for distributing drugs to minors, toughened penalties for using minors in drug operations, and increased penalties for criminal gang members. He also has made proposals to encourage states to prosecute violent armed juveniles as adults.

Senator Ashcroft has been a proponent of tougher gun laws. His proposals called for increased penalties for those who unlawfully transfer firearms to juveniles, and incentives to the states to prosecute juveniles as adults for firearm offenses. In addition, Senator Ashcroft has been quite concerned with access to firearms by persons with mental illness, and proposed legislation for instant background checks for persons with a history of mental illness. His proposal called for grants to states to insure that data concerning mental illness and mental commitments be entered into the data bank for instant background checks.

Senator Ashcroft, however, has not just proposed tougher penalties for perpetrators of crime, but has also shown concern for individual rights. He has, for example, proposed measures dealing with privacy rights for Americans, including a proposal that would have prohibited the government from requiring a decryption key be given to the government for encrypted data. While law enforcement may not have agreed completely with these proposals limiting access to encrypted information, the proposal quite clearly shows John Ashcroft's balanced approach to law enforcement, in that he believes in tougher criminal laws for offenders, but is also concerned with

individual rights of all Americans.

Similarly, with respect to racial profiling, Senator Ashcroft conducted hearings on that issue, and stated during those hearings that his belief was that racial profiling was unconstitutional. In fact, he worked with the Senate sponsor of the bill on language for the proposal.

3. John Ashcroft's Voting Record On Judicial Appointments Has Been Fair.

Senator Ashcroft has opposed judges only where he correctly concluded that the judge was not sufficiently tough on crime. In the case of Judge Ronnie White, for example, the NTC believes that Senator Ashcroft was correct in opposing the nomination.

With respect to Judge White, we have read a number of his opinions, including State v. James Johnson, and State v. Ernest Johnson, both death penalty cases involving multiple counts of first-degree murder. We believe that cases such as these disqualify Judge White from the judicial appointment that he sought.

In the case of State v. James Johnson, for example, Johnson shot five people. He first shot and killed a deputy sheriff who had responded to Johnson's home for a domestic problem. Johnson then proceeded to the sheriff's home and shot and killed the sheriff's wife at her family Christmas party. He then shot and wounded a deputy sheriff. He then went to the sheriff's office and shot and killed two additional officers. Johnson admitted the killings and defended on a plea of not guilty by reason of mental disease or defect, claiming to be suffering from post-traumatic stress disorder. He was convicted of four counts of first-degree murder and sentenced to death.

While the majority upheld the death sentence, Judge White wrote a dissenting opinion that would have reversed the death sentence on a theory of unprofessional conduct by the defense attorney. We do not believe that the dissent was justified on the facts of the case, and completely disagree with the reasoning expressed by Judge White in that dissent.

Similarly, we have reviewed the opinion of Judge White in State v. Ernest Johnson, where he again voted to overturn a death sentence of an individual who had been convicted of murdering three people while robbing a convenience store. Again, we believe that Judge White's opinion on the death penalty is not supported by the law or the facts in the case. Consequently, we believe that Senator Ashcroft was correct in taking the stand that he did, and in opposing Judge White for a nomination to the federal bench.

CONCLUSION

We believe that the record of John Ashcroft, as Attorney General for the State of Missouri, as Governor of that State, and as U.S. Senator for that State, is a strong yet balanced record on issues that are important to law enforcement. Consequently, the NTC strongly endorses Senator Ashcroft for the position of Attorney General of the United States.

NATIONAL VOTING RIGHTS INSTITUTE
working to fulfill the legal promise of American democracy

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 Third Floor
 Boston, Massachusetts 02108

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 Email nvri@nvri.org
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January 18, 2001

The Honorable Patrick Leahy
 Chairman
 Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Senator Leahy:

The National Voting Rights Institute strongly opposes the nomination of John Ashcroft to be Attorney General of the United States. The Institute is a non-profit litigation and public education organization dedicated to working for dramatic change of our campaign finance system. Since we define campaign finance as a civil rights issue, we stand in opposition to this nominee for the serious threat he would pose to civil rights as the nation's chief law enforcement officer.

Mr. Ashcroft's record on campaign finance matters is deeply troubling and further demonstrates that he is unfit for the position of Attorney General. In particular, his record as Missouri's attorney general raises serious questions regarding his potential misuse of that office for political campaign purposes. In light of this record, Americans cannot have confidence that Mr. Ashcroft would properly uphold and enforce the law as Attorney General of the United States.

Court documents from a 1982 lawsuit against John Ashcroft reveal that, as Missouri's attorney general, Mr. Ashcroft engaged in highly questionable, and possibly illegal, fundraising practices. These practices demand further investigation. Of special concern is the conduct of Mr. Ashcroft during an investigation and subsequent litigation against a Missouri oil company and related parties. During the pendency of this investigation and litigation, Mr. Ashcroft refused to answer questions about a personal fundraising visit made to Peter Merrill, a business associate of one of the targets of the investigation.

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- organizations listed for purposes of identification only -

A troubling fundraising visit by the Missouri Attorney General

On November 9, 1982, John Ashcroft made a personal fundraising visit to the office of Peter Merrill, president of Merrill Marine Services based in Brentwood, Missouri. Merrill Marine Services provided services to the Inland Oil and Transport Company of Brentwood, Missouri. At the time of Mr. Ashcroft's visit, the Missouri Attorney General's office had issued civil investigative demands to Inland Oil and other targets (not, apparently, including Merrill Marine) on October 14 and November 1 and 5, 1982, in connection with complaints of tainted gasoline allegedly sold by Inland Oil. An affidavit provided by Mr. Merrill recounted how he had received a call from Mr. Ashcroft's office on November 8, 1982, "out of the clear blue sky" asking him to agree to meet with Mr. Ashcroft personally. Affidavit of John Merrill, dated April 26, 1983, in *Inland Oil & Transport Co v. John Ashcroft*, Case No. 82-4336-CV-C5 (W.D. Mo.), p.3. Prior to this call, Merrill had never been involved as a fundraiser for any political candidate, had never had any contact with Mr. Ashcroft or his office, and had never been active in politics. Mr. Ashcroft's administrative assistant, Thomas A. Deuschle, acknowledged making the call for Mr. Ashcroft, and said that Merrill's name was provided by Carl Koupal, who Mr. Deuschle described as someone "involved in the political activities for Mr. Ashcroft." Deuschle Deposition at 10-11. As Peter Merrill described the call and his reaction,

I received a call from a man who identified himself as being "in John Ashcroft's office." Prior to that day I had never spoken to this man and I never had anything to do with John Ashcroft or his office before. This man indicated that John Ashcroft was going to be in town on Tuesday (the next day) and would like to come by and see me. I said something like "Am I in trouble?", to which he replied, "No, he just wants to talk with you about some things." I was very surprised that the Attorney General wanted to talk to me but I agreed to the meeting.

Merrill Affidavit, p. 1.

Mr. Merrill's affidavit goes on to describe the visit by Mr. Ashcroft, accompanied by another man, the next day. They chatted, and when Mr. Ashcroft was called away for a telephone call, the other man indicated that Mr. Ashcroft intended to run for Governor, and said

something to the effect that the three most important things a candidate needs if he wants to be elected are money, more money and still more money. He indicated that John Ashcroft wanted me to raise \$10,000 by the end of the year (1982).

Merrill Affidavit, p. 2. Mr. Merrill told the man he would see what he could do. When Mr. Ashcroft returned, Mr. Merrill suggested to Mr. Ashcroft that while he was in the same building he should meet with Herb Wolkowitz, the president of Inland Oil. Mr.

Ashcroft indicated that he knew Mr. Wolkowitz and might contact him on another occasion.

Later that same day, Mr. Merrill contacted Mr. Wolkowitz to tell him of the visit and the request that Mr. Merrill raise \$10,000 by the end of the year (1982). Mr. Wolkowitz questioned why Mr. Merrill had been contacted, and declined to contribute. Mr. Merrill also reported that he decided not to collect the money requested by Mr. Ashcroft. Merrill Affidavit, p. 3. The Attorney General's office proceeded to sue Inland Oil in January 1983. The chronology of these events clearly raise troubling questions about the propriety of Mr. Ashcroft's fundraising activity during this investigation and subsequent litigation.

Ashcroft refuses to testify on Merrill fundraising visit

Inland Oil filed a countersuit against Mr. Ashcroft in federal court alleging, among other things, that Mr. Ashcroft's investigation violated the plaintiffs' civil rights. As part of that litigation, the plaintiffs sought to take Mr. Ashcroft's deposition. The court allowed the taking of his deposition over the objection of Mr. Ashcroft's attorney. Mr. Ashcroft was deposed on March 1, 1983. In that deposition, Mr. Ashcroft, through his attorney, repeatedly refused to answer questions about the personal fundraising visit with Mr. Merrill. In one seven-page excerpt from that deposition, Mr. Ashcroft said "I don't know" or refused to answer, either directly or through his attorney, approximately 18 times, all questions related to the Merrill fundraising visit.

On April 29, 1983, the attorneys for the plaintiffs filed a motion to compel Mr. Ashcroft to answer the deposition questions regarding the Merrill fundraising visit. Subsequent to the filing of that motion to compel – and prior to the federal court's ruling on the motion – the Missouri Attorney General's office stipulated to the dismissal of all of the cases against Inland Oil. To this day, Mr. Ashcroft has never been forced to answer the questions posed at that deposition regarding the Merrill fundraising visit.

Fundraising letters from the 'Office of the Attorney General'

Court documents from the Inland Oil litigation also reveal that the Missouri State Republican Committee regularly sent out fundraising letters soliciting contributions on the letterhead of the office of the Attorney General of Missouri, bearing Mr. Ashcroft's signature. In his deposition, Mr. Deuschle acknowledged that it was the "normal" practice to "raise funds using stationery that has 'Office of the Attorney General, State Capitol' and signed by John Ashcroft, Attorney General," and that Mr. Deuschle had reviewed the proposed draft of such solicitation letters. Deuschle Deposition, p. 13. Despite the obvious impropriety of this practice, and the danger that persons concerned about possible investigations by the Attorney General would feel pressured to contribute in response to such an official letter, Mr. Ashcroft's office did not follow any regular procedures to determine if persons being solicited might be the target of an investigation or ongoing lawsuit by the Attorney General. Deuschle Deposition, p. 12. In fact, one of these "Dear Friend" solicitation letters from the Attorney General was sent to Mr.

Wolkowitz, president of Inland Oil, which shortly thereafter was investigated and ultimately was sued by Mr. Ashcroft's office. See Plaintiffs' Deposition Exhibit 13, letter dated August, 26, 1982, from John Ashcroft, Attorney General, to "Dear Friend," with copy of envelope addressed to Herb Wolkowitz, President, Inland Oil & Transport Co. The letter asked Mr. Wolkowitz to "join the Missouri Republican Party's Gold Elephant Club," pointing out how the "financial commitment of each Gold Elephant Club member" would benefit the Republican Party and its goals.

Use of paid government staff for political campaign purposes

Court documents from the Inland Oil litigation confirm that, while serving as Attorney General of Missouri, Mr. Ashcroft hired a state employee, on state time, to carry out fundraising for Mr. Ashcroft's gubernatorial campaign and to engage on a regular basis in other political campaign activities. In a sworn deposition, Mr. Deuschle, acknowledged that during his state employment he was "primarily responsible for the day-to-day activities of Mr. Ashcroft's political campaigns or proposed campaigns," although Mr. Deuschle's salary came solely from his state-paid position as Mr. Ashcroft's administrative assistant, and he was not compensated in any way by Mr. Ashcroft's political committee for these campaign activities. See Deposition of Thomas A. Deuschle, April 13, 1983, in *Inland Oil & Transport Co v. John Ashcroft*, Case No. 82-4336-CV-C5 (W.D. Mo.), pp. 13-14. These activities, conducted from an office next to Mr. Ashcroft's office at the Missouri Supreme Court Building, included telephoning individuals to ask for appointments at which Ashcroft would personally solicit campaign funds. Deuschle Deposition, pp. 10-11.

Mr. Ashcroft's 1984 gubernatorial campaign plan

During the 2000 Senate campaign, Democrats released a 34-page document that, they alleged, served as Mr. Ashcroft's 1984 campaign plan detailing various aspects of his campaign for governor (St Louis Post Dispatch, 7/11/00). The document, dated February 1983, stated that the bulk of the plan would be directed by Mr. Ashcroft from his office as attorney general. Mr. Ashcroft denied that this plan was actually implemented, but no definitive investigation of these allegations has ever been conducted.

On January 15, 2001, *The Washington Post* quoted a source familiar with Mr. Ashcroft's 1984 gubernatorial campaign as saying the plan was implemented and "fully operational." "Federal law prohibits the use of public money for political purposes," *The Washington Post* article continues,

and Ashcroft's successor as Missouri attorney general, William Webster, pleaded guilty in 1993 to federal charges of conspiracy and misapplication of public funds by using the attorney general's office, employees and resources for political purposes.

"Ashcroft Faces Questions on Use of Staff in '84 Campaign," *The Washington Post*, January 15, 2001, A02.

The Alex Bartlett nomination

In the first term of his administration, President Bill Clinton considered nominating Alex Bartlett to serve as a United States District Court Judge for the Western District of Missouri. In a public statement on June 1, 1995, Mr. Bartlett stated that he and others had learned that then-Senator Ashcroft had "a problem with my nomination and ha[d] so advised the White House." *Statement of Alex Bartlett*, June 1, 1995. Senator Ashcroft's problem apparently concerned Mr. Bartlett's involvement in the Inland Oil deposition of Mr. Ashcroft. *Statement of Alex Bartlett*, June 1, 1995. Mr. Bartlett had served as local Jefferson City counsel in the Inland Oil case against Mr. Ashcroft. While he attended the March 1, 1983 deposition of Mr. Ashcroft, he did not conduct any of the interrogation. Mr. Bartlett co-signed the plaintiffs' motion to compel in that case.

* * *

Mr. Ashcroft is not qualified to be Attorney General of the United States. His overall record on civil rights is inconsistent with this nation's promise of equality for all. Further, his prior record as Missouri's chief law enforcement officer reveals, at best, an insensitivity to the appearance of impropriety and, at worst, a disrespect for the rule of law. We urge the United States Senate to reject this nomination.

Sincerely,



John C. Bonifaz
Executive Director

990

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TELECOPIER (314) 621-5065

Edwin L. Noel

January 15, 2001

**VIA UPS OVERNIGHT AND
FACSIMILE 202-224-9102**

Hon. Patrick J. Leahy
Chairman, United States Senate Committee on
the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

Hon. Orrin G. Hatch
Ranking Member, United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Senators Leahy and Hatch:

I enclose a letter to members of the United States Senate Committee on the Judiciary from some of the many Missouri lawyers who know John Ashcroft well and who strongly support his confirmation to be Attorney General of the United States.

We would appreciate it if you would share the enclosed letter with other members of the Committee as you deem appropriate.

Respectfully,



Edwin L. Noel

ELN/sdh

January 15, 2001

To the Senate Judiciary Committee:

The undersigned members of the Missouri Bar support the nomination of John Ashcroft for Attorney General of the United States.

We represent a broad spectrum of views on a variety of issues including abortion, affirmative action, the death penalty and gun control, but we share familiarity with John Ashcroft's record as Attorney General of Missouri, Governor of our State and United States Senator.

We have no doubt that John Ashcroft respects the rule of law and that, as Attorney General, he will vigorously uphold the law without regard to his political or philosophical viewpoint.

As Governor, John Ashcroft appointed to the Bench well qualified people, including women and minorities. We are confident that, as Attorney General, he would champion the judicial nomination of diverse people who are able, fair-minded and diligent.

As members of the Missouri Bar, we are honored that President-elect Bush has nominated John Ashcroft for Attorney General of the United States, and we strongly urge his confirmation by the Senate.

Respectfully,

C. Todd Ahrens
Hannibal

Bob Arb
Fenton

Todd H. Bartels
St. Joseph

Thomas C. Albus
St. Louis

Millard Backerman
St. Louis

John Baumgardt
Kansas City

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Henry H. Stern, Jr. Creve Coeur	Francis Toohey Perryville	Richard E. Walters Springfield

1000

James F. Waltz
Cape Girardeau

J. Fred Waltz
Cape Girardeau

Dee Wampler
Springfield

T. Chris Watkins
Kansas City

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St. Louis

Dale Wiley
Crane

Robert S. Wiley
Crane

Robert Wilkinson
St. Louis County

Robert J. Will
Rock Hill

Sharon M. Williams
St. Louis

Theodore J. Williams, Jr.
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January 12, 2001

The Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

On behalf of Nortel Networks, I urge you to support the confirmation of Senator John Ashcroft as our next U.S. Attorney General.

Senator Ashcroft has been an important champion of key high-tech issues fundamental to the continued success of America's information technology sector. He is known in the industry as someone who will take the time to listen and understand the complexities of the issues before making his decision. Senator Ashcroft has demonstrated his attention to the new economy as Missouri Attorney General, Governor, and as a United States Senator.

As a member of the Commerce Committee, he was a defender of the rights of individuals to use encryption to protect their documents and transmissions. He has clearly demonstrated an understanding of the importance of using technology as a solution and not a barrier.

I hope that you will support the confirmation of Senator Ashcroft as the next Attorney General of the United States.

Sincerely,

A handwritten signature in black ink that reads "Frank Carlucci". The signature is written in a cursive style.

Frank Carlucci
Chairman

How the world shares ideas.

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Orthodox Union

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ב"ד

January 9, 2001

Hon. John Ashcroft
Bush/Cheney Transition Office
1800 'G' Street, NW
Washington, DC 20270

Dear Attorney-General-Designate Ashcroft,

Congratulations on your nomination to be America's next Attorney General.

The Orthodox Union has been pleased to work with you during your U.S. Senate tenure on issues of critical importance to us and all Americans; issues such as a strong U.S.-Israel relationship, religious liberty, charitable choice, family friendly fiscal policies and workplace flexibility rules. We are pleased to have hosted you in our New York headquarters and appreciated your participation in our leadership missions to Washington.

We appreciate your friendship and look forward, should you be confirmed, to continuing this productive relationship as you lead the Department of Justice.

With warm wishes,

Harvey Blitz
President

Rabbi Raphael Butler
Exec. Vice President

Richard Stone
Chair, Public Affairs

Nathan J. Diamant
Director, Public Affairs

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January 10, 2001

Senator Orrin Hatch
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Hatch:

I am writing to offer my enthusiastic support for the nomination of Senator John Ashcroft to be Attorney General of the United States. I am a professor of constitutional law and of legal ethics at the University of Minnesota Law School.

Mr. Ashcroft brings to the job of Attorney General a thorough knowledge of, and respect for, the U.S. Constitution that is truly rare. He also brings to the job a level of experience – as a state attorney general, a state governor, and a United States Senator – that is truly outstanding. I have had the opportunity to appear before the Senate Judiciary Committee to testify on matters of constitutional law. Senator Ashcroft brought to such hearings a level of sophistication, conscientiousness, and intelligence that I found truly impressive. It is hard to think of anyone whose background and experience makes him more qualified than Senator Ashcroft for this position.

Perhaps even more important than Mr. Ashcroft's experience is Mr. Ashcroft's integrity. With all due respect to the outgoing administration, it is very important to our nation at this time to have a person of the utmost integrity heading the U.S. Department of Justice. Some people no doubt disagree with certain of Mr. Ashcroft's political and policy positions, but no one fairly can say that he is anything other than a man of integrity, honesty, decency, and commitment to public service. I have found that he respects, and carefully considers, the views of those who disagree with him. He would be an Attorney General for all the people, committed to the even-handed enforcement of the laws.

I am aware that Mr. Ashcroft's nomination has been opposed by some on the ground that

he is pro-life and, also, a man of deep religious convictions. Still others have been *motivated* by objections to Mr. Ashcroft's pro-life and religious views, but have cast their criticisms of him in other terms. In my view, these are absolutely not legitimate grounds for opposition to Mr. Ashcroft's appointment. Indeed, they smack of an intolerance – for policy views different than one's own, for religious views other than one's own – that has no rightful place in the confirmation process. To the extent such views are based on Mr. Ashcroft's religion, they cannot properly form any part of the basis for opposition to his appointment, consistent with the No Religious Test Clause of the U.S. Constitution. In a time and season in which it is important to lessen partisan tensions, it would be a disservice to the nation for anyone to oppose Mr. Ashcroft's appointment on purely partisan grounds.

Please feel free to share my views with other members of the Committee. Senator John Ashcroft is a good man of high morals, high standards, high respect for the law, and high respect for the views of all Americans. He would bring much-needed prestige and respect to the U.S. Department of Justice. I urge the Committee, and the Senate, to give their enthusiastic consent and support to his nomination.

Sincerely,



Michael Stokes Paulsen
Briggs & Morgan Professor of Law
University of Minnesota Law School

1005



119 C STREET, SE • WASHINGTON, DC 20003

People Advancing Christian Education

202 • 548-2563 FAX 202 • 548-2564

January 14, 2001

Dear Senator:

I write this letter in strong support of John Ashcroft. In recent days, Mr. Ashcroft has undergone unsubstantiated character assassination from his political enemies. These enemies have sought to bring American politics to a new low. John Ashcroft is a kind man of character and integrity who has served in the U.S. Senate with honor. He holds true to the law, and he believes firmly in the timeless principles that our Founding Fathers used to establish this nation.

Never before has a Cabinet nominee been rejected on the basis of his religious or political beliefs. A vote against John Ashcroft will be giving in to the political witch-hunt that is currently taking place. A vote against Ashcroft is a vote against his rights as an American to hold strong religious and political views. To vote against Ashcroft will be to vote for divisive hate speech and against bipartisanship.

When you look at the total picture, you will see that John Ashcroft is a person more than qualified to perform the duties of Attorney General. He will do his job to uphold the laws of our land. For these reasons, I join with millions of others to ask you to support John Ashcroft for Attorney General.

Sincerely,

John K. Hutcheson, Sr.
Executive Director

1006



United States Senate
Washington, D.C. 20510

January 11, 2001

Dear Senator:

On behalf of the more than 300,000 members of People For the American Way, we urge you to oppose the confirmation of John Ashcroft to be U.S. Attorney General. In our twenty-year history, People For the American Way has opposed only three executive branch nominations. Like many Americans, we had hoped that President-elect Bush's pledge to unite America would be matched by his actions. However, his nomination of John Ashcroft to be U.S. Attorney General could not have been more divisive or confrontational, and we have no choice but to urge you to vote against his confirmation.

The Attorney General of the United States is one of the nation's most important public officials, with enormous power and influence over the lives of all Americans. The position requires a person who has demonstrated a commitment to equal justice under law and who will carry out his or her duties fully and fairly. John Ashcroft's record makes it clear that he is not that person.

First, John Ashcroft's devotion to an extreme right-wing legal and policy agenda places him not only outside the mainstream of American politics, but also outside the mainstream of the Republican party. Moreover, his extremism calls into question his ability to act impartially as this nation's chief law enforcement officer, particularly in the areas of protection of civil rights, reproductive rights and the environment. For example, the Attorney General is responsible for enforcing laws that protect women's rights, including access to safe and legal abortion. But John Ashcroft's opposition to abortion rights is so extreme that he opposes it even in cases of rape or incest. Moreover, he would ban common methods of contraception such as the pill and IUDs because he views them as abortifacients.

Second, Senator Ashcroft's vicious and calculated campaign against the nomination of Missouri State Supreme Court Judge Ronnie White to the U.S. District Court demonstrated a clear lack of integrity and sensitivity. Senator Ashcroft misrepresented Judge White's record and misled the Senate, denying Judge White a seat on the federal bench. In particular, Senator Ashcroft grossly distorted Judge White's record on the death penalty, accusing him of being so anti-death penalty that he was "outside the court's mainstream." Senator Ashcroft levied this charge despite the fact that Judge White had voted to affirm death sentences in 41 out of 59 capital cases that had come before the Missouri Supreme Court during his tenure.

Moreover, Senator Ashcroft in his condemnation of Judge White on the Senate floor pointed specifically to two – of only three – death penalty cases in which Judge White was the sole dissenter on the Court as proof of the judge's "soft" position on crime.

Not only did Senator Ashcroft neglect to provide his colleagues with relevant information about Judge White's dissents which would have dispelled the false light which Senator Ashcroft sought to cast over the judge, but the senator also created an ambush. At no time during the course of the hearing process two years earlier did Senator Ashcroft ever ask Judge White about those dissents nor did he raise any concerns about them; thus, Judge White was never even afforded an opportunity to explain his opinions or correct the senator's mischaracterizations. Ultimately, regardless of what motivated Senator Ashcroft, this inexcusable distortion of Judge White's record provides strong evidence that Senator Ashcroft is unfit to be Attorney General.

Finally, the Attorney General is responsible for enforcing our nation's civil rights laws. Yet Senator Ashcroft has not demonstrated a commitment to equal opportunity for all Americans. To the contrary, he has shown extraordinary racial insensitivity by accepting an honorary degree from Bob Jones University -- an institution known for its racially insensitive policies -- and by lavishing praise on Southern Partisan, a neo-confederate magazine that whitewashes slavery and has promoted T-shirts celebrating the assassination of Abraham Lincoln. As Missouri's attorney general and governor he strenuously opposed school desegregation ordered by federal courts in St. Louis and Kansas City, including a voluntary city-suburb desegregation plan in St. Louis. As a senator, he consistently opposed hate crimes protection and anti-discrimination legislation.

In short, John Ashcroft is not qualified to lead the U.S. Department of Justice, and we urge you to vote against his confirmation.

Sincerely,


Ralph G. Neas
President


Tracy Hahn-Burkett
Acting Director of Public Policy



**Written Statement of Ralph G. Neas
President, People For the American Way
in Opposition to the Confirmation of John D. Ashcroft
to be Attorney General of the United States**

People For the American Way strongly opposes the confirmation of John Ashcroft to be Attorney General of the United States. It is rare for our organization to oppose the confirmation of a nominee to an Executive Branch position. Only an extraordinary situation could compel us to take such a step. But the position of Attorney General is not just any job, and John Ashcroft is not just any person. The Attorney General of the United States is one of our nation's most important public officials, with enormous power and influence over the lives of all Americans. The position requires a person who has a demonstrated commitment to equal justice under the law, a person of fairness, judgment, and integrity. John Ashcroft's record makes it clear that he is not such a person.

People For the American Way's opposition to Senator Ashcroft's confirmation is not based primarily on the considerable differences that we have had with Senator Ashcroft's voting record and political views. Rather, we oppose his confirmation because a review of Senator Ashcroft's long public record demonstrates that he does not have the qualifications necessary for him to be entrusted with the extraordinary responsibilities of this special position.

It is extremely troubling that many commentators and even some Senators have suggested that this nomination cannot be defeated unless some "smoking gun" about John Ashcroft's personal life or some singularly fatal utterance is uncovered. The "smoking gun" – the information that should lead to his rejection by the U.S. Senate – is the totality of John Ashcroft's record as a public official. And a careful review of that record makes it clear that John Ashcroft has not earned Americans' confidence that he will energetically uphold and defend civil rights, reproductive rights, environmental protection, and other laws under the authority of the Attorney General. In fact, his record gives us evidence to the contrary, clear evidence that he is not the right person for this job.

The Role of the Attorney General

The Attorney General is not simply the lawyer for the President. The Attorney General is the lawyer for all the people of this country, a person with the power to affect, for good or ill, the lives of all Americans. The Attorney General is the principal enforcer of our civil rights laws and is entrusted with guaranteeing justice for all Americans. In choosing which cases the Justice Department will take up, the Attorney General plays a critical role in determining whether our nation will keep its promise to all Americans of equal justice under the law or will abandon this goal in favor of a narrow, extremist, and exclusionary vision of justice.

More than any other Cabinet member, the Attorney General exerts critically important influence beyond the Executive Branch itself. The Attorney General plays a major role in deciding what kinds of judges will preside over our nation's federal courts. The Attorney General reviews proposed legislation and renders advice as to whether particular proposals violate the Constitution as interpreted by the Supreme Court. Through the Office of the Solicitor General, the Attorney General also represents the United States before the Supreme Court, where he or she is in a position to advocate on behalf of or in opposition to individual rights and freedoms and other matters of importance in the lives of all Americans.

For these reasons, the person chosen to be the Attorney General of the United States must be someone who has demonstrated the highest respect for the fundamental principles of equality under the law. The person confirmed to this critically important position must be committed to seeing to it that every American enjoys equal protection under the law and must be willing to pledge the power and resources at the Attorney General's command to the pursuit of equal justice.

And because of the Attorney General's unique powers and responsibilities as the nation's chief lawyer and prosecutor, he or she must also be a person beyond reproach, a person of integrity and judgment, and one with a temperament fit for this special position.

The Public Record of John Ashcroft

Since John Ashcroft's nomination was announced, People For the American Way has undertaken an extensive examination of his record as a public official. We have published two reports, the first reviewing John Ashcroft's record as a Senator, and the second providing an overview of his record as Attorney General and then as Governor of Missouri. These reports are attached to this statement as part of my written testimony.

What we found is that John Ashcroft's record is one of rigidity and extremism. His views place him at the far right of the political spectrum. He is out of step, not only with the vast majority of Americans, but even with the conservative mainstream of his own party. Even more troubling is the evidence that John Ashcroft has, in spite of protestations to the contrary by his supporters, repeatedly tried to undermine and obstruct laws and court rulings with which he disagrees.

Civil Rights and Racial Insensitivity

In his more than twenty years in elected office, John Ashcroft has failed to demonstrate a commitment to fairness and equal opportunity, a commitment that should be considered a prerequisite for one who aspires to be the Attorney General. In fact, Senator Ashcroft has a record of insensitivity and hostility to the rights of women and minorities.

Senator Ashcroft's deceptive campaign against the federal judicial nomination of Missouri State Supreme Court Judge Ronnie White demonstrated an appalling lack of integrity. Senator Ashcroft distorted Judge White's record and misled his Senate colleagues about that record, denying Judge White a seat on the federal bench. Regardless of what political calculation motivated the Senator, his inexcusable treatment of Judge White's reputation and nomination is evidence enough that John Ashcroft is unfit to be Attorney General. The fact that Judge White was the first African American judge on the Missouri Supreme Court does not mean that Ashcroft chose his target for racial reasons, but it is one demonstration of his insensitivity to the realities of race in America.

The reactions to Ashcroft's attacks on Judge White must also be considered in the larger context of racial insensitivity, which is clearly demonstrated in John Ashcroft's public record. That

record shows a man who, more than a quarter of a century after *Brown v. Board of Education*, used the resources of his office in a divisive, single-minded fight to obstruct even voluntary desegregation of the St. Louis public schools. It shows a troubling insensitivity to the rights and needs of minorities and the poor. It shows a commitment not to upholding the law and the Constitution, but to bending them to conform to an extremist ideology.

For years, John Ashcroft, as Missouri's attorney general, relentlessly fought efforts by others in the community to forge a resolution to the problem of segregation in St. Louis schools. He strenuously resisted efforts to shape a voluntary desegregation plan, filing appeal after appeal, earning scathing criticism from observers and leaders in the community as well as a stinging rebuke from a federal court.

Ashcroft's tactics were likened to the "massive resistance" employed by virulent segregationists during the early days of the civil rights movement. Religious leaders, including the St. Louis Archbishop, united in opposition to Ashcroft's rhetoric and tactics on desegregation. Newspapers and commentators around the state regularly and roundly denounced him. Ashcroft employed such racially divisive rhetoric against desegregation efforts, particularly in his campaign for governor, that he was even criticized by fellow Republicans.

Also indicative of racial insensitivity was Senator Ashcroft's 1999 acceptance of an honorary degree from Bob Jones University, where he also delivered remarks at the University's commencement. Bob Jones University is infamous for its racially discriminatory policies and religious intolerance. Not only did Ashcroft fail to criticize the school's policies, he declared, "I thank God for this institution...."

The same insensitivity was demonstrated by an interview that Ashcroft gave in 1998 to *Southern Partisan*, a neo-Confederate publication that whitewashes slavery and has marketed T-shirts celebrating the assassination of Abraham Lincoln. Ashcroft not only spoke to the magazine, he lavished praise on its efforts to defend the reputations of confederate leaders.

We do not claim that John Ashcroft is a racist. We do not know what is in his heart, but we do know what is in his public record. And that is a long and continuing history of actions that inspire no confidence that John Ashcroft will be a strong advocate for the nation's civil rights laws, much less for programs to redress discrimination such as affirmative action, over which Ashcroft led the opposition to Bill Lann Lee, a Clinton nominee for the position of Assistant Attorney General for Civil Rights.

During the 1970s, as Missouri's Attorney General, Ashcroft filed a lawsuit on behalf of the state against the National Organization for Women, which had targeted Missouri and other states that had not yet ratified the Equal Rights Amendment with a call for conventioners to boycott the state. Ashcroft's unsuccessful lawsuit could have stifled NOW's First Amendment rights.

Reproductive Rights

John Ashcroft is one of the most extreme opponents of a woman's right to make her own reproductive choices. He would ban all abortions, except those necessary to save a woman's life. He would permit no exceptions for victims of rape or incest. And his anti-choice legislative proposals are so sweeping they could, if adopted, have been invoked to ban even some of the most commonly used and accepted forms of contraception, including the birth-control pill and IUDs. John Ashcroft would enshrine these views in the Constitution.

A review of his career in Missouri, moreover, reveals a pattern of behavior that is even more troubling than his extremist anti-choice positions. It reveals a pattern of behavior that speaks directly to the question of whether John Ashcroft can be trusted to fairly enforce laws with which he disagrees and to help select fair-minded judges for the federal courts.

Ashcroft's rigid extremism on reproductive choice and his difficulty in working with those who do not share his extremism was a major factor cited by some Missouri Republicans who opposed Ashcroft's unsuccessful 1993 bid to become chairman of the Republican National Committee.

Based on Ashcroft's record during his Missouri and U.S. Senate years, American women would not be able to count on him to protect their fundamental right to make their own reproductive decisions. Instead, they would have an Attorney General who would do everything within his power to undermine and roll back these rights.

The Constitution

John Ashcroft has taken a cavalier approach to amending the Constitution. In only six years in Congress, Senator Ashcroft proposed or co-sponsored no fewer than seven separate constitutional amendments, including one that would make it easier to amend the Constitution by disturbing the careful framework created by the Framers. Senator Ashcroft's proposal would have made it easier for the Constitution to become the vehicle for the advancement of political and ideological agendas, and was properly criticized at the time as "drastic constitutional tinkering." The person who would so alter our foundational document in these ways is not the person who should now be entrusted with the responsibilities of the Office of Attorney General.

Executive and Judicial Branch Nominations

As a Senator, John Ashcroft waged a series of ideological campaigns against well-qualified judicial and executive branch nominees. Ashcroft led the opposition to the confirmation of Bill Lann Lee as Assistant Attorney General for Civil Rights, based on Lee's support for affirmative action. Ashcroft led opposition to the nominations of Dr. Henry Foster and Dr. David Satcher to the position of U.S. Surgeon General, based on their support for abortion rights. Ashcroft played a leading role in delaying and attempting to defeat a series of nominations to the federal judiciary, in addition to the campaign against Judge Ronnie White. He frequently joined a minority of right-wing Senators to oppose judicial nominations; of the 12 nominees Ashcroft opposed, eight were women and minorities.

As a Governor, Ashcroft had a well-publicized record of appointing political cronies and financial contributors to judicial positions. And he had a dismal record of appointing women at the highest levels in his administration.

Conclusion

We urge every Senator to review the attached reports and all other information that is being made available about John Ashcroft's record as a public official. We believe the evidence is overwhelming that John Ashcroft is the wrong person for this job.



SPECIAL REPORT

**THE CASE AGAINST THE CONFIRMATION OF
JOHN ASHCROFT AS ATTORNEY GENERAL
OF THE UNITED STATES**

PART ONE: AN OVERVIEW OF THE SENATE YEARS

"I am a uniter, not a divider."

George W. Bush
Presidential Campaign 2000

"There are voices in the Republican Party today who preach pragmatism, who champion conciliation, who counsel compromise. I stand here today to reject those deceptions. If ever there was a time to unfurl the banner of unabashed conservatism, it is now."

John D. Ashcroft
Human Events, April 10, 1998

January 4, 2001

Ralph G. Neas, President
People For the American Way
2000 M Street, NW, Suite 400

THE EXTREMIST SENATE RECORD OF JOHN D. ASHCROFT

I. THE SPECIAL NATURE OF THE OFFICE OF ATTORNEY GENERAL

People For the American Way has prepared this report in connection with the nomination of John D. Ashcroft to be Attorney General of the United States. It is extremely rare for People For the American Way to oppose the confirmation of a nominee for an Executive Branch position. But the extraordinary nature of John Ashcroft's record as an elected official - including demonstrated indifference and hostility toward individual rights and equal opportunity - compels us to oppose his confirmation as Attorney General.

The Attorney General is not simply the lawyer for the President. Rather, the Attorney General is also the lawyer for all the people of this country, a person with the power to affect, for good or ill, the lives of all Americans. As head of the Department of Justice, the Attorney General makes decisions that determine how justice is defined and pursued by the Executive Branch. Among other things, the Attorney General is the principal enforcer of our nation's civil rights laws and is entrusted with guaranteeing justice for all Americans. The Attorney General is also responsible for the enforcement of immigration laws and for federal laws protecting women's reproductive freedom and the environment. In choosing which cases the Justice Department will take up, the Attorney General plays a critical role in determining whether our nation will keep its promise to all Americans of equal justice under the law or will abandon this goal in favor of a narrow, extremist, and exclusionary vision of justice.

More than any other Cabinet member, the Attorney General exerts critically important influence beyond the Executive Branch itself. Through the Justice Department's role in recommending nominees to the federal courts, the Attorney General plays a major part in deciding what kinds of judges will preside over our nation's federal courts. The screening and selection process carried out in the Justice Department determines whether the men and women who come before the Senate for confirmation to the third branch of

government are fair-minded individuals committed to equal justice under law for all Americans or are ideologues chosen to advance a specific social and legal agenda.

The Attorney General reviews proposed legislation and renders advice as to whether particular proposals violate the Constitution as interpreted by the Supreme Court. Through the Office of the Solicitor General, the Attorney General also represents the United States before the Supreme Court, where he or she is in a position to advocate on behalf of or in opposition to individual rights and freedoms and other matters of importance in the lives of all Americans.

For these reasons, the person chosen to be the Attorney General of the United States must be someone who has demonstrated the highest respect for the fundamental principles of equality under the law. The person confirmed to this critically important position must be committed to seeing to it that every American enjoys equal protection under the law and must be willing to pledge the power and resources at the Attorney General's command to the pursuit of equal justice.

And because of the Attorney General's unique powers and responsibilities as the nation's chief lawyer and prosecutor, he or she must also be a person beyond reproach, a person of integrity and judgment, and one with a temperament fit for this special position.

For these reasons, a high standard should be applied to the consideration of a nominee for Attorney General. The special nature of the Office of Attorney General should be of principal concern to the Senate Judiciary Committee as it considers Mr. Ashcroft's nomination. As former Solicitor General Archibald Cox stated fifteen years ago:

Respect for the law, the fairness with which law is administered, is the foundation of a free society. The individual who becomes Attorney General can do more by his past record than his conduct in office to strengthen or erode confidence in the fairness, impartiality, integrity, freedom from taint of personal influence, in the administration of law.

Confirmation of Edwin Meese III: Hearings before the Sen. Comm. on the Judiciary, 99th Cong., 1st Sess. 450 (1985).

In this report, we present an overview of John Ashcroft's voting record during his term in the United States Senate and of various actions and positions that he has taken during that time with respect to matters that bear upon his fitness to serve as the Attorney General of the United States. We do not attempt to address in this report the entirety of

Ashcroft's record as a public official, which spans more than two decades, and includes not only his recent term in the Senate but also his service first as Attorney General and then as Governor of Missouri. An analysis of Ashcroft's record as a state official in Missouri will follow in a subsequent report.

In the discussion below, we focus principally on examples from John Ashcroft's Senate record where he has deviated substantially from the mainstream on a number of issues critical to the consideration of a nominee for Attorney General, including civil and constitutional rights and individual freedoms, and on the principles of fairness, equal justice, judgement, and integrity. As demonstrated below, Ashcroft's record is one of rigidity and extremism. His views place him at the far right of the Republican Party, making him one of the most ultra conservative members of Congress and putting him out of step with the vast majority of Americans.

This report discusses at some length Senator Ashcroft's extensive role in opposing various minority candidates for judicial and Executive Branch positions. We do not contend that John Ashcroft is a racist, as some have claimed about him. Rather, the issue here is John Ashcroft's failure to demonstrate a commitment to fairness and equal opportunity, a commitment that should be considered a prerequisite for one who aspires to be the Attorney General. The issue is also John Ashcroft's lack of sensitivity and concern about the rights of women and minorities, as well as his ideological rigidity, all qualities that are antithetical to the ability to serve all Americans as our Attorney General.

In sum, Ashcroft's record in the Senate is not one that will, in the words of Archibald Cox, "strengthen confidence" in the fairness of the administration of law. To the contrary, it is a record of insensitivity toward those who most need the protections of the law, a record that leads inexorably to the conclusion that John Ashcroft should not be confirmed as Attorney General of the United States.

II. ASHCROFT'S SENATE RECORD: VOTES AND POSITIONS DEMONSTRATING HIS IDEOLOGICAL EXTREMISM AND LACK OF COMMITMENT TO EQUAL JUSTICE FOR ALL

A. Voting Record Ratings

John Ashcroft's voting record in the Senate firmly establishes his far right credentials. The *National Journal* wrote that, "Ashcroft's record in 1997 and 1998 put him in a tie as the most-conservative Senator, according to the *National Journal's* rankings."

According to that analysis, Senator Ashcroft was even farther to the right than Jesse Helms. Ratings by both right-wing and progressive interest groups confirm Senator Ashcroft's far right record and underscore the extreme nature and ideological rigidity of Ashcroft's views.

In particular, ratings by the Christian Coalition, the National Right to Life Committee, and the American Conservative Union show that throughout his six years in the United States Senate, John Ashcroft has been a consistent and reliable vote for right-wing legislative priorities. The Christian Coalition has given him a perfect 100% rating in every year but one since 1995 (with the ratings for that one year, 1999, unavailable on the organization's web site). The National Right to Life Committee rated Ashcroft 93% in 1995 and 100% every year since then. (Ratings for 2000 are not yet available on the group's web site.) Ashcroft also received 100% ratings from the American Conservative Union for 1996 through 1999, and 91% in 1995 and 96% for 2000.

On the progressive side, opinion is similarly unanimous about Ashcroft's voting record. The NAACP graded his performance as "F" for each of the last three Congresses. The Leadership Conference on Civil Rights gave him 10% ratings for the 104th and 105th Congresses. On the scorecards of the National Abortion and Reproductive Rights Action League ("NARAL"), Senator Ashcroft's votes earned him a solid 0% every year since 1995. (Ratings are not yet available for 2000.) The League of Conservation Voters gave Ashcroft an 11% in 1995-96 and 0% since then. On the AFL-CIO's ratings on issues affecting working people and their families, Ashcroft earned a meager 14% in 1996 and 0% every year since then. And Handgun Control reports that Ashcroft has opposed every single bill on their priority list during his six years in the Senate.

John Ashcroft takes pride in his ultra-conservatism. According to Ashcroft, “there are two things you find in the middle of the road. A moderate and a dead skunk, and I don’t want to be either one of those.” *St. Louis Post-Dispatch* (Aug. 25, 1998). In the same year he made that statement, Ashcroft also publicly repudiated the “deceptions” of pragmatism, conciliation, and compromise, and strongly advocated “unabashed conservatism.” *Humm Events* (April 10, 1998).

B. Specific Votes and Positions

Senator Ashcroft has taken many positions and voted in many ways with which People For the American Way disagrees. For example, we have opposed Senator Ashcroft’s attempts to promote religious school vouchers and so-called “charitable choice.” However, the particular positions and votes selected for discussion here reflect more than policy disagreements. Instead, they underscore the extreme nature of Ashcroft’s views and actions, and his lack of qualities critical for an Attorney General.

1. Ashcroft’s sabotaging of Judge Ronnie White’s nomination. In 1997, President Clinton nominated Judge Ronnie White of the Missouri Supreme Court to be a United States District Court Judge. Judge White, who had been appointed by Governor Mel Carnahan to the Missouri Court of Appeals and then to the state Supreme Court, was the first African-American to sit on the Missouri Supreme Court, and was unquestionably qualified to be a federal judge. Indeed, at the hearings on his nomination in May 1998, Judge White was introduced to the Senate Judiciary Committee by Republican Senator Christopher Bond of Missouri, who told the Committee:

It is a real pleasure to be able to join with my distinguished colleague, the senior member of Missouri’s congressional delegation, Congressman Clay, to urge that this committee act favorably upon and send to the floor for confirmation the nomination of Judge Ronnie White. . . My close friends and colleagues in the practice of law who have had the pleasure of working with Judge White over several years have assured me that he is a man of the highest integrity and honor. Judge White understands that the role of a Federal district judge is to interpret the law, not make the law. I have always believed that one of the most important duties I have as a Senator is to evaluate carefully the nominees for the Federal judiciary. I believe Judge White has the necessary qualifications and character traits which are required for this most important job.

Confirmation Hearings on Federal Appointments: Hearings before the Sen. Comm. on the Judiciary, 105th Cong., 2d Sess. 7-8 (1998).

Congressman Clay followed Senator Bond's introduction with his own remarks, noting that Senator Ashcroft had also confirmed the high regard accorded to Judge White by his colleagues on the Missouri Supreme Court, all of whom were Ashcroft appointees:

I might cite one incident that attests to the kind of relationship that Judge White has with many, and that is with a member of this committee - Senator Ashcroft. When I recommended Judge White to the President for nomination and the President nominated him, one of the first people that I conferred with was Senator Ashcroft. Senator Ashcroft then said he would get in touch with me at a later date.

At a later date, he told me that he had appointed six of the seven members to the Missouri Supreme Court. Ronnie White was the only one he had not appointed. He said he had canvassed the other six, the ones that he appointed, and they all spoke very highly of Ronnie White and suggested that he would make an outstanding Federal judge. So I think that is the kind of person we need on the Federal bench.

Id. at 9. Senator Ashcroft, a member of the Judiciary Committee, was present during this Committee hearing and did not contradict Congressman Clay's report of their conversation in any respect.

Nonetheless, more than two years elapsed between the time that Judge White was nominated and the date when the Senate finally voted on his nomination. Press reports indicated that Senator Ashcroft was responsible for blocking any vote on Judge White's nomination for this extraordinarily long period of time by placing a hold on the nomination. *See, e.g.*, "Confirm Ronnie White," *St. Louis Post-Dispatch* (Aug. 11, 1999) (stating that Senator Ashcroft had at that point held Judge White's nomination in limbo for 776 days). In fact, the St. Louis federal district court seat to which Judge White had been nominated had been vacant so long that the vacancy was declared a judicial emergency by the Administrative Office of the U.S. Federal Courts. Judge White was one of a number of minority and female judicial nominees whose nominations were significantly delayed by the Senate, and for periods of time longer than the delays experienced by President Clinton's white male nominees. (*See also* discussion in B. 2., below.)

When Judge White's nomination finally was brought to the Senate floor in October 1999, Senator Ashcroft spearheaded a successful party-line fight to defeat White's confirmation, the first time in twelve years (since the vote on Robert Bork) that the full

Senate had voted to reject a nominee to the federal bench. In opposing Judge White's confirmation, Senator Ashcroft used the harshest of language to portray Judge White as soft on crime, stating:

[u]pon [Judge White's] nomination I began to undertake a review of his opinions. . . I believe Judge White's opinions have been and, if confirmed, his opinions on the Federal bench will continue to be procriminal and activist, with a slant toward criminals and defendants against prosecutors. . . [H]e will use his lifetime appointment to push law in a procriminal direction, consistent with his own personal political agenda. . .

145 Cong. Rec. S11872 (daily ed. Oct. 4, 1999) (statement of Sen. Ashcroft).

Senator Ashcroft then went on to characterize Judge White as someone with "a serious bias against a willingness to impose the death penalty." Referring specifically to Judge White's decisions in death penalty cases, Senator Ashcroft represented to his senatorial colleagues that:

Judge White has been more liberal on the death penalty during his tenure than any other judge on the Missouri Supreme Court. He has dissented in death penalty cases more than any other judge during his tenure. He has written or joined in three times as many dissents in death penalty cases, and apparently it is unimportant how gruesome or egregious the facts or how clear the evidence of guilt.

Id. Two months earlier, in a commentary written in the *St. Louis Post-Dispatch*, Senator Ashcroft had launched this line of attack, proclaiming that Judge White was "the most anti-death penalty judge on the Missouri Supreme Court" and that his record was "outside the court's mainstream." *St. Louis Post-Dispatch* (Aug. 18, 1999).

In fact, in the press and in the Senate, Ashcroft had grossly distorted and misrepresented Judge White's decisions in death penalty cases. Judge White had actually voted to uphold the imposition of the death penalty far more often than he had voted to reverse it. According to published reports, Judge White voted to affirm death sentences in 41 out of 59 capital cases that had come before the Missouri Supreme Court during his tenure. Moreover, also according to these reports, in the majority of the cases in which Judge White had voted not to impose the death penalty, he did so unanimously with the other members of the state Supreme Court – including judges who had been appointed by John Ashcroft when he served as the state's governor. And in two of the six cases in which Judge White wrote the decision for the Court upholding the imposition of the death penalty, he did so over the dissent of judges who had been appointed by Governor Ashcroft. Indeed, three

judges appointed by Ashcroft had voted to reverse death penalty sentences a greater percentage of the time than had Judge White.

In his statements on the Senate floor mischaracterizing Judge White as insufficiently committed to the death penalty, Senator Ashcroft specifically pointed to two – of only three – cases in which Judge White was the sole dissenter on the state Supreme Court with respect to imposing the death penalty. In relying specifically on these two cases, not only did Senator Ashcroft fail to provide his colleagues with pertinent information about Judge White’s dissents that would have dispelled the false light in which Ashcroft had placed Judge White, but he also created an ambush. At *no time* during the Senate’s hearings on Judge White, when Senator Ashcroft questioned him in person in May 1998, or later when Ashcroft submitted written questions to him, did John Ashcroft *ever* ask Judge White about these two decisions or raise any concern about why he had dissented. Thus, not only was Judge White never given an opportunity by Senator Ashcroft to explain himself, a gross unfairness in and of itself, he was also not given an opportunity to correct Senator Ashcroft’s misleading use of these dissents.

A fair reading of the dissents in these two cases plainly reveals that what was at issue was not Judge White’s willingness to impose the death penalty, but whether, in one case, the defendant’s right to effective assistance of counsel had been violated, and, in the other, whether the trial judge was biased and should have recused himself. Indeed, in the first case, in which the defendant had raised an insanity defense, Judge White expressly stated, “This is a very hard case. *If Mr. Johnson [the defendant] was in control of his faculties when he went on this murderous rampage, then he assuredly deserves the death sentence he was given.*” But the question of what Mr. Johnson’s mental status was on that night is not susceptible of easy answers.” *Missouri v. Johnson*, 968 S.W.2d 123, 138 (Mo. 1998) (White, J., dissenting, emphasis added).

On the Senate floor, Ashcroft also told his colleagues that law enforcement officials in Missouri had “decided to call our attention to Judge White’s record in the criminal law.” 145 Cong. Rec. S11872 (daily ed. Oct. 4, 1999) (statement of Sen. Ashcroft). However, after the Senate rejected Judge White’s confirmation, the press reported that Senator Ashcroft had *solicited* opposition to Judge White from law enforcement officials. See “Law Enforcement’s Opposition to White Was Courtied by Ashcroft; Police Group’s President Says it Rejected Senator’s Request to Oppose Judge,” *St. Louis Post-Dispatch* (Oct. 8, 1999). According to this article:

... the president of one of the state's biggest police groups, the Missouri Police Chiefs Association, said it had declined a request by Ashcroft's office to oppose White. . . Carl Wolf, president of the association, said his group received a letter from Ashcroft's office detailing White's decisions in death penalty cases. One of Ashcroft's staffers also called him and asked if the group would work against the nomination. "I just told them we had never taken that type of position before," Wolf said. As a policy, the association does not get involved in judicial nominations, he said. Wolf added that he knows White personally and has never thought of him as "pro-criminal" – a label Ashcroft applied to White's record. "I really have a hard time seeing that he's against law enforcement," Wolf said. "I've always known him to be an upright, fine individual and his voting record speaks for itself," Wolf said.

Id. In fact, a number of Missouri law enforcement officials and organizations, including the Missouri State Lodge of the Fraternal Order of Police, wrote in support of Judge White.

Senator Ashcroft not only misrepresented Judge White's willingness to affirm death sentences by blatantly mischaracterizing his decisions, he also ignored the fact that Senator Hatch had specifically questioned Judge White on this very issue during the May 1998 confirmation hearings before the Senate Judiciary Committee, for which Ashcroft was present. At that time, Senator Hatch asked Judge White whether he had "any legal or moral beliefs which would inhibit or prevent [him] from imposing or upholding a death sentence in any criminal case that might come before [him] as a Federal judge." White's answer was unequivocal:

Absolutely not, Mr. Chairman. The U.S. Supreme Court has ruled in several cases that the death penalty is constitutional, it doesn't violate the Eighth Amendment, and as a Supreme Court judge, I have written opinions affirming death sentences and have concurred in many others.

Confirmation Hearings on Federal Appointments: Hearings before the Sen. Comm. on the Judiciary, 105th Cong., 2d Sess. 16 (1998). When Judge White's nomination finally reached the Senate floor, Ashcroft prevailed on every one of his Republican colleagues to vote against confirmation.

Observers at the time noted a number of possible reasons why Senator Ashcroft had so misrepresented Judge White's record and orchestrated what one newspaper called "a sad judicial mugging." *The New York Times* (Oct. 8, 1999). Some noted that Senator Ashcroft was facing a highly-contested reelection battle against then-Governor Mel Carnahan (who had appointed Judge White) in which Ashcroft intended to make strong support for the death penalty an important issue. (Gov. Carnahan, at the urging of the Pope, had commuted a death sentence given to a convicted murderer.) It was also reported that Ronnie White's

pro-choice beliefs concerning women's reproductive freedom, views with which Senator Ashcroft strongly disagreed, may have played a role as well. Indeed, anti-choice forces in Missouri blamed Ronnie White, when he was a state legislator, for effectively killing a bill that would have prohibited all abortions in the state except those necessary to save the woman's life. Others have charged that Ashcroft's conduct reflected clear insensitivity to African Americans.

We cannot judge the reasons why Senator Ashcroft did what he did. What Senator Ashcroft's actions on the Ronnie White nomination demonstrated, however, was a clear lack of integrity. Ashcroft engaged in a reprehensible and irresponsible distortion of a nominee's record, he misled the Senate about that record, and he prevented a qualified nominee from being confirmed as a federal judge.

2. Ashcroft's extremist record on other Judicial and Executive Branch nominations.

Unfortunately, Senator Ashcroft's opposition to the Ronnie White nomination was no exception. Ashcroft, unlike many other Senate Republicans, consistently delayed and opposed lower court nominations. Perhaps even more troubling, Ashcroft helped lead a minority of Senators to oppose Executive Branch nominations based on little more than policy disagreements with the nominees' positions on issues such as abortion and civil rights, completely changing the traditional standards by which such nominees have been considered. And a disturbingly large proportion of the nominees opposed by Ashcroft were women or minorities.

For example, Ashcroft played a key role in delaying and trying to defeat the nomination of Margaret Morrow to serve on the federal district court in Los Angeles in 1996. Morrow was an established corporate litigator with more than 20 years of experience. She earned an overwhelming number of bipartisan endorsements for her nomination -- including that of Republican Judiciary Chairman Orrin Hatch, who sent a letter to his colleagues on her behalf. She was the first woman to head the California Bar Association, and was twice named one of Los Angeles' top business lawyers. Nevertheless, far right interest groups and a few Senators, including Ashcroft, claimed that she was a liberal activist and unfit to serve on the bench, based on her efforts to promote *pro bono* legal work for the poor and on a misinterpretation of statements from her about bar association reform and ballot initiatives. Ashcroft and a few other Senators delayed a vote on her nomination for

almost two years. In the end, a bipartisan majority supported her confirmation, and Ashcroft was one of 28 Senators who voted against her confirmation.

A similar pattern of delay and opposition emerged with respect to a number of other female and minority judicial nominees. Ashcroft was one of only 11 Senators to vote against the confirmation of Margaret McKeown to the Ninth Circuit Court of Appeals in 1998, after a delay of almost two years. He was one of 29 Senators to vote against Sonia Sotomayor for the Second Circuit Court of Appeals, after a delay of more than a year. After a delay in acting on the nomination of more than 2 ½ years, Ashcroft was part of a minority of 34 Senators in opposing Susan Oki Mollway for confirmation to the federal district court in Hawaii, where she became the first Asian American woman to serve on the federal bench. He was one of 30 Senators to vote against Ann Aiken to become a federal district court judge in Oregon. Ashcroft and 30 other Senators voted to postpone indefinitely a vote on the nomination of Richard Paez to the Ninth Circuit Court of Appeals, and he was among a minority of Senators who voted against both Paez and Marsha Berzon for confirmation to that court after long delays.

John Ashcroft's opposition to the confirmation of minority nominees extended beyond the courts; he also worked with ultra conservative groups to help lead opposition to a number of Executive Branch nominations. For example, in 1998, the far right Family Research Council and Christian Coalition enlisted Senator Ashcroft's help in an effort to defeat the confirmation of Dr. David Satcher, an African-American, as Surgeon General. Satcher's nomination was easily approved by the Senate Labor and Human Resources Committee, and Senate Majority Leader Trent Lott announced that Satcher would probably be confirmed in early 1998. Nevertheless, Ashcroft took the lead in opposing Dr. Satcher, based largely on Dr. Satcher's support for reproductive choice. As in the case of Ronnie White, Ashcroft used extremely harsh language on the Senate floor to criticize Dr. Satcher, calling him "someone who is indifferent to infanticide." 144 Cong. Rec. S540 (daily ed. Feb. 10, 1998) (statement of Sen. Ashcroft).

As in Committee, Dr. Satcher had the support of a number of Republican Senators, including Fred Thompson and Bill Frist, himself a physician. Senator Frist, like Senator Ashcroft, disagreed with Dr. Satcher on the issue of so-called "partial birth" abortion. Unlike Ashcroft, however, Frist and other Republicans were satisfied with Dr. Satcher's pledge that he would not use his official position to promote his views on abortion. Ashcroft persisted

in his opposition, and joined less than a quarter of the Senate (23 Senators) in taking the extremely rare step of opposing cloture, thus seeking to delay indefinitely even a Senate vote on the nomination. Dr. Satcher was confirmed by almost two-thirds of the Senate on February 9, 1998, with Ashcroft as part of a 35-vote minority opposed to confirmation.

The Satcher nomination was only one example of Ashcroft's opposition to minority Executive Branch nominees. In 1995, he helped block the nomination of Dr. Henry Foster to become Surgeon General, also over the issue of abortion. A majority of 57 Senators supported the Foster nomination, but Ashcroft and others demanded a cloture vote, allowing a minority of the Senate to kill the nomination. Ashcroft also helped lead opposition to the confirmation of Bill Lann Lee as Assistant Attorney General for Civil Rights, helping block a vote by the full Senate. No one suggested that Lee lacked integrity or was not qualified; disagreement with Lee on the issue of affirmative action was enough to prevent a Senate vote.

Ashcroft was also a leader in blocking the confirmation of James Hormel to be Ambassador to Luxembourg. *Time* wrote that as a businessman, philanthropist, and law school dean, Hormel was "standard ambassadorial material," but was opposed simply because he is "gay and a prominent advocate of gay rights." *Time* (May 11, 1998). Only Ashcroft and Senator Jesse Helms voted against Hormel in a 16-2 vote in his favor in the Senate Foreign Relations Committee. That minority of two was able to block a vote on the Senate floor as a result of Helms' position as Committee chair.

As one commentator has recently written, Ashcroft "used the forum of Senate confirmation hearings to act out his political dark side, savaging presidential nominees," particularly minorities, and standing out "among his peers as a conservative attack dog." *St. Louis Riverfront Times* (Dec. 27, 2000). In fact, if the standard used by Senator Ashcroft in attacking other Executive Branch nominees were applied to him, many Republican as well as Democratic Senators would oppose him. While People For the American Way believes that policy disagreements alone would generally not be a sufficient basis for opposing an Executive Branch nominee, Senator Ashcroft's extreme record with respect to nominations is another key aspect of his far right record in the Senate that bears directly on his fitness to serve as Attorney General. Ashcroft's record on nominations is particularly troubling for a nominee for Attorney General, an official whose critical responsibilities include helping to screen and select nominees to the federal courts.

3. Ashcroft's extremist views in opposition to abortion and common methods of birth

control. It is well known that, throughout his long career, John Ashcroft has been a staunch opponent of the right of women to make their own reproductive decisions. What is less well known is that he is so extreme in his views that he supports enacting a federal law and amending the Constitution to ban abortions *even* when a woman has been raped or is the victim of incest. And he has advocated proposals in Congress that were so sweeping that they could have been invoked to use the government's power to ban common forms of contraception, including the pill and IUDs, a little-publicized goal of some anti-choice organizations.

In 1998, during his term as a United States Senator, John Ashcroft, along with only Senators Jesse Helms and Bob Smith, was an original sponsor in the 105th Congress of a proposed amendment to the Constitution (S.J. Res. 49, the "Human Life Amendment") and a proposed federal statute (S. 2135, the "Human Life Act") that would have prohibited all abortions except those medical procedures "required to prevent the death of either the pregnant woman or her unborn offspring, as long as [the law authorizing such procedures] requires every reasonable effort be made to preserve the lives of both of them." The proposed amendment and statute contained no exception for victims of rape or incest, nor did they contain any exception for abortions necessary to prevent injury, including serious or permanent injury, to the woman's health.

But Ashcroft's proposals threatened even more extreme results. The sweeping language of the proposed "Human Life Amendment" and "Human Life Act" defined human life as beginning at "fertilization," and could therefore have been invoked to ban some of the most widely accepted and dependable forms of contraception, such as the pill and IUDs, which may sometimes work by preventing a fertilized egg from implanting in the lining of the uterus. In fact, banning these methods of contraception is a goal of such extreme anti-choice organizations as the American Life League, which opposes all abortions, without exception. *See* www.all.org. The American Life League considers common forms of contraception, specifically including the pill and IUDs, to be "abortifacient in action [that] kill already existing human beings," and opposes "these devices." *See* <http://www.all.org/issues/argue26.htm> (visited Dec. 27, 2000). The President of the American Life League has stated that the pill, the IUD, Norplant and Depo-Provera "can

and do kill, and are therefore not contraceptives – we are talking about abortion.” See “Pill Bill: Birth control is not healthcare,” http://www.all.org/activism/pb_basic.htm (visited Dec. 27, 2000).

John Ashcroft agrees that common forms of contraception that work by preventing implantation should be considered “abortifacients,” and he has taken other steps beyond the legislative proposals discussed above to deny women access to them. In 1998, Ashcroft was one of just eight Senators, including Jesse Helms and Bob Smith, who signed a letter in opposition to pending legislation to require federal employee health insurance plans to cover the cost of prescription contraceptives. In their letter, Senator Ashcroft and his handful of colleagues stated: “we are concerned with what appears to be a loophole in the legislation regarding contraceptives that upon failing to prevent fertilization, act *de facto* as abortifacients. Therefore, we believe this amendment is a precedent setting attempt to mandate coverage of other abortifacients.” They urged that the provision requiring coverage of contraceptives be dropped. See Letter to Senator Ben Nighthorse Campbell from Senators Brownback, Nickles, Ashcroft, Coats, Helms, Enzi, Bob Smith, and Hutchinson (Sept. 4, 1998).

The legislation that Ashcroft opposed was endorsed by leading medical organizations, including the American Medical Association, the American Academy of Family Physicians, and the American College of Obstetricians and Gynecologists. In a letter supporting the proposal, the medical groups stated that “[a]ccess to reliable contraception should be a part of even the most basic health care plans.” Congress ultimately enacted this proposal.

Lest there be any doubt about his desire to ban virtually all abortions, in May 1998, John Ashcroft submitted a written statement to *Human Events: The National Conservative Weekly* reconfirming his views. Ashcroft sent the document to correct statements in a form letter sent by his Senate office to his constituents saying that he believed in a woman’s right to choose to have an abortion in cases of rape or incest. In his statement to *Human Events*, Ashcroft repudiated the suggestion that he supported abortion in cases of rape or incest and detailed his lengthy public record in opposition to abortion. He summed up his position as follows: “[I]f I had the opportunity to pass but a single law, I would fully recognize the constitutional right to life of every unborn child, and ban every abortion except for those medically necessary to save the life of the mother.” *Human Events*, at 7 (May 29, 1998).

In May 1999, the same month in which Senator Ashcroft accepted an honorary degree from Bob Jones University (see below), he was also honored by the American Life League. And, as discussed previously, Senator Ashcroft's opposition to reproductive choice spurred him to lead a battle opposing the confirmation of Dr. David Satcher to be Surgeon General. Among his other votes denying women the right to make their own reproductive choices, Senator Ashcroft was in the minority in voting against a resolution that the Supreme Court's *Roe v. Wade* decision should not be overturned, (Harkin Amendment to S. 1692, 10/21/99, 51Y-47N), and in voting in favor of prohibiting the use of tax funds for emergency contraceptives. (RCV# 169, S. 3697, 6/30/00, 41Y-54N.)

4. Other examples of Ashcroft's negative record on civil rights and indifference to the rights of women and minorities. In addition to the inappropriate and disturbing manner in which he has dealt with the nominations of a number of minority and female nominees for Executive Branch and judicial positions, Senator Ashcroft's votes on legislation pertaining to civil rights matters underscore his insensitivity to the rights of minorities and women and his lack of commitment to full equality for all, as do other actions that he has taken during his term in the Senate.

For example, Senator Ashcroft in 2000 voted against the Hate Crimes Prevention Act, which would have amended federal law to recognize hate crimes based on sexual orientation, gender and disability, as well as expanded federal jurisdiction over these and other hate crimes already covered under federal law. (Kennedy Amendment to S. 2549, 6/20/00, 57 Yes-42 No.)

In May 1999, Ashcroft delivered the commencement address at and accepted an honorary degree from Bob Jones University. This school is infamous for its racially discriminatory policies and for the U.S. Supreme Court's well-known 1983 decision upholding the revocation of the school's tax-exempt status because of its policy of denying admission to applicants who have a spouse of a different race or who are known to advocate interracial marriage or dating. Apart from the school's racial policies, the President of Bob Jones University, Bob Jones III, has called Catholicism a "cult." His father, former University President Bob Jones, Jr., has said that "The papacy is the religion of Antichrist and is a satanic system." As recently as March 2000, the school's web site proclaimed, "We love the practicing Catholic and earnestly desire to see him accept the Christ of the Cross

[and] leave the false system that has enslaved his soul. . .” *St. Louis Riverfront Times* (March 1, 2000).

In 1998, Ashcroft was interviewed in the magazine *Southern Partisan*, which caters to a small group of neo-Confederate southerners and has been a major forum for neo-Confederate views, including the recurring theme that slavery was beneficial to the slaves. In his interview, Ashcroft praised the magazine for “help[ing] to set the record straight” against what he called “attacks the [historical] revisionists have brought against our founders.” *Southern Partisan*, at 28 (2d Quarter 1998). Adding more praise, he said, “You’ve got a heritage of doing that, of defending Southern patriots like Lee, Jackson and Davis. Traditionalists must do more. I’ve got to do more. We’ve all got to stand up and speak in this respect, or else we’ll be taught that these people were giving their lives, subscribing their sacred fortunes and their honor to some perverted agenda.” *Id.*

The magazine that Ashcroft so praised for its “heritage” and defense of “Southern patriots” has a long history of publishing racially insensitive views. For example, in 1983, Editor-in-Chief Richard Quinn wrote:

[M]assive evidence suggests that slave families were rarely separated. Efforts were made uniformly across the South to keep families together (in part because good morale was good for business). The record also shows that many freed slaves stayed South, kept close ties with their former owners and found for themselves a life altogether more satisfying than their cousins who ended up sleeping with rats in Harlem. . .

Southern Partisan, at 5 (Spring Issue 1983). More recently, in 1996 a *Southern Partisan* reviewer wrote of a book on slavery: “The greatest contribution of this work is that it exonerates slave owners by stating that they did not have a practice of breaking up slave families. If anything, they encouraged strong slave families to further the slaves’ peace and happiness in order to promote efficient work.” *Southern Partisan*, at 51 (1st Quarter 1996). *Southern Partisan’s* merchandising operation, the “Southern Partisan General Store,” has offered a T-shirt celebrating the assassination of Abraham Lincoln. The T-shirt bore the likeness of President Lincoln along with the legend “Sic Semper Tyrannis” (“thus always to tyrants”), the words shouted by John Wilkes Booth after he shot Lincoln. During the 2000 presidential campaign, when it was revealed that Richard Quinn, a top adviser to Senator John McCain in South Carolina, was also the Editor-in-Chief of *Southern Partisan*, George W. Bush’s campaign

spokesperson, Ari Fleischer, reacted by calling Quinn's writings "offensive." *The Washington Post* (Feb. 18, 2000).

In 1998, Ashcroft told CBS that he agreed with Senator Trent Lott's statement that homosexuality is a sin. Ashcroft charged that "in terms of public policy, the Democratic Party has an agenda of providing a special setting and special rights for homosexuals. I don't believe we should have special rights there." *The Hotline* (July 6, 1998). And despite broad public support for ending employment discrimination against gay men and lesbians, Senator Ashcroft in 1996 voted against the Employment Nondiscrimination Act, which would have prohibited workplace discrimination based on sexual orientation. (S. 2056, 9/10/96, 49Y-50N.)

Ashcroft also voted against moderating a Helms Amendment to the Ryan White Reauthorization bill, which authorized new funds for AIDS research. The moderating amendment, proposed by Senator Nancy Kassebaum, prohibited funds from being used to directly promote or encourage intravenous drug use, but clarified that funding was available for medical treatment and support services for individuals infected with HIV. Despite the potentially serious harm to people with AIDS that could have resulted, Ashcroft was one of only 23 Senators to oppose the Kassebaum provision. (Approved 76-23, 7/27/95.)

Ashcroft vigorously opposed any form of affirmative action as well as other anti-discrimination programs. In 1998, Ashcroft was one of 37 Senators to vote in support of an effort to eliminate the Disadvantaged Business Enterprise program, which requires recipients of federal transportation money to have affirmative action programs for women and people of color. (RCV# 23, 3/6/98.) Ashcroft also voted to weaken the 1977 Community Reinvestment Act (CRA), a federal law that has been important in efforts to promote economic opportunity and economic growth in low-income neighborhoods by discouraging banks from "redlining" minority areas in inner cities. Ashcroft voted against a motion to table (kill) an amendment that would have exempted banks with assets of less than \$250 million from the Act. The CRA requires federal regulators to consider a bank's lending record to all areas in the community it serves when deciding whether to allow a branch, merger or other endeavor. Despite Ashcroft's minority views, the motion was approved. (Motion agreed to 59-39, 7/28/98, H.R. 1151, RCV# 238.)

5. Ashcroft's opposition to gun safety and gun control. Ashcroft was ranked as one of the NRA's most reliable votes in the Senate, which reportedly spent close to \$400,000 on behalf of his reelection campaign. A look at several of Ashcroft's efforts in opposition to restricting access to guns shows why.

In 1999, Ashcroft was one of only 20 Senators to vote against an amendment to prohibit the sale or transfer of guns without safety locks. (S. 254, 5/18/99, 78Y-20N.) During his campaign for the Senate, Ashcroft opposed a ban on assault weapons. *St. Louis Post-Dispatch* (Oct. 25, 1994). And in 1999, Ashcroft urged Missouri voters to legalize the carrying of concealed weapons.

6. Ashcroft's anti-environmental positions. On issues involving environmental concerns, Ashcroft has won praise from the far right and criticism from environmental advocates. In 1998, Ashcroft introduced the "Economic Growth and Sovereignty Act" (S. 2019), which the right-wing Heartland Institute called "the boldest step yet taken by a member of the [Senate] that will ultimately decide the fate of the [Kyoto] treaty." According to Heartland, the Ashcroft measure "aims to undercut White House efforts to circumvent the Senate and impose limits on emissions of man-made greenhouse gases."

Ashcroft voted against a motion to table an amendment that would have limited the American Heritage Rivers Initiative, which gives federal assistance to river communities. He also voted to require congressional approval before President Clinton could implement the AHRI, which the President established by executive order. (Motion agreed to 57-42, Sept. 18, 1997, H.R. 2107, FY 1998 Interior Appropriations, RCV# 247.)

7. Other votes demonstrating Ashcroft's rigid ideology. Ashcroft was the only Senator to vote against the continuing resolution to keep the government running in 1999. (RCV# 296, H.J. Res. 68, 98Y-1N, 9/28/99)

Ashcroft received a 0% rating from the National Committee to Preserve Social Security and Medicare for the 1997-98 session and a 4% rating for his entire term in the Senate. Ninety-eight Senators, including 53 of 54 Republicans, received higher scores than Ashcroft. It is safe to say that Ashcroft has one of the worst records in the Senate with respect to preserving Social Security. In fact, Ashcroft told a class of middle school students

in 1998, "Social Security is a bad thing. It's in debt and if I had a better deal than Social Security would you [sic] give it up? You bet I would." *Fulton Sun-Gazette* (Nov. 19, 1998).

Ashcroft introduced bills to further restrict the welfare reform bill in 1995 by including Medicaid, food stamps and Supplemental Security Income (SSI) in block grants to the states. (S. 842, 843, 844, 845.)

Senator Ashcroft voted against a compromise on national testing offered by Senator Gregg (R-NH). Ashcroft was a leading right-wing opponent of such testing. The Gregg amendment established that the National Assessment Governing Board has exclusive authority over all policies for establishing and implementing voluntary national tests for 4th grade English and reading and for 8th grade mathematics. (Adopted 87-13, 9/11/97, RCV# 234, S. 1061, FY 1998 Labor-HHS Appropriations.)

Ashcroft voted against anti-tobacco legislation that increased taxes on tobacco products, required cigarette manufacturers to fund health and education programs, and gave the FDA the authority to regulate nicotine. (S. 1415, 57Y-42N, 6/17/98.) And Ashcroft was in a minority of less than one-third of the Senate that voted in 1998 against a national drunk driving standard. (S. 1173, RCV# 20, 62Y-32N, 3/4/98.)

Ashcroft also sponsored an unsuccessful amendment to completely eliminate funding for programs and activities carried out by the National Endowment for the Arts. (Interior Appropriations bill, 9/17/97, 23Y-77N.)

8. Ashcroft's cavalier approach to amending the Constitution. As the foundational document of our government, the Constitution is not something that should be amended lightly. Indeed, in the more than 200 years since it was ratified, the Constitution has been amended only 27 times (including the ten amendments of the Bill of Rights). Nonetheless, in his single term in the United States Senate, John Ashcroft introduced or co-sponsored no fewer than seven proposed constitutional amendments (none of which was adopted by Congress), including the extremist "Human Life Amendment" discussed above. He publicly supported several other possible amendments as well.

Senator Ashcroft was the sole sponsor of a proposed constitutional amendment that would have changed the very framework so carefully constructed by the Framers for amending the Constitution. S.J. Res. 58 (July 31, 1996). Ashcroft's proposal would have authorized two-thirds of the states to propose constitutional amendments to Congress and

required that those amendments be submitted to the state legislatures for ratification unless *disapproved* by two-thirds of the members of each House of Congress during the session in which it was submitted, a very high hurdle for defeating a proposed amendment. Ashcroft's measure would have made it easier for the Constitution to be amended, and thus easier for it to become the vehicle for the advancement of political and ideological agendas. In an editorial entitled "Mr. Ashcroft's Unwise Amendment," the *St. Louis Post-Dispatch* (Aug. 10, 1996) called this proposal "unwise, unnecessary and potentially dangerous," and the *Atlanta Journal and Constitution* (Aug. 10, 1996) termed it "drastic constitutional tinkering."

III. CONCLUSION: THE WRONG MAN FOR THE JOB

Without going any further back than this overview of John Ashcroft's record during his just-completed term as a Senator, there is no question that Ashcroft's extreme views on individual rights and liberties place him at the far right of his party and out of the mainstream of American belief.

On significant matters of individual rights and liberties, issues that routinely come before the Attorney General of the United States for enforcement policy decisions, John Ashcroft's record demonstrates a lack of commitment to justice. During his six years in the United States Senate, John Ashcroft, time and again, sought to use the power of his office to undermine justice and derail individual rights. On issues of civil rights, reproductive rights, workers' rights, environmental protection, gun safety and regulation, and more, Ashcroft's positions have been consistent with the most extreme voices of the right wing. He has cast his lot among those seeking to thwart or dismantle the machinery of equal opportunity. He has favored turning individuals' most private decisions about reproductive health – even on contraception – over to government regulation. He has sided with the polluters, the gun manufacturers, and big tobacco against the interests of the people.

Ashcroft has also shown himself willing to sacrifice the truth in service of a right-wing agenda. He engaged in a campaign of distortion to sabotage Judge Ronnie White's nomination to a seat on the United States District Court and misled his Senate colleagues about Judge White's record and views. He helped turn other judicial and Executive Branch nominations into ideological struggles, seeking to reject nominees such as David Satcher and Margaret Morrow under a right-wing litmus test. An elected official with John Ashcroft's record of extremism should not be entrusted with the responsibility of helping to decide whether our next federal court judges and Supreme Court Justices are fair-minded individuals committed to the fundamental American principle of equal justice for all, or are ideologues chosen to advance a specific social and legal agenda. And John Ashcroft has shown a disturbing willingness to sacrifice even the Constitution in the interests of advancing right-wing causes, introducing or co-sponsoring more than half a dozen constitutional amendments in just six years.

The Attorney General is the principal enforcer of our civil rights laws and other federal laws, a person with enormous influence in determining whether our country will achieve its promise of equal justice for all. Yet John Ashcroft's record in the Senate and his views suggest that his commitment is not to upholding the law and the Constitution but to making the law and the Constitution bend to right-wing ideology. Would an Attorney

General Ashcroft commit his Justice Department to protecting the reproductive rights of women by enforcing the Freedom of Access to Clinic Entrances Act, when he has so vigorously and frequently espoused virtually unconditional opposition to abortion? Could an Ashcroft Justice Department be counted on to move equality of opportunity forward when he has demonstrated extraordinary indifference, if not outright hostility, to the rights of women and minorities? When a person is nominated for the position of Attorney General, there should be no doubt whether that person will engender public confidence that he or she will vigorously enforce these laws and see to it that they are invoked to achieve the purposes for which they were enacted. In the case of John Ashcroft, the doubts are overwhelming. And an elected official who in the late 20th Century would accept an honorary degree from Bob Jones University and heap praise upon a publication like *Southern Partisan* simply lacks the judgment and sensitivity required of the individual entrusted with the Office of Attorney General.

The Attorney General of the United States is one of the most important public officials in our nation, a person who has enormous power and influence over the lives of all Americans. This position requires a person of fairness, judgment, and integrity. It also requires sensitivity to those who have suffered discrimination, and a demonstrated commitment to achieving this nation's promise of equality for all. The person who holds this position must be supremely well qualified for it. Americans deserve no less. His record in the Senate shows, however, that John Ashcroft is not that person.

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SPECIAL REPORT

**THE CASE AGAINST THE CONFIRMATION OF
JOHN ASHCROFT AS ATTORNEY GENERAL
OF THE UNITED STATES**

PART TWO: AN OVERVIEW OF THE MISSOURI YEARS

January 13, 2001

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**JOHN ASHCROFT'S EXTREMIST RECORD AS MISSOURI
GOVERNOR AND ATTORNEY GENERAL**

PREFACE

**THE SPECIAL NATURE OF THE OFFICE OF
ATTORNEY GENERAL**

The Attorney General is not simply the lawyer for the President, but also the lawyer for all the people of this country, a person with the power to affect, for good or ill, the lives of all Americans. As head of the Department of Justice, the Attorney General, among other things, is the principal enforcer of our nation's civil rights laws and is entrusted with guaranteeing justice for all Americans. The Attorney General is also responsible for the enforcement of immigration laws and for federal laws protecting women's reproductive freedom and the environment. In choosing which cases the Justice Department will take up, the Attorney General plays a critical role in determining whether our nation will keep its promise to all Americans of equal justice under the law or will abandon this goal in favor of a narrow, extremist, and exclusionary vision of justice.

The Justice Department also recommends nominees to the federal courts and plays a significant role in the screening and selection process to determine whether those nominees are fair-minded individuals committed to equal justice under law for all Americans or are ideologues chosen to advance a specific social and legal agenda. The Attorney General reviews proposed legislation and advises the President as to whether particular proposals violate the Constitution as interpreted by the Supreme Court. Through the Office of the Solicitor General, the Attorney General also represents the United States before the Supreme Court, where he or she is in a position to advocate on behalf of or in opposition to individual rights and freedoms.

The person chosen to be Attorney General of the United States must be someone who has demonstrated the highest respect for the fundamental principles of equality under

the law. The person confirmed to this critically important position must be committed to seeing to it that every American enjoys equal protection under the law and must be willing to pledge the power and resources at the Attorney General's command to the pursuit of equal justice.

And because of the Attorney General's unique powers and responsibilities as the nation's chief lawyer and prosecutor, he or she must also be a person beyond reproach, a person of integrity and judgment, and one with a temperament fit for this special position.

For these reasons, a high standard should be applied to the consideration of a nominee for Attorney General. The special nature of the Office of Attorney General should be of principal concern to the Senate Judiciary Committee as it considers Mr. Ashcroft's nomination. As former Solicitor General Archibald Cox stated during the Confirmation Hearings of Edwin Meese III fifteen years ago:

Respect for the law, the fairness with which law is administered, is the foundation of a free society. The individual who becomes Attorney General can do more by his past record than his conduct in office to strengthen or erode confidence in the fairness, impartiality, integrity, freedom from taint of personal influence, in the administration of law.

Confirmation of Edwin Meese III: Hearings before the Sen. Comm. on the Judiciary, 99th Cong., 1st Sess. 450 (1985).

I. INTRODUCTION & EXECUTIVE SUMMARY

A. About This Report

This is the second part of a two-part report examining John Ashcroft's record as an elected official. People For the American Way has undertaken this examination in response to his nomination to be Attorney General of the United States, one of the most important public officials in our nation, a person who has enormous power and influence over the lives of all Americans.

Part One, published on January 4, 2001, reviewed Ashcroft's record since 1995 as a U.S. Senator from Missouri. However, Ashcroft's public record began more than a decade and a half before he came to the Senate and includes eight years as Missouri's attorney general, followed by eight years as the state's governor. This second part of our report is concerned only with John Ashcroft's years as a Missouri elected official, the period from 1977 to 1993. Because of the length of time covered and the time constraints imposed by the impending Senate Judiciary Committee hearings on his nomination, this part of our Report, by necessity, is an overview of that state record. And while People For the American Way has many policy differences with John Ashcroft, this part of our report like Part One before it, focuses not on such policy differences but on those specific aspects of Ashcroft's record that relate directly to the special role of the United States Attorney General and the standards that should be met for anyone to be considered qualified to carry out the responsibilities of that position.

In Part One we concluded that John Ashcroft's U.S. Senate record does not meet the high standards required of the person entrusted with protecting the Constitution and the rights of all Americans. During his six years in the Senate, John Ashcroft consistently put his allegiance to far right ideology before the interests and rights of the people and the nation. He failed to demonstrate a commitment to equal justice under the law, respect for individual rights and the Constitution, and sensitivity to the injustices suffered by women and minorities – all qualities that should be considered a prerequisite for the nation's chief lawyer and principal enforcer of our civil rights laws.

B. Ashcroft's Missouri Years Summarized

In Part Two, our review of John Ashcroft's conduct as Missouri Governor and Attorney General further supports and underscores the conclusion we reached in Part One: John Ashcroft should not be confirmed to the office of U.S. Attorney General. His record in Missouri is deeply disturbing. It shows a relentless crusader for extreme causes who used the powers of his public positions to seek to drastically cut back or eliminate reproductive rights. It shows a man who, more than a quarter of a century after *Brown v. Board of Education*, used the resources of his office in a divisive, single-minded fight to obstruct even voluntary desegregation of the St. Louis schools. It shows a troubling insensitivity to the rights and needs of women, minorities and the poor. It shows scorn for any viewpoint he

disagrees with, a preference for confrontation over compromise, and, most troubling of all, a dedication not to upholding the law and the Constitution but to bending them to conform to an extremist ideology.

The many troubling aspects of John Ashcroft's record in Missouri include:

1. Reproductive Rights

- ◆ As Attorney General, Ashcroft played a particularly active role in defending efforts by the state to restrict women's reproductive rights. In *Planned Parenthood v. Ashcroft*, 462 U.S. 476 (1983), Ashcroft personally argued the case before the Supreme Court in defense of a Missouri law requiring, among other abortion restrictions, all second-trimester abortions to be performed in hospitals, not outpatient clinics. The hospital requirement would have made it very difficult for many women, particularly poor women, to obtain an abortion because of the cost, inaccessibility and, in some cases, unavailability of abortions at hospitals.
- ◆ In *Serrano v. Gonzales and State of Missouri*, 660 S.W.2d 683 (Mo. 1983), Ashcroft both intervened and submitted an amicus brief in a case in which a state agency was attempting to block professional nurses from being able to provide routine gynecological services such as conducting breast and pelvic examinations, performing PAP smears and other lab tests, and providing and giving out information about contraceptives. The entire Missouri Supreme Court rejected Ashcroft's position and ruled unanimously that professional nurses could perform these services under Missouri statutes. Ashcroft's position would have held that nurses could not perform these critical reproductive health services, thus reducing and burdening women's access to these services. The exceptional nature of the case at that time was noted by the Missouri Supreme Court, which stated that despite at least forty states having modernized or expanded their nursing laws in the prior fifteen years, the Attorney General's office and other state counsel could not cite a single case anywhere challenging the authority of nurses to perform similar services.
- ◆ In 1993, as his term as Governor was ending, Ashcroft decided to run for the position of Chairman of the Republican National Committee. Notably, Republican legislators and local leaders from Missouri who knew the most about him said that he was too extreme for the job and that he was not receptive to people with different views. An important component of these statements was the concern about Ashcroft's extreme views on abortion.

2. Desegregation and Other Civil Rights Issues

- ◆ For years, John Ashcroft, as Missouri's attorney general, relentlessly fought efforts by others in the community to forge a resolution to the problem of segregation in St. Louis schools. He strenuously resisted efforts to shape a voluntary desegregation plan, filing appeal after appeal, and earning scathing criticism from observers and leaders in the community. Ashcroft's tactics were likened to the "massive resistance" employed by virulent segregationists during the early days of the civil rights movement. Many religious

leaders, including the St. Louis Archbishop, united in opposition to Ashcroft's rhetoric and tactics on desegregation. Newspapers and commentators around the state regularly and roundly denounced him. Perhaps the most stinging rebuke of all came from the federal court in ruling against Ashcroft's attempts to block payment of plaintiffs' attorneys' fees in the case on the grounds that they were excessive. The judge wrote, "If it were not for the State of Missouri and its feckless appeals, perhaps none of us would be here today."

- ◆ In 1982, Attorney General Ashcroft's office represented the state in a criminal appeal brought by a convicted burglar and rapist. On appeal, the defendant, an African American, argued that certain prospective jurors, all white, should have been stricken from the jury because of their responses to a question asking "How many people here over the past two years . . . heard a black man referred to as something other than a negro? . . . A nigger, a coon, or some other name... How many people have not? . . . Have not referred to a member of the negro race, black man, by another name." On appeal, in a brief bearing Attorney General Ashcroft's name and that of one Assistant Attorney General, the state correctly pointed out that the question asked of the prospective jurors was ambiguous, in that it combined a person's both having "heard" or "used" racial slurs. However, the state's brief did not stop there. Instead, it went on to assert: "Moreover, the mere use of another term for black or negro is not necessarily indicative of racial bias."
- ◆ During the 1970s, women's rights advocates were engaged in a nationwide effort to secure ratification of the proposed Equal Rights Amendment to the U.S. Constitution, which Congress had passed in 1972. In 1977, with the ratification deadline approaching, the National Organization for Women helped to organize a boycott to persuade organizations not to hold their conventions in those states, including Missouri, that had not ratified the ERA. In early 1978, Ashcroft, as the Attorney General of Missouri, brought a federal lawsuit on behalf of the state against N.O.W., claiming that the organization had violated a federal antitrust law prohibiting restraint of trade. Ashcroft's unsuccessful lawsuit could have stifled NOW's First Amendment rights.

3. Religion

- ◆ As Governor, Ashcroft staunchly opposed efforts to require church-run day care centers to meet even minimal health and safety regulations such as state fire codes and health requirements. Missouri was the only state that exempted them completely from those regulations. His opposition raises serious concerns not only about his preferential treatment of religious institutions, but also about how he, as attorney general, would interpret and implement so-called "charitable choice" laws. Would he argue that churches and other religious institutions should be exempt from laws that prohibit discrimination in programs receiving federal funds? Would he argue that church-run drug treatment centers receiving "charitable choice" funds under recently enacted federal law be exempt from health and safety regulations?

4. Use Of Veto Power

- ◆ Ashcroft frequently used his veto to balance the state budget or otherwise reject legislation in a way that increased the burden on those least able to bear it. For example,

on July 13, 1990, Ashcroft vetoed a bill that would have provided eight weeks of unpaid leave to new birth and adoptive mothers. The *St. Louis Post-Dispatch* condemned Ashcroft's veto in an editorial: "The veto of this bill pitted the welfare of business against the welfare of the family – and the family lost. As Attorney General, Ashcroft would help shape policy on many legal matters, including many of those most important to the poor and to families.

- ◆ For fiscal year 1991, Governor Ashcroft vetoed \$200,000 in funds to help victims of spousal abuse. Again in 1992 he vetoed \$250,000 in funding for domestic violence programs, stating that a \$100,000 increase in federal funds over the previous year's level was available (but failing to mention that the funds had to be shared among a number of crime victims' programs.) Colleen Coble, executive director of the Missouri Coalition Against Domestic Violence, called the veto "reprehensible" and noted that "[m]ost of these programs are literally struggling to stay afloat."

5. Appointments and Nominations

- ◆ While Governor of Missouri, particularly during his first term, Ashcroft was criticized for favoring political friends and campaign contributors in making judicial and executive appointments. For example, Edward D. "Chip" Robertson, Jr. was Governor Ashcroft's chief of staff and had served as a top deputy when Ashcroft was Missouri Attorney General. When appointed by Ashcroft to the Missouri Supreme Court, Robertson was 33 years old, had been out of law school for only eight years, and had no judicial experience. Ashcroft chose Robertson over two other highly qualified candidates who were sitting appellate court judges.
- ◆ In 1989 a survey by the National Women's Political Caucus revealed that Ashcroft was the only governor in the country with an appointed Cabinet that did not include any women, ranking Ashcroft last among the nation's governors. In 1990, after serving as Governor for five years, Ashcroft had one woman in his Cabinet.
- ◆ With respect to the appointment of African Americans, Ashcroft's record was mixed. Ashcroft supporters have released a 1991 letter from an African American bar association thanking Ashcroft for appointing an African American woman to an appellate court post, stating that "there is still much that needs to be done to increase the number of minorities and women on the bench," and stating that the appointment and Ashcroft's record in the area are "positive indicators of your progressive sense of fairness and equity." Other Missourians, however, have criticized Ashcroft on this score. A former member of one judicial commission commented that the judicial selection process was "still a white male bastion." The head of the National Association of Blacks Within Government noted in 1988 that there was one black member in Ashcroft's cabinet, but that in "most offices in Jefferson City, it's an ocean of whiteness."
- ◆ In 1985, Governor Ashcroft nominated Springfield, Missouri newspaper columnist Joan Hart to the Missouri Commission on Human Rights, the agency responsible for enforcing the state's anti-discrimination laws. The nomination provoked much criticism, since Hart had taken extreme right wing positions in her columns. For example, Hart

claimed that the ERA would “not provide equality, only enslavement to the feminist philosophy.” She opposed abortions, favored prayer in public schools, supported elimination of *Miranda* warnings, and referred to “radical feminists and homosexuals” as “anti-family groups.” She wrote that Rev. Jesse Jackson had a “lack of intelligence in believing that the American people would ever consider him a viable candidate for any public office.”

The conclusion is inescapable: John Ashcroft should not be entrusted with the safeguarding of Americans’ most precious and fundamental rights and freedoms. He should not be confirmed as Attorney General of the United States.

II. ASHCROFT’S ASSAULT ON REPRODUCTIVE RIGHTS

Throughout his long political career, John Ashcroft has pursued an extreme and relentless crusade against the right of women to make their own reproductive decisions. In part one of our report, we discussed John Ashcroft’s years as a United States Senator, and his extreme proposals during this time, such as proposing a constitutional amendment to ban abortions *even* for women who have been victims of rape or incest and proposing to define human life in language that could be invoked to ban some of the most widely accepted and dependable forms of contraception, such as the birth control pill and IUDs. During his Missouri years, Ashcroft had supported similarly extreme proposals. In addition, his actions as Missouri’s Attorney General and then its Governor provide a window on the issues of fairness, impartiality and respect for the law that are so central to serving as the nation’s top legal officer.

A. As Attorney General

As Missouri’s Attorney General, Ashcroft staked out extreme positions that he later continued to promote as a U.S. Senator. For example, in 1981, during his second term as Attorney General, Ashcroft testified before a U.S. Senate Judiciary Subcommittee in favor of a bill to provide that human life shall be deemed to exist from conception. Ashcroft testified, “Both now and in my first term as attorney general, I have devoted considerable time and significant resources to defending the right of the State to limit the dangerous impacts of *Roe v. Wade*, a case in which a handful of men on the Supreme Court arbitrarily

amended the Constitution and overturned the laws of the States relating to abortions.” Hearings Before Senate Judiciary Subcommittee on S. 158, “Human Life Bill,” 97th Cong., 1st Ses. (1982), at 1106.

Ashcroft testified that the “Human Life Bill,” if enacted, would effectively undo the Supreme Court’s *Roe v. Wade* decision and eliminate a woman’s constitutional right to choose, returning the situation to that “prior to 1973.” *Id.* at 1107. In addition to effectively eliminating a woman’s constitutional right to choose to terminate a pregnancy, the Human Life Bill, by defining life as beginning at conception, could have been invoked to ban even some of the most common and reliable forms of contraception, such as the birth control pill.

However, even this extreme bill, which would have effectively reversed *Roe v. Wade* and permitted states to criminalize abortion, was not enough for Attorney General Ashcroft. Because the bill would “allow considerable latitude to the 50 states in their approaches,” Ashcroft testified that he “would regard this bill as an important but insufficient step in the protection of human life.” He testified that a “human life amendment would remain necessary,” amending the U.S. Constitution to effectively ban abortions altogether in the United States except to save the woman’s life. *Id.* at 1107.

In addition to the extreme nature of Ashcroft’s substantive position on abortion, Ashcroft’s testimony reveals disturbing views for a state’s top law enforcement officer charged with the duty to uphold the letter and spirit of existing law and advise legislative bodies do the same. In testifying in support of the Human Life Bill, Attorney General Ashcroft actively encouraged Congress to undo a then nine-year old Supreme Court ruling, stating that the bill would provide a way for “a court desirous of reversing the error-ridden decision of *Roe v. Wade*” to do so. *Id.* Ashcroft also testified that the legal testimony of the bill’s opponents describing the law’s clear unconstitutionality “reflects an analytic misperception of the function of the forum of the Congress.” He explained, “Whether this bill is healthy enough to survive constitutional challenge can only be determined by the courts in the proper discharge of its responsibilities. I urge the Congress to pass the bill and allow the courts to make that decision.” *Id.* at 1106. While Ashcroft went on to note that he and others believed that the bill was constitutional and *Roe v. Wade* was not, the notion that Congress and other legislatures should “allow the courts” to decide on constitutionality and not feel constrained to carefully consider and try to determine such questions is

disturbing. Indeed, on those occasions when Congress considers laws seeking to overule or counteract Supreme Court decisions, Congress should and generally has made every effort to explore and reach its own resolution on constitutionality. Ashcroft's testimony in this regard reflects poorly on his ability to serve as U.S. Attorney General with the responsibility for enforcing the letter and spirit of existing laws and providing impartial analysis and advice to Congress and the President concerning the constitutionality of legislative proposals.

As Attorney General, Ashcroft played a particularly active role in defending efforts by the state to restrict women's reproductive rights. In *Planned Parenthood v. Ashcroft*, 462 U.S. 476 (1983), Ashcroft personally argued the case before the Supreme Court in defense of a Missouri law requiring, among other abortion restrictions, all second-trimester abortions to be performed in hospitals, not outpatient clinics. The hospital requirement would have made it very difficult for many women, particularly poor women, to obtain an abortion because of the cost, inaccessibility and, in some cases, unavailability of abortions at hospitals. (In describing at a later time his reasoning for handling the argument himself, he said, "I think my own personal argument made a statement about the intensity of the state's position on the issue." *The Springfield News-Leader* (April 23, 1989). One Missouri paper editorialized after Ashcroft's oral argument: "All the pious talk about maternal health, in short, is simply [a] way of camouflaging the real intent of the hospitalization requirement, which is to make abortions as difficult as possible for women to obtain." *St. Louis Post-Dispatch* (12/4/82). In a 6 to 3 ruling joined by conservative Chief Justice Burger, the Supreme Court struck down this requirement as imposing a heavy and medically unnecessary burden on a woman's right to choose. The day after the hospital requirement was struck down, an unrepentent Ashcroft said if the state was "being forced to allow second-trimester abortions to be performed in clinics" that he would look into imposing licensing requirements on the clinics. *St. Louis Post-Dispatch* (6/16/83).

During his oral argument, which *The American Lawyer* magazine described as the "the most disappointing argument of the day," Ashcroft was forced to concede that Missouri had singled out second-trimester abortions for this burdensome treatment and that the state did not require any other medical procedures to be performed in a hospital. *Missouri Times* (2/21/83). In addition, Ashcroft took an even more extreme position in an attempt to defend the law when he asserted that the state could, if it wanted, require that all babies be delivered at hospitals. *St. Louis Post-Dispatch* (12/1/82). Justice Thurgood Marshall's

response demonstrated the radical nature of this position: "Then a poor woman who couldn't afford to go to a hospital would be committing a crime if she gave birth." *Id.*

In *Serrachefu v. Gonzales and State of Missouri*, 660 S.W2d 683 (Mo. 1983), Ashcroft both intervened and submitted an *amicus* brief in a case in which a state agency was attempting to block professional nurses from providing routine gynecological services to women pursuant to standing orders and protocols signed by physicians. Such services included conducting breast and pelvic examinations, performing PAP smears and other lab tests, and providing and giving out information about contraceptives. The Missouri Supreme Court rejected Ashcroft's position and ruled unanimously that professional nurses could perform these services under Missouri statutes. Ashcroft's position would have held that nurses could not perform these critical reproductive health services, thus reducing and burdening women's access to these services in terms of cost and accessibility. The exceptional nature of the case at that time was noted by the Missouri Supreme Court. It stated that despite the fact that at least forty states had modernized or expanded their nursing practice laws in the prior fifteen years, the Attorney General's office and other state counsel could not cite a single case anywhere challenging the authority of nurses to perform similar services.

B. As Governor

As Governor, Ashcroft relentlessly continued to pursue his ultimate goal of banning abortion. As he stated in an interview, "I'm what you would call a person who is against abortion. I generally do whatever I can to curtail abortion." *St. Louis Post-Dispatch* (April 25, 1986). True to his word, Governor Ashcroft proposed new and extreme measures to curb abortions and directly challenge the Supreme Court's decision in *Roe v. Wade*. In doing so, he let nothing stand in his way, stacking a task force with abortion opponents and forgoing any pretense of impartiality or deference toward the views of legislators and constituents with whom he disagreed.

As an example of such extreme legislation, in January 1990, Governor Ashcroft proposed new restrictions on abortion that, among other things, would have prohibited women from having a second abortion except to protect their health. Doctors and hospitals could have lost their licenses for violating the law, and doctors would have been required to ask women to disclose the reasons for their abortions and information on any prior abortion. *St. Louis Post-Dispatch* (1/20/90).

One editorial described Ashcroft's "one to a customer plan" as "downright goofy" and criticized it for sending a "troubling message about women and morality." *St. Louis Post-Dispatch* (1/23/90). The editorial continued: "Second abortions, in this worldview, are the result of irresponsibility. That couldn't be further from the truth. Second abortions are, for example, more likely to be performed because of contraceptive failure than first abortions." *Id.* Despite these facts, Ashcroft claimed in trademark, inflammatory language, "History someday is going to say, 'This butchering of women and children is the wrong way to manage family size.'" *Id.* Another article described reaction to Ashcroft's plan as "novel" and "shocking," and noted concerns that enforcement of the law could require the state to track women who have abortions and require doctors to invade traditional areas of privacy with regard to medical information. *St. Louis Sun* (1/23/90). Evidence of the extreme nature of the bill was that it effectively died in less than a week in the solidly anti-choice Missouri General Assembly. *Kansas City Times* (Jan. 25, 1990).

In 1986, Ashcroft had put Missouri in the forefront of the anti-choice movement by signing into law a bill comprising a series of abortion restrictions and provisions aimed again at finding different ways of inviting reconsideration and reversal of *Roe v. Wade* by the courts. The provisions included stating in a preamble that human life begins at conception; requiring that all state laws be interpreted to provide "unborn children" with the same rights enjoyed by other persons subject to the U.S. Constitution; requiring physicians to ascertain viability at or after 20 weeks of pregnancy by performing certain medical tests; and prohibiting the use of public employees or facilities to perform abortions or to counsel a woman to have an abortion except as necessary to save the woman's life. While the federal district and appeals courts struck down each of these provisions as unconstitutional, in *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), a bitterly divided Supreme Court generally upheld the specific restrictions in Missouri's law while not ruling on the preamble or overturning *Roe v. Wade*.

Almost immediately after the decision, Governor Ashcroft announced the appointment of a "Task Force for Mothers and Unborn Children" intended "to contribute to Missouri's lead in regulating abortions." *St. Louis Post-Dispatch* (7/22/89). Ashcroft said the task force would review the *Webster* decision and recommend further abortion restrictions. "With its [the task force's] guidance, we will press on to protect the lives of our future generations," he stated. *Id.* Ashcroft appointed seven "staunch abortion foes" to the

panel, including two people who helped write the law at issue in *Webster* and three members of Missouri Citizens for Life. The newspaper reported that interviews with task force members revealed that they favored banning all abortions in Missouri except to save the life of the woman. Echoing Ashcroft's 1981 testimony on the "Human Life Bill," one of the appointed members reportedly said that she felt that a majority of Supreme Court justices were looking for "excuses" to reverse *Roe v. Wade* and that "[m]aybe we [the taskforce] can give them those excuses." *Id.*

According to public reports, Ashcroft's unilateral appointment of a clearly biased and activist, anti-abortion task force seriously disturbed leaders of the Missouri House and Senate, both of whom refused to participate in the taskforce. *UPI* (7/25/89). Missouri House Speaker Bob Griffin said, "I told the governor I had never been involved and didn't want to be involved in appointing people to a task force when it was stacked going in... If the purpose of the task force is to do evaluations and to determine what is a best course of action for us to follow, I didn't think it should be composed of people who had already made up their minds... I thought the task force ought to have some balance..." *Id.* Griffin and Senate President Pro Tem James Mathewson were quoted as saying the task force was "obviously slanted toward one side of the issue" and not "a fair way to proceed in trying to arrive at a consensus." *Riverfront Times*, at 10 (7/26/89-8/1/89).

One of the members of the task force from the Missouri Citizens for Life responded to the criticism of the biased nature of the panel by reportedly stating, "What did you expect the governor to do? Would you invite a member of the Ku Klux Klan to sit on the civil rights commission? The governor is very clear - he wants to stop abortion. You're not going to put people on who will try to scuttle that." *St. Louis Post-Dispatch* (1/14/90). In the end, perhaps as a result of all the controversy surrounding the task force, the panel issued a short report that "covered little new ground and endorsed no specific legislation to ban abortion." *St. Louis Post-Dispatch* (1/14/90). The report did contain "one sentence urging legislators to pass a law challenging *Roe v. Wade*..." *Id.*

Some of the same members of Ashcroft's "Task Force for Mothers and Unborn Children" were involved in a prior "Task Force on Unwed Sexual Activity and Pregnancy" that was intended to address the problem of high teenage pregnancy in Missouri, particularly in urban areas in St. Louis. However, like the subsequent Task Force on Mothers and Unborn Children, this one became dominated by anti-choice activists who turned the project

into an ideological crusade for chastity and against birth control and sex education. *Riverfront Times* (12/18/88). According to an in-depth article, “[a]fter spending 14 months,... the task force produce[d] a 203-page report so biased and unrealistic that five of the group’s 15 members refuse[d] to sign it, calling it ‘a disaster.’” *Id.* A *St. Louis Post-Dispatch* editorial described the final report as “straight out of the 19th century.” *Id.* In addition to recommending “bans against educating teens about contraception and abortion,” the final report “says the state should not fund health clinics at school.” *Id.* The task force members reportedly “went so far as to say that sex education does not reduce teenage pregnancy,” and made the astonishing claim in their final report that use of contraceptives may lead to “an increased pregnancy and abortion rate.” *Id.*

According to an Ashcroft spokesperson, the Governor was “not embarrassed at all [by the report] and look[ed] forward to the legislature’s reaction to the proposals in the report.” *Id.* The article indicates that despite voicing concerns about the high teen pregnancy rate, the governor had “taken no steps to act on the problem.” *Id.* In addition, in 1993, the Chairperson of Pro-choice Republicans of Missouri, Karen Grace, noted the state’s failure to provide support for family planning during Ashcroft’s tenure as governor, something that would reduce the need for and number of abortions. *Riverfront Times*, at 17 (1/27/93-2/2/93). Chairperson Grace stated: “I have no problem with people not supporting abortion, but you’d think they’d be very gung-ho about family planning. That’s the answer. We have no state funding for family planning in Missouri, and I find that baffling.” *Id.*

C. Race for Chair of the Republican National Committee

In 1993, as his term as Governor was ending, Ashcroft decided to run for the position of Chairman of the Republican National Committee. Ironically, some Republican legislators and local leaders from Missouri who knew the most about him said he was too extreme for the job and that he was not receptive to people with different views. An important aspect of these statements was the concern about Ashcroft’s extreme views on abortion.

For example, Republican State Senator Robert Johnson said that Ashcroft had stopped talking to him because of differences over their views on abortion. *St. Louis Post-Dispatch* (1/10/93). Johnson stated that Ashcroft “won’t take criticism, and if you disagree with him, he knocks you out of the loop, like you don’t exist.” *Id.* Republican State Rep.

Connie Wible reportedly stated that she hoped the Republicans would choose an RNC Chair “who is truly a moderate Republican, because we’re in a position where the party needs to prove we are not extremists.” *Id.* Pro-choice Republican leader Karen Grace advised national republicans to be “very careful” in considering Ashcroft, stating that “[Ashcroft is] trying to present himself as a more moderate person than I think he is.” *Riverfront Times*, at cover, 18 (1/27/93-2/2/93).

According to press accounts, even anti-choice Republican legislators stated that Ashcroft was in tolerant of differing views within the party and thus implied he might not be a good fit for the RNC Chair position. For example, Republican State Sen. Dennis Smith, “an abortion foe from Ashcroft’s hometown of Springfield,” stated: “Can he accommodate opinions that differ from his own? My opinion is that it’ll be hard for John to do that.” *News Tribune* (1/24/93) Another Republican anti-choice legislator, State Rep. Todd Smith, said that “[t]he governor can get along with you – if you change your tune.” *Id.*

The criticism of Ashcroft by local Republican leaders came not just from those involved in battles over reproductive rights, but also extended to those involved in civil rights, desegregation and other matters. For example, Rev. Eugene Fowler, a local African American Republican activist, complained about Ashcroft’s role as leader of the state Republican party and the use of a weighted voting system by which more power is given to party activists in “high-turnout voting wards (typically white).” *Riverfront Times*, at 17 (1/27/93-2/2/93). Ashcroft also drew criticism from local leaders over his resistance to voluntary desegregation programs in Kansas City and St. Louis. Fowler reportedly said, “They can’t let an Ashcroft become national chairman. They’ll be allowing racism to continue to raise its ugly head in the party.” *Id.*

In the end, Ashcroft lost out on his bid for the RNC Chairman position to Haley Barbour, a former White House political director in the Reagan Administration. *The Washington Post* (1/30/93); *The Kansas City Star* (1/30/93). This was despite the fact that Barbour was also anti-choice and conservative. Outgoing RNC Chair Rich Bond warned that the GOP needed to move away from abortion as a “litmus test issue” and to stop “cling[ing] to zealotry masquerading as principle.” *Id.*

Senator Orrin Hatch said in opposing Bill Lann Lee’s nomination as assistant attorney general for civil rights, “Those charged with enforcing the nation’s laws must demonstrate a proper understanding of the law and a determination to uphold its letter and

its spirit.” The Washington Post, (E.J. Dionne op-ed column, January 5, 2001). With respect to a woman’s constitutional right to choose and other reproductive rights, Ashcroft’s record indicates an extreme view that raises serious questions about his respect for existing law and the ability to provide balanced and impartial counsel in this area. Based on his record during his Missouri and U.S. Senate years, if confirmed as Attorney General, millions of American women would not be able to count on John Ashcroft to protect their fundamental reproductive rights. Instead, they would have an Attorney General who will do everything within his power to undermine and roll back these rights.

III. ASHCROFT’S STATE RECORD: REVEALING HIS STRIDENT RESISTANCE TO THE PROTECTION OF CIVIL RIGHTS

A. Racial Desegregation of Missouri Schools

Both as Attorney General and Governor of Missouri, John Ashcroft was well known as an opponent of school desegregation programs in St. Louis and Kansas City. Differences of legal and political opinion existed then and now on this subject, and such differences alone would not constitute significant grounds for opposing Ashcroft’s nomination. But Ashcroft’s conduct in Missouri went far beyond such differences of opinion. Ashcroft spent years and significant state resources in efforts to stymie voluntary St. Louis desegregation plans designed to enable city and suburban students and families to choose whether to participate on a completely voluntary basis. He repeatedly tried to delay and reverse court orders, and his arguments were rejected in three appeals to the Supreme Court. He was threatened with contempt of court and was criticized and rebuked by federal judges. His conduct was likened to the Southern “massive resistance” that had followed the Supreme Court’s decision more than two decades earlier in *Brown v. Board of Education*. Observers chastised him for exploiting his opposition to desegregation in his campaign for governor through rhetoric widely perceived as racially divisive. Even supporters and fellow Republicans criticized his tactics. And he failed completely to undertake meaningful efforts to solve the problems of state-created segregation, to resolve the litigation through

negotiations or settlement, or to provide constructive leadership on the issue, all important qualities for a future U.S. Attorney General.

1. An Attorney General's crusade to obstruct voluntary desegregation. Ashcroft's significant involvement with desegregation in St. Louis began around 1980, for in that year both the federal court of appeals for the Eighth Circuit and the federal district court in St. Louis found both the State of Missouri and the City school board liable for continued segregation of the public schools. The State's liability was based primarily on state legal and constitutional provisions dating back to 1865, which mandated separate schools for blacks and whites (provisions not completely repealed until 1976); the mandatory transfer of black suburban students into segregated city schools to enforce segregation; and the state's failure to take effective action to dismantle the racially dual school system and its effects. *See Adams v. United States*, 620 F.2d 1277, 1280-81 (8th Cir.), *cert. denied*, 449 U.S. 826 (1980). As the district court recognized that year, "the State defendants stand before this Court as primary constitutional wrongdoers who have abdicated their affirmative remedial duty." *Liddell v. Board of Education of City of St. Louis*, 491 F. Supp. 351, 359 (E.D. Mo. 1980), *aff'd*, 667 F.2d 643 (8th Cir.), *cert. denied*, 454 U.S. 1081, 1091 (1981).

As part of its May 1980 order, the district court ordered desegregation in St. Louis to begin that fall. One provision of the court's order, as specifically suggested by the court of appeals, called on the City Board and the State to seek the cooperation of suburban districts to enhance school desegregation by developing a "voluntary, cooperative plan" in which city and suburban students could choose to transfer between the city and the suburbs. 491 F. Supp. at 353.

The City Board and the suburbs promptly began to discuss such a voluntary plan. On behalf of the State, however, Ashcroft immediately announced he would appeal, seeking to overturn even the provision that called only for planning of a voluntary city-suburb program. The *St. Louis Post-Dispatch* noted that Ashcroft's actions "nearly wrecked" the initial city-suburban meeting efforts. *St. Louis Post-Dispatch (June 20, 1980)*. Despite the opposition of the City Board and the United States, which had intervened in the case on the side of the plaintiffs, Ashcroft asked the court of appeals to delay the order while the appeal was being heard. When the court of appeals turned Ashcroft down in August, he asked the Supreme Court for another delay. Ironically, he did not ask for a delay in mandatory student transfers within St. Louis, but did try to further postpone work on a voluntary city-suburb

plan. The Court denied Ashcroft's request. Years later, an expert witness involved in the case testified that the City Board and the state had enjoyed a brief period of cooperation in 1980, but that after the May 1980 order, Ashcroft told state education officials "not to talk with anyone." (*St. Louis Post-Dispatch March 23, 1996*).

Although the district court's order had directed the parties to work out a voluntary plan to begin in 1980-81, delays continued throughout the school year. After the state finally submitted an initial plan, the judge rejected it as lacking in specifics and called on the state to submit another, but the state did not do so. The NAACP and the City Board then filed a claim for mandatory interdistrict relief, based in part on the failure of the state to act. Ashcroft responded not only by opposing any such mandatory relief, but by declaring that voluntary efforts were now impossible and by asking for another delay in submitting a voluntary plan. The *St. Louis Post-Dispatch* excoriated Ashcroft:

The logic of these arguments is mystifying... Even now, acquiescence in a voluntary program might dispense with the need for one ordered by court... As matters stand, a state that for more than a century required its schools to segregate the races now presents itself as unable to help them desegregate, even on a voluntary basis... Judge Meredith had asked the state to take the lead in developing suggestions for a voluntary program. Take the lead? The attorney general has put state leadership in reverse. (*St. Louis Post-Dispatch*, Feb. 1 and Feb. 4, 1981.)

Throughout this period, Ashcroft continually sought to thwart desegregation by failing to comply with orders and deadlines for submission of plans and seeking delays from the appellate court. Finally, in March, 1981, the district judge entered a blistering order threatening to hold the state in contempt if it failed to submit a voluntary plan within 60 days. The judge criticized the state's "continual delay and failure to comply" with the court's orders. *Associated Press, March 5, 1981*. "The court can draw only one conclusion," the judge explained, "the state has, as a matter of deliberate policy, decided to defy the authority of this court." *St. Louis Post-Dispatch* (March 5, 1981).

Although Ashcroft claimed that the state was working on a voluntary plan, he again asked the appellate court and then the Supreme Court for a delay, as he also sought to have the Supreme Court overturn an appellate court decision fully affirming the district court's May 1980 order. All these requests were denied.

As 1981 continued, Ashcroft persisted in his efforts to disrupt voluntary desegregation efforts. For example, when the court named Susan Uchitelle, a state education official, to oversee voluntary desegregation efforts, which could presumably have helped

secure state cooperation, Ashcroft demanded her removal. The *Post-Dispatch* noted that the state could have felt “honored by the use of Ms. Uchitelle as a leader” in the voluntary desegregation effort, but “[i]nstead, Missouri’s attorney general acts as if segregation is here to stay.” *St. Louis Post-Dispatch* (July 14, 1981). Around the same time, the Reagan Administration Justice Department submitted a plan to encourage voluntary desegregation by offering free state college tuition to students who agreed to city-suburban transfers. The City Board agreed, several suburban districts and a state university official praised the idea, and the Reagan Administration received praise for suggesting a plan to promote voluntary desegregation consistent with its opposition to mandatory busing. Nevertheless, Ashcroft balked at the suggestion, basing his opposition on cost and on claims that the plan would result in the transfer of “the most motivated” black city students to the suburbs. *Newsweek* (May 18, 1981).

The federal proposal also produced another result for Ashcroft. He began to hold talks with Reagan Administration officials, which Ashcroft reportedly tried to keep secret, about the St. Louis and Kansas City cases. It was soon reported that Ashcroft was trying to convince Reagan Justice Department officials to switch sides and support the state in its latest effort to get the Supreme Court to reverse lower court rulings in the St. Louis case. In the short run, those efforts failed, as the Justice Department suggested that the Court should not accept Ashcroft’s request. When the Court again rejected Ashcroft’s appeal, he remained defiant, proclaiming that “this fight is a long way from being finished.” *UPI* (Nov. 30, 1981). The *Post-Dispatch* noted that “legal contentions can be pursued on and on,” but urged “the state of Missouri and its attorney general” to “begin working for desegregation instead of obstructing it.” *St. Louis Post-Dispatch* (Dec. 1, 1981).

The new year of 1982, however, saw little change in Ashcroft’s attitudes and tactics. In January, speaking to a suburban rotary club, he attacked desegregation and declared that busing is “unconstitutional discrimination against all groups.” *St. Louis Post-Dispatch* (January 13, 1982). He lost another appeal in which he contested again the state’s liability and protested any voluntary city-suburb plan. The appellate court’s opinion pointedly urged the state to participate in the desegregation budget process “so that the annual budget can be determined on a cooperative rather than an adversary basis.” *Liddell, supra*, 677 F. 2d 626, 628 (8th Cir.), *cert. denied*, 459 U.S. 877 (1982). For the second year in a row, the Supreme Court denied Ashcroft’s request for a full review. One news article noted that Ashcroft was

“making himself a familiar advocate before the Supreme Court, most often as the antagonist of civil rights interests.” *St. Louis Post-Dispatch* (Nov. 7, 1982). The article quoted civil rights lawyers who criticized Ashcroft’s “zealous, litigate-to-the-end” approach, and noted that his frequent appeals to the Court were discouraging suburban districts from joining the voluntary city-suburb plan. Although noting that the Court’s acceptance of a number of (non-desegregation related) appeals demonstrated that Ashcroft’s office was certainly not being frivolous, the article quoted one former assistant attorney general as highly critical of the “litigate-to-the-end” approach even in innocuous suits, comparing Ashcroft unfavorably to his predecessor, John Danforth.

The article noted Ashcroft’s harsh and racially divisive rhetoric in court papers. For example, in his latest appeal to the Supreme Court, the article explained, Ashcroft called the lower court action “grossly unjust” and complained that if the defendant was “an individual, especially a minority, neither this court nor the court of appeals would have permitted” the procedures used. *Id.* Critics likened Ashcroft’s handling of the St. Louis case “to the massive resistance that some Southern politicians mounted in the 1950s and 1960s to oppose desegregation.” One attorney who asked not to be named stated that “[a] lot of what he does is to delay and harass” and that he “appeals everything to the Supreme Court.” *Id.* School desegregation expert Dr. Gary Orfield was reported as testifying in court that the state’s arguments reminded him of the defense of segregation in *Brown v. Board of Education* itself. Dr. Orfield stated that he had been reading the *Brown* transcript “where the attorney representing the government of South Carolina argued that it would be educationally better to leave the black children segregated.” He explained that “I thought I wouldn’t hear state government producing that argument again” but was “very disappointed to hear it” in the St. Louis case. *Id.*

In 1983, Ashcroft’s efforts to obstruct voluntary city-suburban desegregation reached a new level. Shortly before the trial of the segregation claims against the suburban districts was to begin, the City Board, the NAACP, and the suburban districts announced a tentative settlement. The agreement called for significant expansion of the city-suburb voluntary desegregation program, as well as for additional efforts to improve education in city schools to help remedy the educational vestiges of segregation. Although the State department of education had reportedly made positive comments about the plan, Ashcroft and the City of St. Louis promptly opposed it. Ashcroft criticized the costs that would be

imposed on the state, and asserted that mandatory transfers could occur in the future if the plan failed. He had critical letters hand-delivered to each of the suburban districts. A source close to the negotiations reported that Ashcroft was not “telling the whole story” and was “trying to scuttle this agreement.” *St. Louis Post-Dispatch* (April 2, 1983).

One of Ashcroft’s major objections to the plan – his claim concerning its costs – was criticized not only by the *Post-Dispatch*, but also by St. Louis Archbishop John L. May. The Archbishop urged citizens to ignore the “hysterical figures” and to emphasize the positive “in place of the dirges we have been hearing from Jefferson City,” the state capital. *UPI* (July 25, 1983). The Archbishop and 10 other prominent religious and public figures endorsed the plan. Although acknowledging Ashcroft’s proper role in defending the state, then-Senator and former state Attorney General John Danforth split with Ashcroft and announced his support for the plan. Suburban districts rejected Ashcroft’s race-tinged claim that the plan would “subordinate education to other objectives” and his insistence that he would have preferred to litigate the case. In July 1983, despite Ashcroft’s three-year efforts, the City Board and all 23 suburban districts approved the plan, and the federal court accepted it.

Ashcroft and the City announced they would appeal and sought a district court order to delay the plan. Even though the school year had already begun, Ashcroft asked the court of appeals to stay the plan – and effectively order thousands of students uprooted from the schools they had begun – in September. Although the court of appeals did temporarily limit the plan to students who had already transferred and did prevent any possible court action to change city tax rates, the appellate court firmly rejected most of the stay order that Ashcroft requested. As a result of such a stay order, the court explained, the “lives of thousands of students and teachers would be disrupted before this court had decided the matter on its merits.” *AP* (Sept. 13, 1983).

In early 1984, the last year of his term as Attorney General, Ashcroft announced his intention to run for governor. In his announcement speech, he pledged to continue to fight “tooth and nail” to oppose the “just plain wrong” St. Louis desegregation orders, vowing that “this battle is not over.” *UPI* (Jan. 3, 1984). Ashcroft soon received another court setback, as the full 8th Circuit Court of Appeals voted 7 to 2 to uphold most of the desegregation plan. The court painstakingly noted that on three separate occasions it had already rejected the state’s arguments against the use of voluntary interdistrict transfers and

that each time the Supreme Court had denied review. *Liddell, supra*, 731 F.2d 1294, 1302-05 (8th Cir.) (en banc), *cert. denied*, 469 U.S. 816 (1984). The appeals court nevertheless considered Ashcroft's arguments for the fourth time, and again rejected them. *Id.* at 1305-1309.

The court did agree with Ashcroft that the state should not pay for voluntary integrative transfers of black suburban students from predominantly black to predominantly white suburbs, since that would not help promote desegregation in the city. Even though that part of the order affected only 311 students, Ashcroft moved immediately to cut off payments for those students, prompting fears that they would be forced to return to their former schools with only three months left in the school year. Critics called Ashcroft's actions a "cruel way to deal with students who had placed their educational hopes in their new schools." (*St. Louis Post-Dispatch Feb. 19, 1984*). A split court of appeals avoided such an outcome by ordering the state to continue the payments temporarily, subject to a later good faith effort among the suburbs and the state to allocate the costs. Ashcroft called the decision a "gross miscarriage of justice" and predicted it would help his case in the Supreme Court. (*St. Louis Post-Dispatch March 6, 1984*).

Once again, Ashcroft sought review of the court of appeals decision in the Supreme Court, with the opposition this time joined by the League of Women Voters in the St. Louis area. Ashcroft did obtain a new ally, however, convincing the Reagan Justice Department to complete its reversal of position and join his efforts in the Court, as a result of what Ashcroft described as his "arduous effort" at persuasion. (*St. Louis Post-Dispatch July 24, 1984*). Nevertheless, the high Court turned Ashcroft down for a third consecutive year, prompting Ashcroft to claim that the Court had "wrongfully sanctioned the judiciary's usurpation of legislative authority" and to pledge to keep fighting. (*St. Louis Post-Dispatch Oct. 2, 1984*). The *Post-Dispatch* noted the progress made under the plan, with over 5,500 students participating in totally voluntary desegregation transfers plus better education in only its second year, all f"[d]espite the attorney general's efforts." (*St. Louis Post-Dispatch Oct. 3, 1984*).

In the meantime, Ashcroft was busily using the desegregation issue in his gubernatorial campaign. During the Republican primary campaign, Ashcroft and his primary opponent were "trying to outdo each other as the most outspoken enemy of school integration in St. Louis," and "exploiting and encouraging the worst racist sentiments that exist in the state." (*St. Louis Post-Dispatch March 11, 1984*). Ashcroft publicly wore the

threatened federal contempt citation against him as a badge of honor, arguing that it showed he had “done everything in my power legally” to fight the desegregation plan. (*UPI, Feb. 12, 1984*). Ashcroft criticized the St. Louis plan as “grandiose programs just to enhance a few students,” ignoring the thousands who were being helped. (*Jefferson City Post Oct. 5, 1984*). In one debate, he called the plan an “outrage against human decency” and an “outrage against the children of this state.” (*St. Louis Post-Dispatch June 15, 1984*). His campaign bombarded voters with telegrams claiming that his primary opponent had changed his support for the plan to opposition. (*St. Louis Post-Dispatch Aug. 4, 1984*). At one point, he appeared to compare desegregation to drug use, stating that the people who are against the desegregation plan also pay for it “[b]ut some people sell pot and think it should be legalized, and we fight against them with their tax money,” and “I don’t have any problem with that.” (*Columbia Missourian July 18, 1984*). Ashcroft’s media consultant described an ad attacking alleged waffling by his primary opponent on desegregation as Ashcroft’s “silver bullet.” (*St. Louis Post-Dispatch Dec. 30, 1984*).

Newspapers on both sides of the desegregation issue were highly critical of Ashcroft, along with his primary opponent, for divisive rhetoric. The *Daily Dunklin Democrat*, which had supported Ashcroft’s desegregation appeals, nevertheless criticized the Republican primary campaign as “reminiscent of an Alabama primary in the 1950s.” (*St. Louis Post-Dispatch Oct. 26, 1984*). The African-American newspaper *St. Louis American* was even harsher towards Ashcroft. “Here is a man who has no compunction whatsoever to standing on the necks of our young people merely for the sake of winning political favor,” the *American* wrote. “Ashcroft implies at every news conference, radio and television interview that he couldn’t care less what happens to black school children.” (*St. Louis Post-Dispatch Feb. 29, 1984*).

2. Ashcroft continues to battle desegregation as governor. Shortly after he was elected Governor, Ashcroft received yet another stinging rebuke for his handling of the St. Louis case – this time, from the federal court. Ashcroft’s office had vigorously opposed a request for civil rights attorneys’ fees to be paid by the state to the attorneys who had successfully litigated against him. (In fact, he had previously asked President Reagan to support legislation to limit state liability for civil rights attorneys’ fees, using St. Louis as an example. *St. Louis Post-Dispatch Nov. 20, 1983*.) Ashcroft argued that the size of the bill, over \$3 million, was excessive and that much of the plaintiffs’ attorneys’ efforts were not necessary.

Although the judge did substantially reduce the size of the award, he unequivocally rejected Ashcroft's claim and found that the work was "unquestionably necessary" because of the conduct of the state and its attorney general. The judge explained that the state had contributed significantly to the size of the award by its "opposition and repeated appeals." Ashcroft and the state had continued to "litigate what the other parties sought to settle, thereby increasing litigation costs for which it now seeks to avoid responsibility. "In fact, the judge stated, "[i]f it were not for the state of Missouri and its *faceless appeals*, perhaps none of us would be here today." (*St. Louis Post-Dispatch*, Dec. 30, 1984, Jan. 3, 1985) (emphasis added).

Ashcroft also argued that the attorneys for the original plaintiffs had ridden the "coattails" of other parties to seek unwarranted attorneys' fees. The court rejected this argument as well, with words aimed clearly at Ashcroft. "With equal validity," he explained, "one might argue that counsel for the state voluntarily rode Liddell's bus to political prominence." (*Id.*) Although the size of the award was reduced on appeal because the court determined that the plaintiffs were only 75% successful, the appellate court otherwise affirmed the trial court's decision. *Liddell, supra*, No. 85-1179 (8th Cir. July 9, 1985).

After he assumed the governor's office, of course, Ashcroft's direct involvement in the St. Louis case diminished. Nonetheless, he continued to urge vigorous opposition to the plan and to criticize the federal court rulings, particularly in election year 1988. Ironically, at a 1989 education conference in Washington, Ashcroft publicly supported the idea of public school choice in Missouri. The director of the St. Louis voluntary interdistrict desegregation choice program, whom Ashcroft had attempted to remove years earlier, responded in a way that aptly summarizes Ashcroft's record and the accomplishment that he tried to thwart:

For nine years, Gov. John Ashcroft has been fighting the voluntary choice plan in St. Louis and St. Louis County. But now the light suddenly dawns. At the president's education summit, Ashcroft announces he wants to offer Missouri school children the right to school choice.

Where have you been, governor? Without your help – indeed over your vehement opposition – St. Louis has had school choice. In fact, St. Louis has the largest and most successful school choice program in the country. To date, more than 22,000 students are making school choices, both within the city system with its magnet schools and among 16 suburban districts.

Ashcroft now says school choice could lead to more motivated students and higher achievement. He is right! We are finding the longer school choice students are in the

program, the better they perform. All area schools can attest to improved curricula as a result of our voluntary school choice program.

But school choice does not just happen. It requires equitable access that will not upset racial balance. It requires available transportation so that all students will have the right to choice. It requires funds to improve urban districts. (*St. Louis Post-Dispatch* Oct. 8, 1989).

Gov. Ashcroft opposed all of these and other features of the St. Louis plan, a situation that changed under his successor. Governor Mel Carnahan spent part of his first day in office discussing how to settle or end both the St. Louis and the Kansas City desegregation lawsuits. The settlement reached by the State and all other parties in early 1999 won widespread acclaim. *St. Louis Post-Dispatch* (Jan. 7, 1999).

Ashcroft's direct involvement in the Kansas City case was less significant than in St. Louis because most of the key court proceedings and the resulting controversial remedies in that case occurred at the end of or after his term as Attorney General. Ashcroft opposed any state liability in that case as well, a position rejected by the district court in September of 1984. As governor, Ashcroft continued to direct the attorney general to appeal orders calling for significant expenditures by the state, and he received much more political and legal support for his position, up to and including a 1995 Supreme Court decision in the case that he praised as a Senator.

Nevertheless, Ashcroft came under significant criticism, even from supporters and fellow Republicans, for his "continual harping against" desegregation in Kansas City and his failure to provide effective leadership and offer alternatives to remedy problems the state had helped cause. (*Kansas City Times*, Oct. 25, 1988). The president of the Kansas City board lamented in 1987 Ashcroft's earlier failure to "offer viable alternatives when he had a chance to do so." (*Kansas City Star* Nov. 10, 1987). A Republican state legislator from the area explained that she was "very disturbed that once the judge handed down his findings, the state was not more pro-active in finding a solution." She stated that contacts with Ashcroft's office on the subject were "not productive" because he did not appear to have a "philosophy that allows for different points of view." (*St. Louis Post-Dispatch* Jan. 10, 1993). A former St. Louis school board member suggested that Ashcroft was partly to blame for increasing expenditures, noting that "you can't help but wonder how soon this would've ended if (the governor) hadn't been so concerned with fighting this and more concerned with finding a resolution." (*St. Louis Post-Dispatch* Jan. 3, 1993). In short, the qualities displayed by Ashcroft

in school desegregation controversies in Missouri, particularly in St. Louis, are not the qualities America has a right to expect from its Attorney General.

B. Other Civil Rights Issues

In addition to his record on desegregation and on nominations and appointments, discussed below, several other aspects of Ashcroft's record as a state official demonstrate a troubling lack of sensitivity to civil rights concerns.

1. Gov. Ashcroft refuses to endorse bipartisan study revealing a national racial divide. One of the most public concerned a 1988 report by a 40-member blue-ribbon bipartisan study commission formed by the Education Commission of the States (ECS) and the American Council on Education to examine the status of minority participation in education and American life. As chair of ECS's board, John Ashcroft also sat on the study commission, whose report, "One Third of a Nation," concluded that America was moving backwards in its efforts to achieve full participation by minority citizens. Ashcroft and Former Secretary of State William Rogers were the only two study commission members who refused to sign the report. Ashcroft stated that he thought it was too negative and placed too much emphasis on federal programs. Other Republicans who signed the report included former President Gerald Ford, Former Education Secretary Terrell Bell, and Governor Thomas Kean of New Jersey. Other Commission members included, for example, John Jacob of the Urban League, former Congresswoman Barbara Jordan, Rev. Timothy Healy, and Coretta Scott King.

Ashcroft's refusal to sign the report generated significant criticism, particularly among African Americans, who also voiced other concerns about the governor's record on and sensitivity towards minority concerns. The leader of black legislators in the Missouri House, Rep. O.L. Shelton, said Ashcroft's actions revealed that the governor was "totally ignorant of the reality of race problems in the U.S. and especially in Missouri," and that it appeared that his "mind frame is that of a traditional white southerner during the '60s and '50s." (*Columbia Daily Tribune* May 24, 1988). Shelton also contended that Ashcroft had failed to listen to complaints by black legislators and that "[h]e's just given us a dumb ear," a claim denied by Ashcroft's spokesman. (*St. Louis Post-Dispatch* May 25, 1988). State Senator John Bass called Ashcroft's refusal to sign the report an affront to efforts to improve race

relations in Missouri. The Columbia Missourian accused Ashcroft of “denying reality.” (*Columbia Missourian*, May 29, 1988).

2. Gov. Ashcroft thwarts effort to reform voter registration for minorities. Later that year, Governor Ashcroft vetoed a bill that could have significantly aided voter registration among minorities in St. Louis. The bill would have allowed groups to conduct voter registration drives in the city, just as private groups already were doing in the suburbs. In the days before the federal “motor voter” law, the legislation would have been particularly important. Ashcroft apparently agreed with the city election board’s specious claim that such registration drives could lead to voter fraud. But since St. Louis County was permitting precisely such voter registration without any indication of such problems, and since Ashcroft had signed a bill permitting mail-in voting in certain elections, the *Post-Dispatch* concluded that this “claim of concern about potential corruption lacks credence.” (*St. Louis Post-Dispatch*, June 8, 1988).

3. Ashcroft shows more callousness toward minorities. A much less publicized example raises further concerns about Ashcroft’s sensitivity towards minorities. In 1982, Attorney General Ashcroft’s office represented the state in a criminal appeal brought by a convicted burglar and rapist. On appeal, the defendant, an African American, argued that certain prospective jurors, all white, should have been stricken from the jury panel because of their responses to a question asking “How many people here over the past two years . . . heard a black man referred to as something other than a negro? . . . A nigger, a coon, or some other name. How many people have not? . . . Have not referred to a member of the negro race, black man, by another name. Either a joke or in conversation.” *Missouri v. Coxams*, 643 S.W.2d 628, 631 (Ct. App. W.D. Mo. 1982). On appeal, in a brief bearing Attorney General Ashcroft’s name and that of one Assistant Attorney General, the state correctly pointed out that the question asked of the prospective jurors was ambiguous, in that it combined a person’s both having “heard” or “used” racial slurs, the former not being indicative of any bias on the part of the hearer.

However, the state’s brief did not stop there. Instead, it went on to assert: “Moreover, the mere use of another term for black or negro is not necessarily indicative of racial bias.” *Missouri v. Coxams*, No. 32603 (Ct. App. Mo. W.D.), Respondent’s Brief, at 14.

It is stating the obvious, however, to point out that the “terms” specifically used with the prospective jurors were not just “another term” for “black or negro” but some of the most offensive and pejorative language ever used to refer to African Americans. We do not know whether John Ashcroft reviewed every brief filed in his name by his office, but the fact that such an argument could be made in a legal brief written by his office demonstrates a lack of sensitivity toward racial minorities and failure to accord respect to all Americans that is disturbing indeed.

4. As Attorney General, Ashcroft also opposes Equal Rights Amendment. Finally, highly publicized litigation Ashcroft initiated as Attorney General raises further concerns about his views on civil rights and liberties. During the late 1970s, when John Ashcroft first served as Missouri Attorney General, women’s rights advocates were engaged in a nationwide effort to secure ratification of the proposed Equal Rights Amendment to the U.S. Constitution, which Congress had passed in 1972. Ashcroft opposed the ERA. Only three more states were needed to ratify the ERA and Missouri was one of only 15 states that had not done so.

In 1977, with the ratification deadline approaching, the National Organization for Women helped organize a boycott of states that had not ratified the ERA, to persuade organizations that supported the ERA not to hold their conventions in those states. The goal of this boycott was ratification of the ERA. In early 1978, Ashcroft, as the Attorney General of Missouri, brought a federal lawsuit on behalf of the state against N.O.W., claiming that the organization had violated the Sherman Act, a federal antitrust law prohibiting combinations in restraint of trade. Ashcroft filed this suit even though the boycott was not commercially motivated but had been undertaken to advance a legislative goal, N.O.W. was not a competitor of Missouri businesses, and N.O.W. had no control over whether any other groups took their convention business to Missouri.

This lawsuit, if successful, could have stifled N.O.W.’s free speech rights and political activities. It was soundly rejected by the United States District Court, which held that the antitrust laws did not apply to a noncommercial, politically-motivated boycott. *Missouri v. National Organization for Women*, 467 F. Supp. 289 (W.D. Mo. 1979). The trial court stated that “[a]pplication of the Sherman Act to N.O.W.’s boycott campaign also would involve serious questions concerning the right of petition and the freedom of association protected by the First Amendment.” *Id.* at 304.

Nonetheless, Ashcroft filed an appeal on behalf of Missouri with the United States Court of Appeals for the Eighth Circuit. The Court of Appeals, in a 2-1 decision, upheld the lower court ruling in favor of N.O.W., stating that “the right to petition is of such importance that it is not an improper interference even when exercised by way of a boycott.” *Missouri v. National Organization for Women*, 620 F.2d 1301, 1317 (8th Cir. 1980). Ashcroft then asked the United States Supreme Court to hear the case; the Court refused. *Missouri v. National Organization for Women*, 449 U.S. 842 (1980) (denying *cert.*). It had taken N.O.W. more than two and a half years of litigation to prevail in this lawsuit.

Ashcroft’s litigation against N.O.W. not only evidenced his disdain for the anti-discrimination movement seeking to establish without question women’s right to equality under the Constitution, but produced evidence of his ties to right-wing organizations, which became even more apparent in later years. For example, early in the litigation against N.O.W., relentless ERA-opponent and radical right leader Phyllis Schlafly wrote a note to Ashcroft (whom she addressed as “Dear John”) concerning the lawsuit that thanked him for his “leadership in this matter.” (Schlafly signed the letter “Faithfully, Phyllis”.) Letter from Phyllis Schlafly to John Ashcroft (Mar. 28, 1978).

It is well known that Schlafly’s Eagle Forum had opposed the ERA in part by using gay-baiting tactics, claiming that the ERA would be used to advance gay rights. For example, the Eagle Forum frequently linked N.O.W., which it called “[t]he principal organization spearheading the political push for ERA,” with support for lesbian rights. And in a publication entitled “The ERA-Gay Rights Connection,” the Eagle Forum called on ERA proponents to “prove that ERA will NOT lock ‘gay rights’ into the U.S. Constitution.”

Ashcroft was repeatedly criticized for bringing and pursuing the lawsuit against N.O.W. In fact, when Ashcroft’s plans to file suit had become public, the *St. Louis Post-Dispatch* urged him not to proceed, citing N.O.W.’s free speech rights:

When the National Organization for Women, or any other group, advocates a convention boycott of states that have not ratified the Equal Rights Amendment, it is exercising the basic American right to free speech. Missouri Attorney General John D. Ashcroft should realize that and should decide not to file suit against NOW charging it with restraint of trade. NOW does not have the power to force any organization to choose one location over another; but it does have the right to ask other groups to use a state’s record on the ERA in choosing a convention site.

“Ashcroft and the ERA,” *St. Louis Post-Dispatch* (Feb. 27, 1978). Ashcroft went ahead with the suit. After the District Court ruling in favor of N.O.W., the *St. Louis Post-Dispatch* wrote:

Judge Elmo Hunter's decision is a reaffirmation of the First Amendment right of all Americans to advocate the use of economic leverage as a means of political protest. . . The point that Mr. Ashcroft missed completely is that *all* that NOW has at its disposal is an idea – that persons or organizations that believe in the ERA ought not to reward non-ratifying states with their business. With that, one is free to agree or disagree. But beyond stating its case, NOW is powerless to compel anyone to abide by its position. . . All NOW can do is make its case and hope that it is persuasive. . . To deprive NOW of that single weapon would have been to deprive it of one of America's most cherished freedoms, the right to advocate ideas. That is the mischief Mr. Ashcroft tried unsuccessfully to accomplish.

"A Lesson for Mr. Ashcroft," *St. Louis Post-Dispatch* (Feb. 22, 1979) (emphasis in original).

IV. ASHCROFT AND RELIGIOUS INSTITUTIONS

A fundamental premise of the First Amendment is that "the State is firmly committed to a position of neutrality" with respect to religion. *School District of Abington Township v. Schempp*, 374 U.S. 203, 226 (1963). The Supreme Court has repeatedly reaffirmed the requirement of government neutrality toward religion, explaining that "[a] proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of 'neutrality' toward religion, favoring neither one religion over others nor religious adherents collectively over nonadherents." *Board of Education of Kiryas Joel Village School District v. Grumet*, 114 S. Ct. 2481, 2487 (1994). Despite this clear constitutional mandate, John Ashcroft's record reflects several disturbing incidents that suggest preferential treatment of religious institutions.

For example, in 1985, Governor Ashcroft supported and signed into law a bill eliminating the requirement that colleges training Missouri teachers be accredited by a regional accrediting agency, such as the North Central Association of Colleges and Secondary Schools. Unless a teacher were trained at such an accredited college, he or she could not be certified to teach in Missouri's public schools. The law eliminating that requirement was enacted to benefit the Baptist Bible College in Springfield, Missouri — Jerry Falwell's alma mater — a sectarian institution that for reasons of "philosophical differences," according to the school, had never sought accreditation from North Central. See "Bible College Hopes to be Accredited," *St. Louis Post-Dispatch* (Oct. 21, 1985). Baptist Bible

College was accredited by the American Association of Bible Colleges, an organization made up of schools that prepare students for Christian ministry.

Baptist Bible College had asked the Missouri Board of Education to accept its accreditation from the American Association of Bible Colleges in lieu of accreditation from North Central, but was turned down unanimously by the Board. According to one Board member, "We voted against changing the rule because we believed it involved a church-state issue. We believed it was wrong for the board, which is in charge of public education, to allow the American Association of Bible Colleges to be part of the Missouri public school teacher certification process." "Bible College Hopes to be Accredited," *St. Louis Post-Dispatch* (Oct. 21, 1985).

Baptist Bible College then turned to the state legislature, which passed the new rule prohibiting the Board of Education from requiring certification from a regional association. Ashcroft traveled to the campus of Baptist Bible College in order to sign the bill into law there, and claimed the new rule would "open up the teacher certification process." *Id.* According to the *St. Louis Post-Dispatch*, this was "the only bill-signing ceremony the governor held this year on a private college campus." *Id.* Educators criticized the measure. The former president of the state's National Education Association said, "We're appalled. It's going to weaken the whole state teacher training program." "Ashcroft Sticks by Guns on College Accreditation Law Change," *St. Louis Post-Dispatch* (Nov. 8, 1985). And the head of the National Council for Accreditation of Teacher Education said that the new rule would make Missouri the only state that does not require regional accreditation of colleges offering teacher education. "Bible College Hopes to be Accredited," *St. Louis Post-Dispatch* (Oct. 21, 1985).

In 1985, Missouri also had the dubious distinction of being the only state in the country to exempt church-run day care centers from even the most minimal of health and safety regulations. "The Governor and the Kids," *St. Louis Post-Dispatch* (June 13, 1985). This meant that such day care centers did not have to meet state fire codes or health requirements. Nonetheless, Ashcroft opposed legislative efforts to eliminate that special exemption. Ironically, Ashcroft claimed that his opposition to health and safety licensing requirements for church-run day care facilities was premised on his interest in "preserving the distinction between church and state and not having the state involved in licensing church operations wherever we can avoid it." "Lawmaker Says She'll Push for Daycare

Changes Despite Ashcroft's Opposition," *UPI* (Dec. 3, 1984). A bill introduced in 1985 to remove the special exemption for church-run day care centers failed even though it specifically prohibited the state from interfering in what was taught in such centers. And according to a 1992 report, bills to remove the special exemption had been introduced annually, without success; in the prior year, "Gov. John Ashcroft got it stalled in committee." "Maybe This Year," *Kansas City Star* (Jan. 26, 1992).

Ashcroft's opposition to the imposition of health and safety regulations on church-run day care centers raises serious concerns not only about his preferential treatment of religious institutions, but also about how he, as Attorney General, would interpret and implement so-called "charitable choice" laws. Would Ashcroft argue that churches and other religious institutions should be exempt from laws that generally prohibit discrimination in programs receiving federal funds? Would he argue that church-run drug treatment centers receiving "charitable choice" funds under recently enacted federal law be exempt from health and safety regulations? These concerns endanger the well-being of the persons who are the beneficiaries of such programs in addition to their right to be free from discrimination. They also undermine the requirement of government neutrality toward religion, a principle to which anyone who would serve as the United States Attorney General must be committed.

V. GOVERNOR ASHCROFT'S USE OF THE VETO

During his eight years as Governor, John Ashcroft vetoed many pieces of legislation. That, in and of itself, is not necessarily extraordinary. However, Ashcroft used his veto to balance the state budget or otherwise reject legislation in a way that increased the burden on those least able to bear it. He did this to such an extent that it earned him a stinging rebuke when he left office:

Too often, people on the lower rungs of society -- the poor, the mentally disabled, the handicapped -- were short-changed when the governor made spending cuts to balance the budget as the constitution requires. For reasons that remain a mystery, Mr. Ashcroft always seemed unaware of their needs and their pleas.

“As Governor Ashcroft Leaves,” *St. Louis Post-Dispatch* (Jan. 10, 1993). If Ashcroft were confirmed as Attorney General, he would have significant responsibility for ensuring that all Americans have equal access to justice and the courts that provide for it. He would also oversee enforcement of the Americans with Disabilities Act as well as enforcement of the laws that prohibit fraud and abuse in federal programs that protect the poor. The Department of Justice also administers several grant programs dealing with issues such as domestic violence, children exposed to violence and other victims of crime. In most cases involving the federal government, Ashcroft’s Department of Justice would be the lead lawyer for the United States. As such, his decisions about whether or not to pursue those cases would help shape policy on many legal matters, including many of those most important to the poor and to families. All of this makes relevant Ashcroft’s past record on hearing the “pleas” of the poor, the abused and the disenfranchised. In many respects, that record is deeply troubling.

A. Poor and Abused Children

Ashcroft’s vetoes had a tremendous impact on children, especially those who were most vulnerable due to severe abuse and neglect. A 1992 *St. Louis Post-Dispatch* story reported that Missouri was ranked 33rd out of 50 states in an examination by the Center for the Study of Social Policy of indices of child well-being, including access to health care, the infant mortality rate, the high school dropout rate and the generosity of state welfare benefits. *St. Louis Post-Dispatch* (March 1, 1992). Likewise, in 1992, the Children’s Defense Fund issued a report on the state of children nationwide. The report found that the number of children living in poverty in Missouri had increased almost twice as fast during the 1980s as the national average. In Missouri, the rate of increase was 19.2% while it was 11.9% for the country as a whole. The study also found that both black and white children in Missouri were more likely to be poor than children in the same racial groups in the nation as a whole. *St. Louis Post-Dispatch* (July 8, 1992).

Despite the increasingly dire situation for Missouri’s children, Ashcroft repeatedly vetoed badly needed support for Missouri’s most vulnerable children and families. Abused and troubled children were repeated victims of Ashcroft vetoes. In the FY 1987 appropriations process, Ashcroft vetoed \$750,000 in funds approved by the legislature for severely abused and neglected children. (Veto Letter on HB1011 6/27/86). At that time,

the Missouri legislature had only twice in the state's history mustered the two-thirds majority necessary in both house to overturn a gubernatorial veto. *St. Louis Post-Dispatch* (Sept. 4, 1986). However, this budget cut was so draconian that the Missouri House overrode Ashcroft's veto and the Senate almost did, falling only 3 votes short. *St. Louis Post-Dispatch* (Sept. 10, 1986). Ashcroft's significant lobbying on behalf of his cut earned him criticism from both sides of the aisle in the Missouri Senate and seemed especially unnecessary in light of the state's projected surplus of 2 to 5 million dollars. *St. Louis Post-Dispatch* (Oct. 1, 1986).

In an editorial supporting the override effort, the *St. Louis-Post Dispatch* wrote:

A veto override would mark a political setback for Gov. Ashcroft. But it also would represent the right step by the state to offer protection to children who can't protect themselves and, hence, prevent these youngsters from falling through the cracks. The bill that the governor vetoed eliminated quality residential treatment for these children. Unfortunately, that level of service is available nowhere else in Missouri...

If the state doesn't spend the money to give these children proper care now, there is a real possibility that many of them will end up in mental hospitals and prisons. And that will mean spending millions later on problems that could have been brought under control with a lot less money. *St. Louis Post-Dispatch* (Sept. 8, 1986).

Nonetheless, Governor Ashcroft again vetoed money for abused children in the FY 1991 funding process. This time, he cut \$1.5 million in rate increases for the programs that serve abused children. (Veto Letter on HB1011, 6/21/90.) An editorial in the *St. Louis Post-Dispatch* called this veto "regrettable." *St. Louis Post-Dispatch* (June 25, 1990).

During the FY 1992 budget cycle, Ashcroft actually recommended some increases in spending for abused and troubled children. Nevertheless, when the time came to make the hard choices about what to fund and what to leave underfunded due to reduced revenues during a national recession, children lost out. Ashcroft ultimately vetoed some of the very funds he had recommended and the legislature had appropriated, including \$250,000 for children's treatment services, \$500,000 for residential treatment for children and \$12,292 for residential group home placements. In addition, Ashcroft vetoed \$720,472 in funding for the foster care program. (Veto Letter on HB11, 6/27/91.)

In the FY1993 appropriations process, Ashcroft's last as governor, he vetoed \$2.1 million intended to expand residential treatment facilities for abused and neglected children.

(Veto Letter on HB1011, 6/26/92.) One children's advocate, Paul Dow, noted that this single cut represented more than 25% of Ashcroft's total of \$8.1 million in vetoes. He also said "This veto ensures that 345 of the current 400 children on the waiting list will not receive services they so desperately need." *St. Louis Post-Dispatch* (June 27, 1992).

Children suffered real harm as a result of all of these budget cuts. According to the *St. Louis Post-Dispatch*, when Ashcroft became governor in 1985 there were 200 children on the waiting list for residential treatment statewide, children with an immediate need for services. By 1992, that number had doubled. *St. Louis Post-Dispatch* (March, 1 1992).

B. Domestic Violence

For fiscal year 1991, Governor Ashcroft vetoed \$200,000 in funds to help victims of spousal abuse. (Veto Letter on HB1011, 6/21/90; *Columbia Daily Tribune* June 22, 1990; *Kansas City Star* June 22, 1990.) In his veto letter, Ashcroft defended his position by arguing that funding for victims of domestic violence was already available through the Department of Public Safety but he reduced to zero the amount of money available for domestic violence from the state's general revenues. (Veto Letter on HB1011, 6/21/90.)

Again in 1992 Ashcroft vetoed \$250,000 in funding for domestic violence programs, stating that a \$100,000 increase in federal funds over the previous year's level was available. Again he eliminated any funding for domestic violence from the state's general revenue fund. (Veto Letter on HB1011, 6/26/92.) Colleen Coble, executive director of the Missouri Coalition Against Domestic Violence, called the veto "reprehensible" and noted that "[m]ost of these programs are literally struggling to stay afloat." She further noted that the federal funds that Ashcroft referred to were not technically free to be used just for victims of domestic violence. Instead, the funding cited by Ashcroft was Missouri's portion of a federal program to assist victims of crime. Advocates for victims of domestic violence had to compete with prosecutors and other programs for access to any share of these funds. *Daily Capital News* (June 30, 1992).

Despite Ashcroft's assertions in each veto letter that domestic violence funding was available from some other source, that funding was deemed woefully inadequate. Colleen Coble noted, "There are more animal shelters in the state than battered women's shelters [in Missouri]." She further noted that every county in Missouri has some form of animal control

but the overwhelming majority of Missouri counties had no domestic violence services. *St. Louis Post-Dispatch* (Sept. 2, 1990). In an interview two years later Ms. Coble stated, “Only 20 of the 114 [Missouri] counties provide any services at all ... One-third of all the state’s shelter beds are in Kansas City. There are only 50 in the whole St. Louis area. It’s arguable that St. Louis is the least well-served city in the country.” *St. Louis Post-Dispatch* (March 3, 1992)

C. Poor families

Ashcroft repeatedly vetoed funds appropriated to assist the state’s most vulnerable families – even when such vetoes meant foregoing badly needed infusions of federal financial assistance. For example, in 1986 Ashcroft vetoed a \$2.5 million appropriation aimed at increasing benefits to poor families on public assistance. (Veto Letter on HB 1011, 6/27/86) This veto, which saved about \$975,000 in state funds, caused the state to lose \$1.5 million in federal assistance. And, as Carol Wehri, an advocate for the state’s poor pointed out, the cut “cost more in terms of lost human potential and family stability.” *St. Louis Post-Dispatch* (July 3, 1986.)

That same year, Ashcroft vetoed \$600,000 in emergency assistance funds to assist families with children who were homeless or on the verge of eviction. (Veto Letter on HB1011 6/27/86.) This veto involved only \$300,000 in state funds, which would have been matched by an equal amount of federal funds. *St. Louis Post-Dispatch* (July 3, 1986). At the time of the veto, the Missouri Association for Social Welfare stated that Ashcroft’s veto was an illustration of the “state’s continued indifference to the plight of the homeless in the state.” *Springfield News-Leader* (June 21, 1986)

In 1987, in another move that disadvantaged poor families, Ashcroft vetoed \$1.27 million to provide additional subsidized day care slots for poor children. (Veto Letter for HB11 6/29/87). The approximately 600-700 slots were intended primarily for the children of the working poor and poor parents on welfare who were working in low-paying jobs or attending job training or educational programs. *St. Louis Post-Dispatch* (July 12, 1987). Senate Appropriations Committee Chairman Roger Wilson called this veto “one of the meanest vetoes I saw.” *St. Louis Post-Dispatch* (June 30, 1987).

Despite Ashcroft’s record on refusing to provide adequate funding for the programs and services needed by vulnerable families and children, President George Bush in 1992 appointed Ashcroft to head a new commission on America’s urban families. At the time, an

editorial in the *St. Louis Post-Dispatch* stated, "Mr. Ashcroft's only personal contribution to the debate on urban families has been to place unrealistic responsibilities on those who need assistance, demanding that they solve their own problems with little or no state help." The editorial concluded with this paragraph:

Why would the president want the proposed families commission to be headed by a governor whose state ranks low in spending on family needs? Perhaps Mr. Ashcroft's attempts to solve complex social problems on the cheap is what recommended him to Mr. Bush. Or, worse, perhaps Mr. Bush is no more serious than Mr. Ashcroft has been about tackling the problems facing urban families. *St. Louis Post-Dispatch* (March 9, 1992).

D. Maternity Leave

On July 13, 1990, Ashcroft vetoed a bill that would have provided eight weeks of unpaid leave to new birth and adoptive mothers. (Veto Letter on SB542, 7/13/90). This bill was even less helpful to families than a similar proposal debated at the national level that had been vetoed by President George Bush just two weeks earlier. The Missouri bill would have provided leave only for mothers, not for fathers, and would have been limited to leave to care only for very young children. *St. Louis Post-Dispatch* (May 27, 1990).

The *St. Louis Post-Dispatch* condemned Ashcroft's veto in an editorial: "The veto of this bill pitted the welfare of business against the welfare of the family - and the family lost." *St. Louis Post-Dispatch* (July 16, 1990). Then-Lieutenant Governor Mel Carnahan also criticized the veto, pointing out the disconnect between the veto and Ashcroft's observance of "Family Week" in Missouri. A news story published by the UPI summarized Carnahan's comments:

John Ashcroft is living in the 1950s, the world of Ward and June Cleaver....The Governor states the obvious by saying American family life can be enhanced by spending more time with children, eating meals together and encouraging high moral values. Missouri's families are looking for leadership from their governor, not sermonizing ... Working mothers and their infants need the protection that Ashcroft has so callously denied them ... There is more than a taint of hypocrisy on the part of a governor who discourages even minimal leave to care for children. *UPI* (Aug. 20, 1990).

E. Minimum Wage

As of 1990, the overwhelming majority of states had minimum wage statutes, but Missouri did not. *St. Louis Post-Dispatch* (Feb. 20, 1990) Despite this, and broad support in the legislature for a state minimum wage, Ashcroft twice took the extreme position of vetoing bills to establish such a wage.

On July 14, 1989, Ashcroft vetoed a bill that would have established a state minimum wage in Missouri. In vetoing the bill, Ashcroft contended that it contained drafting errors, would have applied to babysitters, and would have required group foster care homes to pay time and a half for house parents. The response from local labor leaders was swift and vehement. Don Owens, secretary-treasurer of the Missouri State Labor Council AFL-CIO called Ashcroft "hypocritical." *Springfield News-Leader* (July 15, 1989). Meanwhile, business lobbyists praised Ashcroft's move. *Columbia Daily Tribune* (July 15, 1989).

Undeterred, the Missouri legislature sent Ashcroft a new minimum wage bill in February 1990. In the new bill, sponsors worked to address all of the concerns expressed in the governor's 1989 veto message, and even restricted the bill further on their own initiative. *Daily Capital News* (Feb. 16, 1990). In an editorial, the *St. Louis Post-Dispatch* urged Ashcroft to sign the new bill even while expressing concern that it was "weak." *St. Louis Post-Dispatch* (Feb. 20, 1990). On March 2, 1990, Ashcroft vetoed the new minimum wage bill, claiming that it might have led to a lawsuit in which a judge might have found that prison inmates were state employees and thus might have required the state to pay the minimum wage to prisoners. He also raised concerns that the bill would have required summer camps to pay the minimum wage and overtime wages. (Veto Letter on HB1048, 3/2/90). This time the response from the bill's sponsors and supporters was even more emphatic. Duke McVey, president of the Missouri AFL-CIO, called the governor's reasoning "a subterfuge" and accused Ashcroft of "fronting for the people with the \$800 suits." State senator Edwin Dirck, a supporter of the bill, noted that Missouri was one of only six states without a law establishing a state minimum wage. He went on to say, "I'm tired of fooling around. ... It's time to give the people a chance to vote on this issue." *St. Louis Post-Dispatch* (March 3, 1990).

Less than two weeks after Ashcroft vetoed the state minimum wage bill, the Missouri House tentatively approved a bill to place the minimum wage issue — explicitly exempting prisoners from coverage — directly before the Missouri voters. *St. Louis Post-Dispatch* (March 16, 1990). Then, on April 18, 1990, the Senate passed a new version of the bill by a unanimous vote. After that overwhelming vote, Ashcroft finally signaled that he would be willing to sign the bill, and he did so.

VI. ASHCROFT'S NOMINATIONS AND APPOINTMENTS

John Ashcroft, as Missouri's governor, made numerous executive and judicial nominations and appointments. As with virtually all chief executives, most of these appointments were not controversial. In addition, as his supporters have stated, Governor Ashcroft did appoint a number of women and minorities to state offices and the state bench. Nevertheless, his record in this area raises troubling questions as well.

In Missouri, supreme and appellate court judges are appointed by the governor from three choices submitted by 7-member judicial appellate commissions. A similar process, with 5-member commissions, is followed for lower court judges in more populous areas. The commissions are composed of a selected judge (who was appointed to the bench by the governor), with the selection of the remaining members divided equally between the governor and attorneys chosen by bar groups. After appointment by the governor, these judges later stand for retention election. Other lower court judges are directly elected by the voters. (*See Mo. Const., Art. V, Sec. 25.*) As in the federal government, some executive appointments are subject to Senate confirmation.

A. Tapping friends, contributors for state judgeships

While Governor of Missouri, particularly during his first term, Ashcroft was criticized for favoring political friends and campaign contributors in making judicial and executive appointments. (*See St. Louis Post-Dispatch, March 20-21, 1988; UPI, July 16, 1985.*) For instance, in 1988, the *St. Louis Post-Dispatch* published a survey showing that 12 of Ashcroft's first 24 judicial appointees — or their spouses — had contributed to his

gubernatorial campaign. (*St. Louis Post-Dispatch, March 20, 1988*.) In addition, according to the *Post*, in nine of those twelve cases, the person given the judicial appointment by Ashcroft was the only one of the three finalists chosen by the judicial commissions who had contributed to the governor. (*Id.*)

Although comparable statistics were not available for later years, we did track this question throughout Ashcroft's tenure with respect to one of his most important sets of appointments: to the Missouri Supreme Court. Governor Ashcroft had the opportunity to appoint all members of the seven-person Supreme Court. (*St. Louis Post-Dispatch, Aug. 8, 1992; Kansas City Star, Aug. 8, 1992*.) Five of the seven individuals who received appointments were either close personal friends, subordinates, or political or financial supporters.

1. Ashcroft judicial pick spurs state lawmakers to urge new rules in choosing state judges.

The most egregious example of Ashcroft's favoritism is the case of Edward D. "Chip" Robertson, Jr. Robertson was Governor Ashcroft's chief of staff and had served as a top deputy when Ashcroft was Missouri Attorney General. (*Kansas City Star, June 30, 1985*.) When appointed to the Missouri Supreme Court, Robertson was 33 years old, had been out of law school for only 8 years, and had no judicial experience. (*St. Louis Post-Dispatch, June 28, 1985, March 21, 1988; Kansas City Times, July 2, 1985*.) Ashcroft chose Robertson over two other highly qualified candidates who were sitting appellate court judges. (*St. Louis Post-Dispatch, March 20-21, 1988*.) Ashcroft's choice of Robertson for this position caused a firestorm of controversy and he was criticized in articles and editorials. (*Springfield Daily News, June 28, 1985; St. Louis Post-Dispatch, June 28, 1985; St. Louis Post-Dispatch, March 20, 1988*.)

After the Robertson appointment, the state Senate Pro Tem and Majority Leader established a special committee to examine the state's system of nominating and appointing judges and to propose legislation to revise the system. (*St. Louis Post-Dispatch, July 7, 1985; Kansas City Star, June 30, 1985; UPI, July 16, 1985*.) One of the changes recommended was having the Senate confirm nominations to the Supreme Court. Ashcroft opposed the proposal to submit Supreme Court nominations to the Senate where – he said – “politics reigned supreme.” (*St. Louis Post-Dispatch, July 7, 1985*.) He said that the current system worked well and that there was no reason to change it. (*Id.*)

2. Ashcroft places contributor on state Supreme Court. Ashcroft's appointment of Ann K. Covington, the first woman to serve on the Missouri Supreme Court, also sparked a controversy after it was revealed that Covington had contributed \$1,000.00 to Ashcroft's gubernatorial campaign just weeks before he appointed her to the state court of appeals in Kansas City in 1987. (*Columbia Missourian*, Jan. 31, 1988; *St. Louis Post-Dispatch*, March 21, 1988.) Ashcroft promoted Covington to the Missouri Supreme Court in 1988. In addition to having contributed to Ashcroft's campaign, Covington was Ashcroft's assistant from 1977-79 when he was Missouri Attorney General. (*St. Louis Post-Dispatch*, March 21, 1988; *Columbia Missourian*, Jan. 31, 1998.)

The other three Supreme Court justices closely linked to Ashcroft included Duane Benton, who was Ashcroft's state revenue director when appointed to the court; William Ray Price, Jr., a good friend of Ashcroft who had worked on his campaigns; and Stephen N. Limbaugh, Jr., the cousin of Rush Limbaugh, who had served as Ashcroft's political coordinator during his campaign for Governor. After Price's appointment, Senate Democratic critics "blasted the governor for what they said was an attempt to turn control of the Supreme Court over to Republican insiders," (*Kansas City Star*, April 8, 1992, Aug. 8, 1992, Aug. 17, 1991; *St. Louis Post-Dispatch*, Aug. 8, 1992).

B. Gov. Ashcroft appoints few women to top executive posts

In his eight years as Governor, John Ashcroft was also criticized for failing to demonstrate any genuine commitment to including women in the highest levels of his administration. For example, in 1989, the *News-Leader* reported that "[i]n national surveys on gubernatorial appointments of women to high-level administrative posts, Ashcroft has consistently ranked at or near the bottom compared with chief executives in other states." (Dec. 9, 1989.) That same year, a survey by the National Women's Political Caucus revealed that Ashcroft was the only governor in the country with an appointed Cabinet that did not include any women, ranking Ashcroft last among the nation's 40 governors. "Ashcroft's Men-Only Cabinet Noted," *Kansas City Times* (Feb. 25, 1989). In 1990, after serving as Governor for five years, Ashcroft had one woman in his Cabinet. In a 1991 editorial, the *St. Louis Post-Dispatch* took Ashcroft to task for the dearth of women in his Cabinet, noting that

The new GOP governor of Illinois, Jim Edgar, managed to find five women [for his Cabinet] — well educated and experienced in business and government — while two-

term GOP governor of Missouri, John Ashcroft, has seemingly been able to find only one. Maybe the Illinois experience suggests that the Missouri governor has not been searching very hard. When the National Women's Political Caucus questioned Mr. Ashcroft's choices several years ago, he said he couldn't find the right women for his administration. Mr. Edgar obviously feels comfortable having women as advisors. The contrast with Missouri speaks for itself.

"Comfortable With Women?" *St. Louis Post-Dispatch* (Feb. 6, 1991). Despite the criticism, Ashcroft ranked third from the bottom in appointing women to his cabinet according to NWPC's 1992 survey. *Riverfront Times* (Jan. 27-Feb. 2, 1993, at 17).

1. After more than 40 judicial appointments, Ashcroft names a second woman. In terms of Governor Ashcroft's appointment of women to the state judiciary, it was reported in late 1988, when Ashcroft was about to start his second term and had just appointed Jean Hamilton to the state Court of Appeals, that Hamilton was only the second woman among at least 48 judicial appointments that Ashcroft had made. "Gov. Ashcroft Appoints Woman to St. Louis Appellate Bench," *St. Louis Post-Dispatch* (Dec. 6, 1988). The head of the judiciary committee of the Women Lawyers Association in St. Louis said that the Association had "long urged Ashcroft . . . to appoint more women to judgeships." *Id.* A study of Ashcroft's judicial appointments reported on by the press in February 1989 stated that Missouri continued to be "one of the lowest states in the country in percentage of women judges." "Ashcroft is Ranked Last On Women as Key Aides," *St. Louis Post-Dispatch* (Feb. 25, 1989). As noted above, Ashcroft appointed Ann K. Covington as the first woman on the state Supreme Court. In addition, as discussed below, he appointed an African American woman to the state bench in 1991. However, throughout Ashcroft's tenure, observers remained critical of the lack of gender diversity in his appointments. (*St. Louis Post-Dispatch*, Jan. 3, 1993, May 26, 1991).

With respect to the appointment of African Americans, Ashcroft's record was mixed. Ashcroft supporters have released a 1991 letter from an African American bar association thanking Ashcroft for appointing an African American woman to an appellate court post, stating that "there is still much that needs to be done to increase the number of minorities and women on the bench," and stating that the appointment and Ashcroft's record in the area are "positive indicators of your progressive sense of fairness and equity." (Letter from Mound City Bar Assn. to Gov. Ashcroft, April 1, 1991.) Other Missourians, however, have criticized Ashcroft on this score. A former member of one judicial

1076



Tipton Police Department

Tipton, Missouri 65081
(816) 433-2620

mg

August 27, 1999

RECEIVED SEP 01 1999

Senator John Ashcroft
US Senate
Washington DC 20510

RE: Ronnie White

Dear Senator:

I am writing this letter in regard to Judge Ronnie White who has been nominated to be a federal district judge.

I strongly feel that Ronnie White should not be appointed as a federal judge. As it is our responsibility to enforce the laws, we in turn, need judges that will uphold these laws in court.

Therefore, I am requesting that you NOT support his nomination.

Sincerely,

A handwritten signature in dark ink, appearing to read "Leo Petree".

Leo Petree
Tipton Chief of Police

7163583
2420943 10/1 ✓

LP/nk

1077

RECEIVED AUG 27 1999

Mc



W.J. PIERCE • SHERIFF OF JASPER COUNTY

JASPER COUNTY LAW ENFORCEMENT CENTER
405 EAST 5TH
CARTHAGE, MISSOURI 64836 PH 1: 35

CARTHAGE OFFICE (417) 358-0425
DETENTION CENTER (417) 358-8177
(417) 624-1601
FAX (417) 358-5600

August 23, 1999

Honorable Senator John Ashcroft
316 Hart Office Building
Washington, D.C. 20510

Dear Senator Ashcroft:

Recently I attended our Missouri State Sheriff's Training in Kansas City, Missouri. While in attendance the Sheriff's discussed the fact that Judge Ronnie White has been nominated to become a Federal Judge.

In December of 1991, myself and several members of the Jasper County Sheriff's Office attended the services of Pam Jones in California, Missouri. We observed some of the after effects of the senseless, brutal killings carried out by James Johnson. Johnson was tried, convicted and sentenced. So be it.

After reading Judge White's opinion I felt it necessary to write this letter asking you to oppose Judge White's nomination and to persuade fellow Senators to do likewise.

Sincerely,

W.J. Pierce
Sheriff of Jasper County

7164231
2421977 *10/5*

mb

Phone: 573-224-3319
573-224-3219
Fax: 573-224-3904



Wayne County Courthouse
Greenville, Missouri
63944

August 13, 1999

RECEIVED AUG 23 1999

To: Senator John Ashcroft
U. S. Senate
170 Russell Office Building
Washington, D. C. 20510-2503

7164213
242935 10/5
✓

Subject: Nomination of Judge Ronnie L. White for U. S. District Judge

Dear Senator,

As Sheriff of Wayne County, Missouri, I ask that you oppose the confirmation, which is pending action by the U. S. Senate, of Judge Ronnie L. White of the Missouri Supreme Court to the position of U. S. District Court Judge.

Since October 1995, when he was appointed to the Missouri Supreme Court, Judge White has rendered numerous opinions, which I feel go against the Statutes of Missouri and against Law Enforcement in General. One of his most recent opinions was to overturn the conviction and sentence to death of James Johnson. In December, 1991, Sheriff Charles Smith of Cooper County, Missouri, Deputy Sheriff Les Roark of Moniteau County, Missouri, Deputy Sheriff Sandra Wilson of Miller County, Missouri, and Mrs. Pam Jones, wife of Moniteau County Sheriff Kenny Jones were murdered by Johnson. Johnson was tried by jury, convicted and sentenced to death. When the case reached the Missouri Supreme Court, Judge White was the only judge voting to overturn the verdict. The Johnson case is not the only anti-death penalty ruling by Judge White. He has voted against capital punishment more than any other judge.

The deterrent value of capital punishment saves lives every day in this country. Effective Law Enforcement saves lives every day in this country. Therefore, we need Judges who will support both, Judge Ronnie L. White, through his opinions, supports neither. Please vote against his appointment for life to the position of U. S. District Judge.

Sincerely,

Larry W. Plunkett Sr.
Larry W. Plunkett Sr., Sheriff
Wayne County, Missouri



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January 16, 2001

Hon. Patrick J. Leahy
U.S. Senate Committee on the Judiciary
Room SD-224, Dirksen Senate Office Building
Washington, D.C. 20510-6275

Fax: 202-224-9102

Dear Senator Leahy:

The Polish American Congress wishes to publicly state its support of John Ashcroft for appointment as Attorney General.

Those who attack him for his principled stand on abortion, ignore his equally important position regarding the abuse of women. Those who impartially examine his record will learn that he was a co-sponsor of the Omnibus Crime Control Act of 1997, which served to reauthorize the Violence Against Women Act.

Those who imply that he is soft on discrimination, fail to recall that, as Governor of Missouri, he signed that state's first Hate Crimes Bill, which defined ethnic intimidation as a crime. It is important to us that the legislation provided protection from crimes motivated by race, color or national origin.

In the course of defending Senator Ashcroft's appointment against negative allegations, it has been all too easy to overlook his affirmative record. For the vast majority of Americans, including, of course, Polish Americans, it is important to note his efforts on behalf of law-abiding citizens and the victims of crime.

As Missouri's Governor, he energetically promoted the Victims' Rights Constitutional Amendment, mindful of the suffering and loss occasioned by criminal acts. As Senator, he supported tougher penalties for the use of guns in the commission of crime. He has an equally strong record in the fight against drugs, which are commonly known to be a major cause of crime.

Senator Ashcroft's respect for the Right to Life earns him the respect of the Polish American community. Defense of the unborn is the highest of callings and, when combined with his progressive sense of fairness and equity, indicates a firm compassion for those who are otherwise defenseless, as well as a humanitarian commitment. Likewise, his record for

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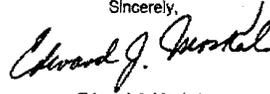
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appointing women to the bench and other highly responsible positions speaks convincingly of his respect for women's rights and progress.

The Polish American Congress is proud to represent the vast majority of Americans of Polish descent who support the nomination of President-elect George W. Bush of Attorney General-Designate John Ashcroft.

Sincerely,

A handwritten signature in cursive script that reads "Edward J. Moskal". The signature is written in dark ink and is positioned above the printed name and title.

Edward J. Moskal
President

EJM/rk

WASHINGTON RESEARCH
Washington World

Prudential Securities
 January 3, 2001

It is Lucr
 783-358-2987
 it_is_lucr@prusec.com

Ashcroft As Attorney General Is Good News For Microsoft, Techs, and Telcos

Technology investors got their Christmas present three days early on December 22 when President-elect George W. Bush named outgoing Missouri Senator John Ashcroft as his choice to serve as Attorney General.

In this capacity, Ashcroft would lead the U.S. Justice Department, which has hitherto been a recurrent headache for the technology community and is in part responsible, politically attuned market watchers believe, for the worst year on the technology-intensive Nasdaq since 1981 and the otherwise gloomy holiday season investors have suffered through this year.

We Believe Ashcroft Will Bring Welcome Change At Justice And Help Restore Investor Confidence Post The Dot-Com Crash. Despite earnest efforts by the Clinton administration to put a tech-friendly face on every government agency, the Justice Department has been the one agency to define its mission in terms of banning technologies – literally, outright banning them – and suing entrepreneurs.

Though other departments under Clinton did everything possible to bless technology and boost investor sentiment, the Justice Department more often than not practiced wanton obstructionism, in our opinion. The result was all too often a correct perception by investors of increased political risk and regulatory processes that were needlessly opaque, with correspondingly negative implications for stock valuations and wider-than-anticipated arbitrage spreads in certain high-profile telecommunications transactions.

This being the case, we find it hard to imagine Bush choosing a potential attorney general with better qualifications than Ashcroft to restore investor confidence and dispel the more extreme, valuation-depressing fears of political risk at a time when Congress is set to take up a slate of complex issues with ample potential to raise blood pressures among the investor class.

The issues at hand include online privacy, extra-jurisdictional taxation of online businesses, cyber-security rules, electronic eavesdropping laws, and a tangled mess of intellectual property disputes that have arisen since the 1998 passage of the Digital Millennium Copyright Act, a landmark statute that undergirds copyright protection in the New Economy.

Ashcroft's Background. In our opinion, there is much to recommend Ashcroft from a technology investor's point of view:

- Ashcroft was the first Senator to have a website with the official institutional sanction of the U.S. Senate. (Senator Edward Kennedy had a website earlier,

but it was an unofficial site constructed for him by a student at MIT.) Ashcroft was also the first federal official, in 1995, to conduct an online poll. (It was a petition drive in support of term limits which gathered upwards of 10,000 signators.)

- As Attorney General of Missouri in 1982, Ashcroft wrote an amicus brief joined by 16 other state attorneys general supporting Sony Corporation in the famed “Betamax” decision—*Sony Corporation, et. al, v. Universal Studios*—in which the Supreme Court affirmed the right of consumers to use the new technology (at that time) of video tape recorders to “time-shift” network broadcasts for private home viewing.
- Ashcroft chaired the Senate Judiciary subcommittee dealing with intellectual property (drafting the original Senate version of the DMCA) and likewise chaired the Senate Commerce subcommittee dealing with consumer protection, which is the subcommittee with primary oversight responsibilities for online privacy. At the last major Senate Commerce Committee hearing on Internet privacy, on May 25, 2000, at which FTC Chairman Robert Pitofsky formally requested authority to regulate online privacy, Ashcroft said he thought industry self-regulation was succeeding and questioned the need for new legislation.
- Ashcroft, more than any single Senator, went toe-to-toe with the Justice Department in challenging what we consider the Department’s unreasonable (and definitely not investment-friendly) attempts to ban or regulate encryption and to introduce CALEA-type regulatory proceedings from the telephone world into the world of computer communications. Such proceedings, which take their name from a statute outlining the obligations of telecommunications carriers to build wiretapping capabilities into their systems, are among the least transparent of any regulatory proceedings in the United States and involve the least accountability for the would-be regulator. We would regard CALEA controls on computer networks as costly and restrictive to innovation.
- Last year Ashcroft was the only Senator to co-sponsor Senator John McCain’s bill for a permanent extension of the moratorium on discriminatory Internet taxes.
- Ashcroft has a 92 percent rating from the Information Technology Industry Council over the past two Congresses, one of the strongest in the Senate, but this simple vote tally does not appropriately recognize the leadership role Ashcroft has played in making these votes happen in the first place, we feel. Further, it appears the only reason Ashcroft has a less than perfect score in the industry rating is his opposition to Permanent Normal Trade Relations (PNTR) with China, on human rights grounds.
- On the whole, we rate Ashcroft as a net positive for Microsoft shareholders, though he is much more in line with Senator Orrin Hatch, a Microsoft critic, on antitrust policy than most commentators realize. We rate Ashcroft a definite plus for B2C and B2B e-commerce stocks, particularly in the consumer retail and media spaces. We rate Ashcroft a plus for internet infrastructure and security stocks.
- Ashcroft’s direct influence on intellectual property issues will be limited, but his past record suggests he or his appointees may play a helpful role in brokering compromises to unsnarl the thorny tangle of copyright issues surrounding peer-to-peer file-sharing and Internet webcasting. We note that the Recording Industry Association of America (RIAA) lawsuit against Napster is apparently on its way to the Supreme Court through the Ninth Circuit, citing precedents from the Betamax case, and that Ashcroft’s instructions to the Solicitor General, including his decision to file or not file a brief on behalf of the United States, could ultimately have a decisive impact on the outcome.

- Finally, as a two-term former governor of Missouri and a two-term former attorney general of the Show-Me State, we suspect Ashcroft is a sufficiently strong administrator to rein in agencies within Justice, most notably the FBI, that have tended to pursue a technology agenda reflecting narrow institutional interests crowding out economic-cost benefit analysis and concerns for technological innovation through the economy as a whole.

What's Wrong At Justice? The Justice Department, as noted, has been the single federal agency most fiercely resistant to technological change. A case in point was the Department's obstinate insistence on attempting to ban or regulate encryption technology—a vital core technology to all digital communications – even though software offering powerful encryption capabilities, based on published algorithms, was already available, over the Internet, to anyone, free of charge, anywhere in the world. One proposal would have made distribution of encryption software a federal crime. Another proposal, which took the form of a 1996 bill dubbed the “McCain-Kerry Secure Public Networks Act” (S. 909), wielded every conceivable lever of industrial policy to make commercial deployment of encryption technology a practical impossibility unless such technology were regulated, sold only through licensed technology providers, and designed in such as way as to permit guaranteed access by government agencies to data in transmission or stored data, on an essentially immediate basis. The Justice Department additionally proposed that similar restrictions be put in place worldwide by a global network of multilateral treaties.

Needless to say, such proposals failed utterly on grounds of practicality and succeeded mostly only in moving industry leadership partly outside the United States to countries such as Israel and Ireland. But the spirit behind these plans remains, and even today the Department still consistently overreaches itself, in our opinion, on such issues as wiretapping, location-tracking, critical infrastructure “protection” programs designed more to increase agency budgets than to provide real security, and less ambitious but still regulatory and burdensome treaties on cyber-crime, which industry opposes.

The fundamental problem, in our view, is that Justice remains ill-prepared to cope with the convergence of computing and communications in a single, seamless digital world. Technology does indeed pose a challenge to modern law enforcement, but of greater import, in our opinion, has been a failure in leadership by the current attorney general, who has publicly said (in her press conference announcing the antitrust suit against Microsoft) that she does her work with a pencil because she finds her office computer too difficult to use. In such an environment, the component bureaucracies have every incentive to hold out for the impossible instead of seeking reasonable accommodations. As public choice economics suggests they will, such isolated bureaucracies tend to confuse their institutional interest with the public interest, and the mission they are to serve with their established, even if technologically obsolete, ways of doing business in the past.

A strong attorney general, by contrast, in our view, will balance public good with institutional self-interest and provide a sometimes necessary reality check on institutional self-aggrandizement. A strong attorney general should also, in our view, assure that traditional constituencies of the Justice Department, such as the state attorneys general and the plaintiff's bar, do not have influence over the Justice Department to the exclusion of other valid interests. Finally, we think, a strong attorney general will change the culture at Justice to look at changing technology as a law enforcement opportunity, not to mention crime-prevention opportunity, rather than a law-enforcement problem.

Ashcroft on Privacy, Internet Tax, Intellectual Property, Cyber Security, Electronic Eavesdropping, Carnivore, And Foreign Acquisitions of U.S. Telecommunications Companies.

- On privacy, the issue of interest to investors is primarily one of exposure to litigation as an enforcement tool and secondarily the loss of efficiency in advertising-based business models which might make certain current ventures less viable. The transfer of online marketing restrictions to the use of offline data is also a concern. On this point, Ashcroft, a critic of the trial bar, is firmly on the side of less regulation.
- Ashcroft has strongly supported a permanent moratorium on discriminatory taxation of Internet transactions. As attorney general, Ashcroft would have little direct impact on this issue in Congress except on the issue of multi-state tax and (potentially) regulatory jurisdiction, which could be vital. As Senator, Ashcroft supported a multi-state sourcing compact for the purposes of collecting taxes on mobile telephone services. However, he might question and possibly challenge on Constitutional grounds a less well-defined compact for the purpose of collecting and consolidating a variety of state taxes. An additional concern: the states assert they can already oblige remote merchants to collect a so-called streamlined sales tax without express authorization by Congress, which would surely impose other nexus restrictions absolutely not to the states' liking if it ever did grant such authorization. Instead, the states would prefer a Supreme Court ruling that effectively end runs what they deem to be Congressional interference. In this case, Ashcroft's instructions to a Solicitor General could very substantially shape the outcome.
- On intellectual property, Ashcroft strongly supports IP protections but breaks with hard IP protectionists on excessive restrictions of traditional fair use. It was largely Ashcroft, we believe, who struck the DMCA's careful balance between content providers' rights and the liability of online service providers for infringing materials.
- One of the more delicate areas of late has been the FBI's use of non-transparent Council on Foreign Investment in the U.S. (CFIUS) proceedings to block foreign acquisitions of U.S. telecommunications carriers on supposed national security grounds until the merged carriers give the FBI guaranteed access to their networks for wiretapping purposes according to detailed—and expensive—technical standards. Along with this would come, effectively, a permanent seat at the table for the FBI in deciding future network design issues. In our view, Ashcroft will give the FBI appropriate deference but nothing like the relative carte blanche the Bureau enjoys today. In other words, we believe Ashcroft will instead put the brakes on the FBI's bid to become a backdoor telecommunications regulator. We suspect that word from the transition effort will filter through to the current review of Deutsche Telekom, Voicestream, and Powertel.
- On eavesdropping, cyber-security, critical infrastructure protection, we again expect appropriate deference to the FBI tempered by a certain amount of Missourian "Show-Me State" skepticism and Ashcroft's strong insistence on undiluted Fourth Amendment Protections. The FBI badly damaged its inherent credibility with more than one legislator during the encryption wars – House Majority Leader and Carnivore critic Dick Army is in this category – and we suspect Ashcroft may be in this category as well.

Ashcroft on Antitrust and Microsoft. Ashcroft's law degree from the University of Chicago and his generally conservative outlook might make some believe he is an outright, Chicago-style antitrust skeptic, but this analysis in our view is quite superficial. Members of the House and Senate Judiciary Committees, as exemplified by Rep. Henry Hyde and Hatch, regard antitrust enforcement as their special purview, and take it seriously indeed. We believe Ashcroft's views on antitrust are in fact quite similar to and largely consistent with those of Hatch.

As Attorney General of Missouri, Ashcroft demonstrated his willingness to undertake antitrust prosecutions in a number of instances, most notably one dealing with the insurance industry. At the March 3, 1998 Senate Judiciary Committee hearing on antitrust issues in the software industry, Ashcroft put pointed questions to

Microsoft Bill Gates, asking in particular (rhetorically) how a ninety percent market share could not be a monopoly and (not rhetorically) how the screen placement of icons and links to online businesses could not be a competitive issue.

However, Ashcroft also asked about the technological significance of Java, and whether that, or the normal, rapid rate of change in the technology industry could affect Microsoft's market dominance. Ashcroft has frequently gone on record with his belief that government lawmaking and regulation, which is necessarily slow and deliberate, cannot possibly keep up with or attempt to match the rate of change in the technological economy. Ashcroft's frequent past statements that he favors "innovation, not regulation" are identical to the current Bush line.

Ashcroft was a strong and vocal supporter of the WorldCom-Sprint merger, which he saw as being in the best interests of consumers and the employment interests of his state. Yet rejection by regulators of the WorldCom-Sprint deal was a seminal event which helped trigger or at least coincided with a telecommunications selloff just as the findings of fact in the Microsoft antitrust case coincided with a technology selloff.

Ashcroft's policy on antitrust regulation, and that of the Bush administration generally, will likely be more circumspect than that of the Clinton administration, but in fact not fundamentally different on a philosophical level. The differences in policy will mostly arise on an administrative level.

- The Bush administration will probably devote fewer resources to high-profile antitrust cases—resources are already stretched desperately thin as it is—and it will abandon the "win at all costs, win by any means" strategy, we believe, that sometimes made the Microsoft case seem more like a high-profile Hollywood divorce case or an early Rudy Giuliani crackdown on Wall Street malfasants in criminal courts as reported with breathless sensationalism by the *New York Post* than the boring, technical piece of civil litigation Microsoft's legal team assumed they were arguing. The days of the Microsoft case being argued in the press as much as it is argued in the courtroom are over, we think.
- We believe it is highly unlikely that an Ashcroft Justice Department would use outside counsel in arguing cases such as Microsoft and Worldcom. An outside counsel, like a special prosecutor, has no incentive to do anything but "win" a case, even if the public interest might best be served by dropping the case or settling.
- The Bush administration will maintain a professional but (in our opinion) much more distant relationship with the state attorneys general, consumer activists, and the plaintiffs' bar. The state AG's have consistently been an exacerbating factor, mostly on behalf of the plaintiffs attorneys who are their primary political constituency. The AG's will get a respectful hearing, we think, but for them the party is over.
- The Bush administration will be more likely to accept settlement offers by companies seeking approval of deals if they address "horizontal" issues between direct competitors. The Bush administration would be less concerned with "vertical" mergers that allow one company to consolidate its supply chain but do not necessarily imply a horizontal issue. The Bush administration is less likely to require elaborate conditions on approval or companies seeking approval to find an up-front buyer for divested assets.
- The move toward a global antitrust enforcement authority, a pet project of former Assistant Attorney General Joel Klein, will be put on hold, we believe. It will move forward only, we believe, at a more

deliberate pace. The "hotline" said to exist between FTC Chairman Robert Pitofsky's antitrust team and that of European Commission antitrust enforcer Mario Monti will be decidedly less hot, we think.

On Microsoft, we see nothing to diminish the generally positive implications of a Bush election win and probably some reason to accentuate them.

- We disagree with a report in the New York Times suggesting that a Bush administration will "walk away" from the Justice Department's "resounding victory" in the trial court. Rather, we think that a Bush administration will have more realistic expectations of the sustainability of their case on appeal. Most legal experts we talk to believe the breakup order by Judge Thomas Penfield Jackson has almost no chance of survival.
- We believe that at this point, it is very likely that Jackson will be removed from any further role in the case because of numerous post-trial comments—and a history of opinionated comments after other trials—that call his judicial temperament into question.
- We believe it is increasingly likely that with Jackson's removal, the U.S. Court of Appeals will remand elements of the case back to the trial court for review in light of standards or guidelines the Appeals Court may set. The most likely element of the case to be remanded will be the remedy order, but all of it is fair game. We put odds of a remand over fifty percent.
- We believe that David Boies has no chance whatever of any continued role in the case in the Bush administration after his representation of Al Gore in the Florida election contest. Even without Florida, his continued role was highly unlikely. However, because Ashcroft's confirmation may take some time, we do not expect a full Bush administration Justice Department team to be in place by the time the Microsoft appeal goes to oral arguments on February 26 and 27. The government brief in the appeal will be filed January 12, before the Bush administration can have any hand in it. We believe that Douglas Melamed, the highly regarded acting head of the Antitrust division and the former Deputy of Joel Klein will most likely argue the case.
- We believe there is very little reason to suppose the Bush administration will intervene in the Microsoft's case until after an Appeals Court decision, particularly given the Court's likely rejection of Jackson's remedy order without any input from the Bush team at all.
- After the Appeals Court ruling, however, we believe the Bush administration could have considerable influence on the case in deciding whether and how to appeal the case or to settle it. The state attorneys general who are parties to the case have indicated they are not yet prepared to settle, but a Bush administration could do much to undercut the viability of their case if they choose to continue on their own.
- Finally, in the event of a remand, we believe Bush appointees will have a very strong role in crafting a remedy order that would be sustainable on appeal.
- In the end, we believe the Microsoft case will be old news as far as Ashcroft and the new Justice team are concerned. They will not abandon the case, since there appears to be no precedent for a Justice Department abandoning case that has preceded this far with a winning record for the prosecution. However, Ashcroft would come to the Justice Department with little enthusiasm for the case, no political capital vested in it, and most significantly, priorities that are radically different from those of the previous team.

Washington Research
Electron 2000



In sum, we believe that Ashcroft's nomination as attorney general from among the possibilities on the Republican side of the spectrum should reassure technology investors that political risk factors from adverse regulation or unforeseen litigation are probably at a minimum for the next few years. We have no doubt that other Republicans of a more traditional law-and-order bent might have been a disaster for technology investors and even worse than the incumbent management team, which has greatly marred the pro-technology record of the Clinton administration.



January 16, 2001

The Honorable Patrick Leahy
 Chairman
 Senate Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Senator Leahy:

I am writing out of concern regarding Senator John Ashcroft's commitment to the enforcement of our country's campaign finance laws. His record of possibly violating, and certainly evading, campaign laws, apparently demonstrates a disturbing disregard for their importance to our democracy. Where Senator Ashcroft has not been personally implicated, closely associated staff have. His record as an elected official has also been marked by steadfast opposition to strengthening campaign finance laws. Furthermore, he has a track record of prodigious fundraising from powerful interests with important matters pending before the Justice Department. This record requires a rigorous investigation by the Senate Committee on the Judiciary. A new Attorney General's record should give the public confidence that he or she will be fair and unbiased in the enforcement of all our nation's laws.

Yesterday's *Washington Post* article on Senator Ashcroft and the research of the National Voting Rights Institute raise serious questions about his conduct while serving as Missouri attorney general. Thomas A. Deuschle, Mr. Ashcroft's government-paid administrative assistant in the attorney general's office, stated in a 1983 sworn deposition that, during working hours, he engaged in fundraising and other political activities in support of Mr. Ashcroft's bid for governor. Furthermore, the Missouri State Republican Committee sent fundraising letters, bearing Mr. Ashcroft's signature, on Missouri attorney general letterhead. (Deposition of Thomas A. Deuschle, April 13, 1983, in *Inland Oil and Transport Co. v. John Ashcroft*, Case No. 82-4336-CV-C5 (W.D. Mo.)).

This conduct follows that suggested in a 34-page plan, identified by the *Post* as prepared for Mr. Ashcroft's gubernatorial campaign, that called for the use of state employees and facilities to promote his candidacy. When deposed in the same case as Mr. Deuschle, Mr. Ashcroft, on the advice of his attorney, declined to answer questions on the matter. To this day, Mr. Ashcroft has never undergone extensive questioning to ascertain his role and knowledge in the illegal activities that were going on in his office.

In any government office, the conduct of illegal political activities by government employees would, of course, be very troubling. But the fact that under Mr. Ashcroft's leadership as a state attorney general, illegal activities were taking place in his offices, on his behalf, is a grave concern. There should be no greater sensitivity to the requirements of the law than in the offices of the highest law enforcement officer of a state, or the nation. Whether Mr. Ashcroft knew of the violations, or not, the allegations raise serious questions of his leadership in general. Specifically, what tone did he set as attorney general, in his own office, with regard to adherence to, and respect for, campaign finance laws? This, and the matter of Mr. Ashcroft's potential personal complicity, are matters that require further investigation.

Another cause for concern is Senator Ashcroft's position on campaign finance reform legislation. I do not suggest that Senator Ashcroft's votes on specific campaign finance reform measures disqualify him from being confirmed as Attorney General. It is the legal grounds on which he has opposed such legislation that raises questions. In particular, Senator Ashcroft has opposed the McCain-Feingold bill on the grounds that it is unconstitutional. This raises the question of how Mr. Ashcroft would reconcile his sworn duty to uphold the Constitution, his view that McCain-Feingold violates the Constitution, and his potential obligation to enforce and defend the provisions of the bill should it become law? More generally, would he, as Attorney General, vigorously enforce other campaign finance laws that he has opposed as a legislator—the disclosure requirements for "527" political committees, for example.

Senator Ashcroft's history of prodigious political fundraising also raises important questions. As a candidate for political office over many years, Senator Ashcroft has collected millions of dollars in political contributions. These have created a long list of relationships and, undoubtedly, at least, debts of gratitude. The Senator is near the top of the list of recipients in the Senate of more than 40 industries. For example, according to the Center for Responsive Politics (CRP), the senator ranks fourth in the Senate for contributions from the oil and gas industry, second in the Senate for contributions from the auto industry, and second in the Senate for contributions from air transport companies. Many of these industries will, undoubtedly, have important matters pending before the Justice Department during the next Attorney General's time in office.

An appearance of impropriety would only be re-enforced by Senator Ashcroft's record of working aggressively for the interest groups that have been his major contributors. For example, he cosponsored several bills to delay stronger fuel efficiency standards, legislation championed by the automotive industry. He was one of nine senators co-sponsoring Senate Bill 1172, which would extend patent rights on eight drugs, including Claritin—the leading prescription drug of Schering-Plough, a pharmaceutical giant. The Ashcroft Victory Committee subsequently received a \$50,000 contribution from Schering-Plough, according to CRP.



Given this track record, we are concerned that as Attorney General, John Ashcroft's many important decisions would be made under a cloud of favoritism. For example:

- The Justice Department has been asked to approve a merger between American Airlines and TWA, which consumer groups warn would raise airline ticket prices for consumers. Last May, American Airlines contributed \$5,000 in soft money to the Ashcroft Victory Committee, a joint fundraising committee of Ashcroft's Senate campaign and the National Republican Senatorial Committee, according to reports filed with the Federal Election Commission. Ashcroft's campaign also got \$4,000 from the airline's Political Action Committee (PAC).
- As Attorney General, Ashcroft would be responsible for enforcing federal gun control laws. The senator was the beneficiary of nearly \$300,000 in spending by the National Rifle Association to back his Senate candidacy, according to Public Citizen. This included the single largest contribution by the NRA to any federal candidate during the 1999-2000 election cycle—a \$25,000 soft-money contribution to the Ashcroft Victory Committee.
- Several Ashcroft committees have collected more than \$18,000 from Microsoft, its PACs and executives. The Justice Department antitrust case against Microsoft is currently being appealed.

We are deeply concerned that President-elect Bush is nominating someone for whom so many actions will raise questions of propriety. Law enforcement, more than any other area of government, must be above reproach and immune from charges of favoritism. Most recent federal Attorney Generals have not been politicians. And no Attorney General in recent history has taken office with a history of campaign fundraising approaching Senator Ashcroft's. This issue warrants investigation and careful consideration by the Committee.

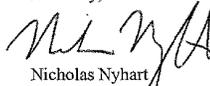
Lastly, Senator Ashcroft has been an unrepentant user of the soft-money loopholes in the current law. Arguably, his activities in setting up the American Values PAC, the Spirit of America PAC and the Ashcroft Victory PAC have, in fact, violated the law. Even if legal, or more probably, unenforced and commonplace, they show a willingness to tolerate the current state of lax campaign finance law enforcement. If, upon further inquiry, this is Senator Ashcroft's position, it is not a quality we should seek in a new Attorney General.

I hope that you and the Committee will aggressively investigate these concerns. A better understanding of the events surrounding Mr. Ashcroft's 1984 campaign for governor while he was Missouri's attorney general is long overdue, and critical at this juncture. He must explain how, as United States Attorney General, he would handle matters pertaining to generous donors to his past campaigns. Would he recuse himself? Would he vigorously enforce our current campaign laws and others passed by Congress even if he personally does not support them and they violate his personal interpretation of the Constitution?

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These are questions fairly raised by Senator Ashcroft's record that bear directly on his qualifications for the office of Attorney General of the United States. With more money in elections than ever, and candidates, interest groups and political committees pushing the bounds of the campaign finance law farther than ever, it has never been more critical that an Attorney General be committed to their enforcement. The experience of the soon-departing Attorney General is all the evidence one needs to show that these issues are important and politically charged—all the more reason that her successor should be someone who instills public confidence in his or her impartiality and dedication to the rule of law.

Sincerely,



Nicholas Nyhart
Executive Director



January 10, 2001

Dear Senator:

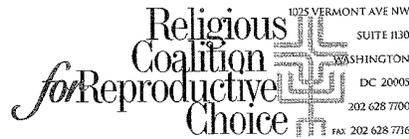
I am writing on behalf of Americans of all faiths who are pro-choice to urge you to oppose the confirmation of Senator John W. Ashcroft as U.S. attorney general. The Board of Directors of the Religious Coalition for Reproductive Choice—the national coalition of pro-choice Protestant and Jewish organizations—has taken the highly unusual step of opposing this confirmation. Our primary concerns are the nominee's extreme voting record on abortion and his lack of regard for religious diversity.

You will hear from dozens of groups concerned about women's rights. We agree that, based on his record, Senator Ashcroft will not impartially enforce laws that he has fought against for more than two decades and will promote his extreme views in judicial appointments and legislation review. However, his lack of respect for religious freedom, religious diversity, and individual conscience—as demonstrated by his voting record—is every bit as troubling. As just one example, Senator Ashcroft's advocacy of the "human life" constitutional amendment places him with the most extreme religious opponents of women's rights and reproductive choice. The premise of this amendment—that life begins at "fertilization"—indicates a lack of understanding or disregard of the religious principles underlying reproductive freedom.

We believe Senator Ashcroft is the wrong person to be the chief law enforcement officer of a religiously diverse nation such as ours, where freedom of religion is basic to our way of life. Our full statement opposing Senator Ashcroft is attached. We appreciate your consideration of our point of view and would be happy to answer questions and provide more information.

Sincerely,

Donna R. Gary
Co-Chair, Board of Directors
Religious Coalition for Reproductive Choice



**RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE OPPOSES
JOHN ASHCROFT AS U.S. ATTORNEY GENERAL
Voting Record Shows He Does Not Respect Religious Freedom,
Will Seek To Impose Personal Views**

The Board of Directors of the Religious Coalition for Reproductive Choice, after considering the public statements and legislative record of John W. Ashcroft, is opposing Senator Ashcroft's confirmation as U.S. attorney general. Mr. Ashcroft's extreme ideology and voting record regarding reproductive decisions show a lack of respect for religious freedom, religious diversity, and individual conscience. John Ashcroft is the wrong person to be the chief law enforcement officer of a religiously diverse nation such as ours, where freedom of religion is basic to our way of life.

The position of attorney general requires a person who has the confidence of a cross-section of the American public, will enforce the law in an even-handed manner, and is moderate. While Americans have varying opinions on abortion, the 2000 national Religious Coalition poll conducted by researcher Celinda Lake shows that 80 percent agree this is a moral decision, best left to a woman, her doctor, her family, and her God. Unlike Senator Ashcroft, the large majority of Americans reject government control, believing instead that women must be free to determine what is best for themselves and their families, in keeping with their own beliefs. It is clear that Mr. Ashcroft is out of the mainstream on reproductive choice and is committed to perpetuating his personal views rather than enforcing the law.

As attorney general, Mr. Ashcroft would be responsible for enforcing the federal law protecting women's clinics and women and health care professionals at clinics from violence. According to a 1999 report by the General Accounting Office (GAO), there has been a decline in incidents of violence against clinics including blockades, vandalism, invasions, bomb threats, death threats, assaults, and stalking since passage of the Freedom of Access to Clinic Entrances (FACE) Act in 1994. We cannot accept anything less than vigorous enforcement of a law that has reduced violence against women. Senator Ashcroft has been such an adamant opponent of reproductive choice, without any exceptions for victims of rape or incest, that we question his ability to enforce the law. In fact, while he was attorney general and governor of Missouri, he did nothing as intimidation, harassment, and violence increased at reproductive health clinics.

We have similar concerns about Senator Ashcroft's ability to advise the President on potential federal judiciary nominees and on the constitutionality of legislation. His opposition to highly qualified judicial and Executive Branch nominees shows he will reject those who disagree with him on reproductive choice and abortion, regardless of their qualifications. Mr. Ashcroft took the lead in opposing the confirmations of both Dr. David Satcher and Dr. Henry Foster

as U.S. surgeon generals, largely based on their support for reproductive choice.

Senator Ashcroft's failure to respect religious diversity is evident in his consistent support of a "Human Life" constitutional amendment that would impose one religious view about the beginning of life on all Americans. In 1998, Senator Ashcroft was an original sponsor of a proposed "Human Life Amendment" to the Constitution and a proposed federal statute, the "Human Life Act," that defined human life as beginning at "fertilization," a belief many Americans and many religions do not share. The amendment and bill would have prohibited virtually all abortions—including those for reasons of rape or incest. Further, the proposed amendment and bill could have been invoked to ban some of the most widely accepted and dependable forms of contraception such as the pill and IUDs.

Ashcroft's advocacy of the "human life amendment" places him with the most extreme religious opponents of women's rights and reproductive choice and, again, indicates a lack of understanding or disregard of the religious principles underlying reproductive freedom.

The Religious Coalition for Reproductive Choice, founded in 1973, comprises national organizations from mainstream denominations and faith traditions, including the Episcopal Church, Presbyterian Church (USA), United Church of Christ, United Methodist Church, Unitarian Universalist Association, and Reform and Conservative Judaism.

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FOR IMMEDIATE RELEASE
Wednesday, January 17, 2000

CONTACT: RNC (202) 863-8509

Kennedy Hypocrisy Exposed!

TO: **All Media Covering Attorney General Designee John Ashcroft's Confirmation Hearing**

FROM: David Israelite
Director, Political and Governmental Affairs
Republican National Committee

After distorting the truth about John Ashcroft's record on the issue of desegregation of schools in Missouri, Senator Ted Kennedy needs to explain why he campaigned and raised money for the current Democrat Attorney General Jay Nixon during his 1998 U.S. Senate campaign, while Nixon was aggressively fighting desegregation in St. Louis.

Attached you will find a copy of the invitation from Senator Kennedy to attend a \$5,000 per person fundraiser in 1998 for Attorney General Jay Nixon. Also attached are letters from Kennedy's colleague Rep. **William Clay** (D-MO), a letter from the NAACP to Senator **Tom Daschle**, and several articles highlighting Jay Nixon's aggressive effort against desegregation and busing program.

Senator Kennedy needs to explain his hypocrisy before he continues his demagoging.

/Attachments

**SENATOR TED KENNEDY
&
SENATOR TOM HARKIN**

**INVITE YOU
FOR BREAKFAST
TO MEET AND SUPPORT
MISSOURI SENATE CANDIDATE**

ATTORNEY GENERAL JAY NIXON

**TUESDAY, MARCH 31, 1998
THE MONOCLE
8:30 AM - 9:30 AM**

**RSVP TO JILL GIMMEL - 202-546-9494
OR DON ERBACH - 202-546-9292**

CONTRIBUTION: \$5,000 or finish your max-out



WILLIAM L. CLAY
MEMBER OF CONGRESS
FIRST DISTRICT, MISSOURI

October 3, 1997

The Honorable William J. Clinton
President of the United States
The White House
Washington, D. C. 20500

Dear Mr. President:

I write to express my most serious concern about your planned visit to St. Louis on November 7 to support and raise money for the candidacy of Jeremiah (Jay) Nixon for the United States Senate.

While you may not have reason to know this, Jay Nixon has used his current office as Attorney General to wage unremitting warfare against a consent decree and court order which has provided educational opportunity for many thousands of students in St. Louis.

Under the Court-approved plan, each year, 13,000 black children from St. Louis attend public schools in the suburban districts of St. Louis county (in the largest voluntary metropolitan desegregation program in the nation); white children from the county attend magnet schools in St. Louis and substantial funds are devoted to one of your major priorities, early grade reading programs and other educational improvement efforts in St. Louis.

Although educators and community leaders in St. Louis and elsewhere have hailed the program's success and called for its continuation and improvement, Mr. Nixon is seeking to dismantle the programs as rapidly as possible. He would provide money to phase out the magnet schools and transfer programs and enough funds to construct new racially segregated schools in St. Louis for the students who would no longer have the choice of enrolling in suburban schools.

It is not simply Mr. Nixon's legal stance that has given offense but the irresponsible and unprincipled manner in which he has pursued his course. Let me illustrate:

* Each year since 1995, Mr. Nixon has made strategically

timed announcements designed to deter African American parents from enrolling their children in the metropolitan program by telling them that the program will soon end. The fact that his ploy appears not to have worked does not render it less reprehensible.

* In April 1996, after the completion of a trial to determine if the parties had complied with the desegregation order, the Court appointed a settlement coordinator whose mandate was to seek a negotiated solution to the controversy. All parties except Attorney General Nixon have cooperated in the effort. These include the plaintiffs, the United States, the City School Board and the suburban school districts. Even the Governor and the State Board of Education seem to be conciliatory, but Mr. Nixon contends that he represents and will speak for them in all meetings.

* Mr. Nixon's warfare has included more than two dozen motions and other court pleadings filed since the settlement process was initiated, seeking to end the program in whole or in part while talks were going on. He has also falsely attacked the settlement coordinator, William Danforth, the distinguished and widely respected past Chancellor of Washington University of St. Louis, as "an outspoken advocate of busing" and the "leader of a pro-busing group". All of Mr. Nixon's legal efforts in the courts have failed including two petitions filed before Justice Clarence Thomas in 1996 and 1997.

* Not content with these legal guerilla warfare tactics, Mr. Nixon has violated the District Court's requirements that the negotiations be kept confidential, by holding press conferences to announce proposals never submitted in the negotiations. The Court of Appeals recently took the Attorney General to task for this tactic, noting dryly that "we assume the settlement director and all parties to this litigation were notified of [the September 10] proposal..."

* Mr. Nixon's purpose in all of this is to advance his ambitions for the United States Senate. He has fomented racial and geographical divisions by suggesting that funds not expended on children in St. Louis could be reallocated to other parts of the State and he opposed legislation offered to facilitate a settlement, arguing that it was too generous to children in St. Louis and Kansas City. As the *St. Louis Post Dispatch* stated in an editorial on July 3, 1997, "Black children who attend suburban and magnet schools are graduating from high school at twice the rate of students who stay behind in the all-black schools. Even though more than \$100 million has been spent improving all-black city schools, test scores of 12th graders fell between 1990 and 1995. If Attorney General Jay Nixon succeeds in bringing a precipitous end to the desegregation plan, there will be more all-black classrooms with less money."

* In sum, Jay Nixon's campaign against desegregation and educational improvement for African Americans is offensive to fair minded people of all races. It is reminiscent of the tactics of Southern political leaders of the 50's and 60's who sought to maintain segregation. As the St. Louis Post Dispatch observed on September 2, 1997, "Mr. Nixon shows no signs of moving out of the schoolhouse door".

Jay Nixon's political maneuvering is a living rebuke to your efforts, Mr. President, to enlarge opportunity for all children and to bring about racial reconciliation.

Mr. President, I recognize and share your goal of achieving a Democratic majority in the United States Senate. And it is too bad that we in Missouri have come this far without having a viable candidate we can support.

But a line must be drawn. The news of your planned trip to St. Louis came on the same day as your eloquent address in Little Rock making clear that the "alternative to integration is disintegration". I am sure that if Orval Faubus in the past had sought your support for a Senate campaign you would not give it. You should not give it to Jay Nixon today.

Mr. Nixon should be told directly and forthrightly that unless and until he abandons his opposition to desegregation and other equal opportunity measures for St. Louis school children, you will not come to St. Louis on his behalf or support him in any other way.

Sincerely,

William L. Clay
William L. Clay
Member of Congress

1100



St. Louis NAACP
Over 85 Years Progress in the . . .



August 3, 1998

PRESIDENT
Col. Charles Mischeaux
FIRST VICE PRESIDENT
Mr. Lloyd Jordan, Esquire
SECOND VICE PRESIDENT
Mr. James Morgan
THIRD VICE PRESIDENT
Ms. Debra J. Moore
SECRETARY
Mrs. Jacqueline Baker
TREASURER
Mr. Theophilus Charles

EXECUTIVE COMMITTEE
Mr. Theo Arnick
Ms. Annetta Booth
Mr. John A. Bordeaux, Sr.
Rev. Bernard Brown
Judge Michael B. Calvin
Ms. Mary F. Cannon
Dr. James DeClue, O.D.
Rev. Dr. John Doggett, Jr.
Mrs. Frankie Freeman, Esquire
Mr. Harold Gant
Mrs. Elizabeth Garlington
Mr. Sherman George
Henry Givens, Jr. Ph. D.
Ms. Darlene Green
Mr. Robert (Bobbie) Guy
Ms. Ann Hamilton
Dr. John Hayden, Sr., D.P.A.
Mrs. Margie Heavens
Mr. Preston Humphrey
Mrs. Blanche Johnson
Mrs. Della Jones
Mrs. Shirley McGee
Mr. Michael McMillan
Mr. Michael T. McPheerson
Mrs. Margo Mischeaux
Ms. Martha Mitchell
Ms. Emma J. Morris
Mrs. Sandra Murdock
Rev. Maurice Nutt, C.Ss.R.
Mrs. Beatrice Payne
Bernard Randolph, M.D.
Mr. Willard Reeves
Mr. Vitlas Reid
Mr. Claude Rogers
Mrs. Maggie Sawyer
Mr. Norman Seay
Ms. Lois Jean Turner
Mr. Preston Vanderford
Mr. Michael Williams
Ms. Ruth Williams

HONORARY MEMBER
Mrs. Inez J. Giles

Senator Tom Daschle
509 Hart Senate Office Building
Washington, DC 20510

Dear Senator Daschle:

As a lifelong Democrat, and the current President of the St. Louis Chapter of the NAACP, I am writing to inform you about a serious situation in Missouri's U.S. Senate race between Kit Bond and Jay Nixon. To put it simply, Jay Nixon is not an acceptable candidate to the African-American community. As Missouri's Attorney General, Mr. Nixon has played racial politics in an attempt to advance his career at the expense of our children. I have enclosed several articles to better inform you about the strong resentment of African-Americans toward Mr. Nixon. This is not a small disagreement which can be resolved. This is a wholesale rejection of Mr. Nixon's candidacy.

As a leader in the Democratic Party, you may be asked to assist Mr. Nixon's campaign by participating in fundraising events in Missouri. Please be advised that the NAACP, along with other concerned citizens groups, have decided to picket Mr. Nixon's fundraising events in protest of his candidacy and his policies which have been so harmful to African-American children. When asked to choose between helping a flawed candidate like Mr. Nixon, and respecting an NAACP picket line, I am hopeful you will chose the latter.

Thank you in advance for recognizing the seriousness of this problem and for not crossing an NAACP picket line which would be present at any high profile event in which you would be asked to participate.

Sincerely,


Charles Mischeaux
President, NAACP
St. Louis Chapter

St. Louis Branch / National Association for the Advancement of Colored People
625 North Euclid, Suite 405 • Saint Louis, Missouri 63108 • (314) 361-8600 / Fax: (314) 361-4334
"The Struggle Continues..."



St. Louis NAACP
Over 85 Years Progress in the... **FIGHT OR FREEDOM**

September 2, 1998

Dear Clergy and Friends:

- PRESIDENT**
Col. Charles Macneaux
FIRST VICE PRESIDENT
Mr. Lloyd Jordan, Esquire
SECOND VICE PRESIDENT
Mr. James Morgan
THIRD VICE PRESIDENT
Ms. Debra J. Moore
SECRETARY
Mrs. Jacqueline Baker
TREASURER
Mr. Theophilus Charles

- EXECUTIVE COMMITTEE**
Ms. Theria Amick
Ms. Annetta Bush
Mr. John A. Bordeaux Sr.
Rev. Bernard Brown
Judge Michael B. Calvin
Mr. Miss F. Cannon
Dr. James DeClerk, D.D.
Rev. Dr. Lahn Doygett, Jr.
Mrs. Frankie Freeman, Esquire
Mr. Harold Gant
Mrs. Elizabeth Gaskin
Mr. Sherman George
Henry Green, Jr. Ph.D.
Ms. Darlene Green
Mr. Robert (Bubbit) Guy
Ms. Ann Hamilton
Dr. John Hansen, Sr. D.P.A.
Mrs. Margie Hewson
Mr. Preston Humphrey
Mrs. Winche Johnson
Mrs. Della Jones
Mrs. Shirley McGee
Mr. Michael M. Milton
Mr. Noel T. M. Pearson
Mr. Marty Muschous
Ms. Marsha Mitchell
Mr. Thomas J. Morris
Mrs. Sandra Murdock
Rev. Maurice Sutt, C.S.R.
Mrs. Heather Payne
Normand Randolph, M.D.
Mr. Wilford Pope Jr.
Mr. Victor Reid
Mr. Claude Rogers
Mrs. Maggie Sasser
Mr. Norman Scott
Ms. Lois Jean Turner
Mr. Preston Vandorford
Mr. M. Noel Williams
Ms. Ruth Williams

- HONORARY MEMBER**
Mrs. Inez J. Gibbs

As witnesses of racial politics in our State and the attack on the education of our children by Jay Nixon to advance his career at their expense we had a choice to stand up and act, or, to turn silently away.

I believe with my whole heart that turning aside through silence or indifference is no answer, and given your commitment to our children an injustice, I am sure you feel the same way.

Sadly, the cancer of racism and intolerance is again growing in our city and state. That is why I am writing to seek your help.

As President of the St. Louis Branch, NAACP, I am asking you to help me stop this cancerous growth while it is still time.

Specifically, I invite you to stand in solidarity with other concerned citizens of all races both Democratic and Republican, by supporting the St. Louis NAACP saying "NO WAY J" not on the backs of our children.

For 85 years the St. Louis NAACP has worked with churches, synagogues and in the courtroom for equality, justice and brotherhood. You and I cannot turn aside from our children and teens who have a right to count on adult help from caring people like us.

We will not stand by passively while a politician seeks to turn back the clock to separation in our schools and be rewarded with our vote. Our children are not for sale and we will not be fooled by the Judas goats he sends.

As Martin Luther King, Jr. said: "The hour is late, we will rise as one people or fall together."

By supporting the NAACP at this critical time you will be sending a message to the Democratic and Republican parties that they must listen to us when we speak of our communities and youth.

We need your help to heal the wounds and move forward with pride and dignity as a city and state truly committed to justice for all that will not tolerate racial politics.

Sincerely,

Col. Charles Macneaux,
President

St. Louis Branch / National Association for the Advancement of Colored People
625 North Euclid, Suite 405 • Saint Louis, Missouri 63108 • (314) 361-8600 / Fax: (314) 361-4334
"The Struggle Continues..."

ST. LOUIS POST-DISPATCH

ST. LOUIS POST-DISPATCH

SATURDAY, DECEMBER 27, 1997

NAACP leaders may again decide to picket Nixon's campaign stops

African-American officials have protested the attorney general's plan to end voluntary desegregation of public schools in St. Louis.

BY BILL BELL

Post-Dispatch Jefferson City Bureau

Next month the St. Louis NAACP is expected to consider whether to reverse itself again and picket Missouri Attorney General Jay Nixon's campaign events.

NAACP President Charles Mischeaux said that he will meet with the group's leaders to discuss Nixon's recent appeal to the U.S. Supreme Court. Nixon asked the court to overturn a desegregation ruling that continues the practice of enrolling and transporting St. Louis students to St. Louis County schools.

Nixon, who is running for the U.S. Senate, responded that the filing last month was merely a part of the state's long-standing legal efforts to end the desegregation program.

Nixon has been in hot water with the NAACP since September, when he offered to end the state-supported program by making a \$304 million lump-sum payment to the St. Louis Public Schools. The money would have gone to operate magnet schools to build 14 new schools and to pay the district for a six-year phaseout of the busing program.

NAACP leaders balked at the plan, saying that it would be detrimental to African Americans in the city and that it would short-circuit the court-ordered negotiations now under way among the state, parents and school

representatives.

Mischeaux then called for pickets at Nixon's fund-raiser Nov. 17 at the Fox Theatre, which was to feature President Bill Clinton.

Nixon withdrew his offer on Nov. 7 and promised to continue negotiations. The NAACP canceled the protest.

Eight days later, Nixon's office filed with the Supreme Court.

Mischeaux said that filing will hurt negotiations. "You say you're going to work with the system in place. Then you file this suit to try to stop the whole program and the whole process," Mischeaux said Tuesday.

"I have a problem with him telling me one thing and then doing something else."

Nixon's campaign manager, Chuck Hatfield, said that Nixon had to file the writ or the state would have had to drop its appeal.

Nixon said that he had not lied to Mischeaux. The filing was one of many he does every week in the case, he said. He added that he would not let anyone dictate what he files or when he files it.

"I've got a job to represent the state, and I'm going to do it," he said. "As attorney general, you represent all the kids."

Besides, Nixon said, he had notified NAACP lawyers of the filing. He said that he would continue negotiations.

Some legislators from the area also were miffed.

Sen. William Lacy Clay, D-St. Louis, said he thought that Nixon and Gov. Mel Carnahan are more interested in saving money than in improving education for black schoolchildren.

Others questioned the NAACP's leadership.

Rep. Charles Quincey Troupe, D-St. Louis, said the NAACP should



THE ASSOCIATED PRESS

Missouri Attorney General Jay Nixon is asking the U.S. Supreme Court to overturn a desegregation ruling.

never have negotiated with Nixon. The NAACP seems interested in dragging out the talks, Troupe said.

"The NAACP doesn't seem to be worried about nothing but these damn lawyers' salaries," Troupe said.

Mischeaux blamed the state for the slow negotiations, which have been going on since a trial that ended in March 1996.

Troupe also questioned whether the NAACP could get involved in a political campaign as a nonprofit organization.

James A. DeClue, chair of the education committee for the St. Louis branch of the NAACP, said his organization does not endorse individuals in campaigns. Mischeaux added that the organization may picket over desegregation but not against Nixon himself.

Currently, the state helps pay for busing more than 12,000 students from St. Louis to predominantly white St. Louis County schools.

Last March, Nixon asked an appeals court to stop recruitment and to end the state's obligation to pay for the transfers. Senior U.S. District Judge George F. Gunn Jr., who oversees the case, denied Nixon's request. The 8th Circuit panel upheld Gunn's ruling.

Nixon wants the Supreme Court to reconsider the appellate decision.

THE CALL

Southwest's Leading Weekly

EDITORIALS

WEEK OF AUGUST 28 TO SEPTEMBER 3, 1998

We Should Not Support Jay Nixon

State Attorney General Jay Nixon, a Democrat, will face incumbent Republican Senator Christopher "Kit" Bond in the General Election in November.

During the primary election season, many black political leaders and organizations, mostly Democrats, hedged on supporting the front runner Nixon.

Now that he has his party's nomination, Nixon is getting some support from prominent black Democrats.

Last week, Freedom, Inc., the powerful political club of Kansas City and former St. Louis Mayor Free-

man Bosley endorsed Nixon.

However, **THE CALL** cannot and will not support Nixon because of his stand against desegregation and the Kansas City, Mo., Public school district.

The state attorney general has long been an opponent of desegregation dollars coming to the Kansas City, Mo., School district. Over the years, he has led the fight to bring about the end to these dollars, which will come in 1999.

Nixon took his case to end desegregation in the Kansas City public schools to the United States Supreme Court and won.

And, he was gleeful about it.

Kansas City has never received its fair share of state funding before desegregation.

The Supreme Court's decision undoubtedly has hurt Kansas City public schools and the majority of black children it serves not only in the coming school year but for many years to come.

The St. Louis public school district is going through the same opposition from Nixon who has initiated court effort to stop funding there because he believes it is unfair to rural school districts.

Nixon has continually been critical of Kansas City receiving state funds.

While Senator Bond has not had a sterling civil rights record, he has sponsored legislation to benefit the city as a whole, including Union Station, the 18th and Vine Redevelopment and mortgage loan programs for the disadvantaged. He has also supported legislation for funding historically black colleges.

Nixon is not exactly a liberal in terms of civil rights even though as a former state senator he did sponsor and support generic legislation on human rights and hate crimes.

Black voters should support those who will do the most for the community and not just party labels.



St. Louis NAACP **FIGHT OR FREEDOM**
Over 85 Years Progress in the...

October 30, 1997

FOR IMMEDIATE RELEASENAACP RETURNS TO PICKET LINES

The St. Louis Chapter of the NAACP has voted to picket the forthcoming fundraiser planned for Missouri Attorney General Jay Nixon, which is scheduled for Monday, November 17, 1997.

The position of the NAACP is right along with senior congressional statesman from Missouri, Cong. Bill Clay, Sr. who has outright opposed the nomination of Attorney Nixon for U.S. Senator. Attorney General Nixon is opposing U.S. Senator Kit Bond (Republican), but has alienated most minorities and in particular Blacks in Missouri, because of his stance against the deseg and busing programs in Missouri.

As the State's top law enforcement officer, Mr. Nixon breached the federal court agreement concerning a fair and equitable settlement of the lengthy desegregation program. Mr. Nixon took it upon his own, to publicize and try to settle the busing and deseg program on his own. By openly violating the spirit of the federal courts of not talking about any type of court settlement, without court approval; it shows his unwillingness for achieving any type of fair settlement or meaningful end to the deseg and busing programs in the state of Missouri.

PRESIDENT
 Col. Charles Mischeaux
FIRST VICE PRESIDENT
 Mr. Lloyd Jordan, Esquire
SECOND VICE PRESIDENT
 Mr. James Morgan
THIRD VICE PRESIDENT
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St. Louis Branch / National Association for the Advancement of Colored People
 625 North Euclid, Suite 405 - St. Louis, Missouri 63108 - (314) 361-8600 / Fax: (314) 361-4334

"The Struggle Continues..."

PRESS RELEASE

pg. -2-

The NAACP plans to picket the fundraiser for Nixon. As you know, President Clinton has been invited, but todate the White House has not said whether or not the president will attend.

President Charles Mischeaux of the St. Louis Chapter of the NAACP has said that it is time to return to action via the picket lines, to demonstrate that the Black vote cannot be taken for granted, by neither party, Democrat or Republican.

The NAACP is opposing Mr. Nixon, because it honestly believes his views on integration and deseg of the state's school systems are detrimental to African-Americans.

Also, Col. Mischeaux is urging that all interested individuals who are interested in helping the NAACP to demonstrate against Mr. Nixon, to call the local chapter at 361-8600.

**Statement of William G. Ross, Professor of Law, Cumberland School of
Law, Samford University, Birmingham, AL**

THE SENATE'S ROBUST ROLE IN EVALUATING ATTORNEY GENERAL NOMINEES

By William G. Ross¹

Attorney General nominations often have generated political controversies which have required the Senate to closely examine its role in offering "advice and consent." The principal issues are what criteria the Senate should use in evaluating nominees and the appropriate balance between deference to the President's choice and an exercise of independent judgment.

Although these same questions arise in connection with the Senate's confirmation of other Cabinet appointees, there is a general consensus that the Senate should exercise particularly close scrutiny of Attorney General nominations. As Senator Charles Percy explained after President Carter's controversial nomination of Griffin Bell in 1977, "the Attorney General requires more stringent standards than any other Cabinet post."² Similarly, Senator John H. Chafee observed at the same time that the criteria for judging a nominee for Attorney General are stiffer than those for judging other Cabinet members.³ And the president of Common Cause aptly remarked during the protracted hearings on Edwin Meese in 1984 that "the appointment of an Attorney General is too important to grant confirmation after superficial examination out of party regularity or upon the ground that the President is entitled to his choice."⁴

There are several compelling reasons for such close scrutiny.

First, it is imperative that the nation's chief law enforcement officer should stand above the partisan politics of the Administration in which she serves and administer justice even-handedly.

As Senator Joseph R. Biden, Jr. told Edwin Meese during his confirmation hearings:

"You are...to become the people's lawyer more than you are to be the President's lawyer. Consequently, the question relating to your nomination is not merely whether or not you possess the intellectual capabilities and the legal skills to perform the task of Attorney General, and not merely whether you are a man of good character and free of conflict of interest that might compromise your ability to faithfully and responsibly and objectively perform your duties as Attorney General, but whether you are willing to vigorously enforce all the laws and the Constitution even though you might have philosophical disagreement with them, and whether you possess the standing and temperament that will permit the vast majority...of the American people to believe that you can and will protect and enforce their

individual rights." ⁵

The insulation of the attorney general from partisan politics should be a matter of particular practical concern since many attorney generals have had intimate personal ties to the President. ⁶

Closely related to the need to stand above partisan politics is the need for the Attorney General to take seriously his or her role as a special guardian of the rights of the poor and the dispossessed, racial and political minorities, and other persons who need the special protection of the laws because they may lack effective means of influencing the executive and legislative processes. As Senator Edward Brooke explained during the debate about Bell in 1977, the Senate has a constitutional responsibility to "carefully scrutinize" the qualifications and also the performance and the promises of an Attorney General nominee because "that office, perhaps more than any other Cabinet post, requires great integrity as well as great sensitivity to the rights of the oppressed and the disenfranchised." ⁷

Moreover, it is imperative that the nation's chief law enforcement officer be beyond reproach in her personal character and her respect for the law since the attorney serves an example to all citizens and should be a role model for lawyers. Voicing opposition to the controversial nomination of Richard Kleindienst in 1972, Senator Edmund S. Muskie insisted that the Attorney General "must be a man of sound judgment whose legal and ethical sensitivities shield him and his department from any hint of concealed misconduct or arbitrary enforcement of the laws." ⁸

History provides cautionary examples of the importance of probity in an Attorney General. Three attorney generals in this century have been enmeshed in ignominious affairs -- Harry M. Daugherty of the Harding Administration, who was indicted for conspiracy in the Teapot Dome scandal, and John Mitchell and Richard Kleindienst of the Nixon Administration, who served time in prison for their role in the Watergate scandal. ⁹

Moreover, the Senate should scrutinize Attorney General nominees more carefully than others because the Justice Department is more closely connected than are other executive departments with both the legislative and judicial branches of government. By profoundly influencing the process by which federal statutes are enforced, the Justice Department necessarily interacts closely with Congress. As Senator Patrick J. Leahy stated during the hearings on Meese, "although the Supreme Court has the last word on what our laws mean, the Attorney General often has the first word, and the first word, so many times, determines the last word...The success of much of the work of Congress always depends on who is sitting at the head of the Justice Department." ¹⁰

Similarly, the Justice Department is intricately involved

with the judiciary in countless ways, from bringing lawsuits on behalf of the government to helping the President select federal judges. With all three branches of government converging in the Justice Department, the Attorney General's office is far more than the province of the President. The Senate therefore has reason to be especially interested in who serves as attorney general.

Although the Senate exercises stricter scrutiny of Attorney General nominees, the criteria by which it evaluates these nominations are essentially the same as those that it uses in connection with other Cabinet nominations.

The failure of the text of the Constitution and the intent of the Framers to provide any specific guidance with regard to these criteria often has exasperated senators.¹¹ Senator Nancy Landon Kassebaum articulated this challenge when she observed in 1989 that the Framers "expected us to find our answer in the same uncertain wisdom and limited understanding in which they lived and worked and so created democracy itself."¹²

In the absence of formal standards, the Senate must look to its own history. The Senate's role in the Cabinet appointment process during the past two centuries has been remarkably vigorous.¹³ Although the Senate has rejected only one percent of the nearly 900 Cabinet nominations,¹⁴ this statistic obscures the controversy that often attends nominations. Similarly, the lopsided margins by which most Cabinet nominees are confirmed is not a reliable gauge of actual opposition to nominations because many senators see no point in joining a lost cause.

During recent decades, the Senate's scrutiny of Cabinet appointments has increased. Although this may reflect growing partisanship, it more likely represents the Senate's recognition of the vast power exercised by Cabinet officials.

There is general agreement that the Senate normally should defer in least at part to the President's choice of executive officials. Although an incoming President may deserve special deference,¹⁵ a president-elect's nominees may actually warrant special scrutiny because they "will determine the character of the new administration."¹⁶ Senate debates on the nomination of Cabinet members are replete with statements that there is a presumption in favor of the nominee,¹⁷ although senators have differed rather widely in assessing the strength of this presumption.¹⁸

There are several reasons for such deference. Time constraints naturally limit the extent to which the Senate is able to consider nominations.¹⁹ Similarly, one President can select an executive officer more expeditiously than can one hundred senators.²⁰ Moreover, a senator who does not like the ideological character of a President's choice is not likely to

harbor any illusions that the President is likely to nominate a significantly different type of person if the Senate rejects the nomination.²¹ Also, the President needs to have advisers that he or she can trust and who are ideologically compatible with the President since the officers are supposed to execute his programs.²² Finally, senatorial deference encourages greater presidential accountability to the extent that Cabinet members are perceived as agents of the President.²³

Even though senators tend to defer to the President's choice, senators regularly have emphasized that they are significant partners in the selection process.²⁴ As Senator Warren G. Magnuson once observed, "I do not think anyone is anointed simply because he is appointed."²⁵ Similarly, Senator Carl R. Levin stated that "[t]he President is entitled to someone in whom he has confidence, of course, but the Nation is also entitled to someone in whom it has confidence."²⁶ As Professor MacKenzie has aptly explained, the confirmation process "affords the Senate an opportunity to carry on in another context its persistent struggle with the executive branch to shape the contours of public policy."²⁷

Senator John Breaux observed in 1977 that "we will do the President the greatest service when we give him the benefit of our most critical judgment, not when we go along to serve our convenience or his." Breaux explained that the Senate has the duty to "search out facts, possibly unknown to the President when he made his initial decision, and cast our votes as those facts require."²⁸

Rigorous senatorial scrutiny of Cabinet nominations does not need to cause rancor or undue friction between the Senate and President. As Senator Eugene J. McCarthy pointed out, "[w]ithholding of consent should not be considered an affront to the President," anymore than the President's veto of legislation should be regarded as an affront to the Senate.²⁹

A rigorous senatorial review of executive appointees also helps to remind these unelected officials that they are servants of the people, to whom they are accountable. As Senator Charles Percy once explained, "[t]he process that publicly elected officials go through is a humbling process. It brings us down to size. It causes us to reexamine everything we have done or thought and puts us to the test. The confirmation process is in a sense a substitute for that."³⁰

Many factors for evaluating nominees have been listed by senators during various confirmation hearings and debates. These include personal integrity; competence; lack of conflict of interest; temperament; judgment; vision; views on particular policy issues; ability to cooperate with Congress; objectivity and balance; and adherence to positions that would not prejudice the public interest.³¹

The consideration of a nominee's opinions on substantive policy issues is an increasingly significant part of the appointment process. The Senate has a duty to inquire into the political philosophies and policy preferences of nominees. What Professor MacKenzie observed in 1981 remains ever more germane today:

"Public policy issues dominate the confirmation process. No topic is discussed more widely in confirmation hearings; no factor looms larger in shaping confirmation decisions. Above all else, the confirmation process is a forum in which the preferences and concerns of the Congress are brought to bear on the development and implementation of American public policy." ³²

Scrutiny of the policy predilections of nominees, particularly the Attorney General, also is appropriate because executive officers carry out the programs of Congress. As Professor Joseph P. Harris explained, "[g]overnmental policies have often been influenced quite as much by the choice of the principal officers as by the legislation they administer." Accordingly, Harris concluded that the Senate "is quite justified in rejecting a nominee who is not in sympathy with the legislative policies he would be required to administer and who presumably would not perform the duties of the office with vigor and zeal." ³³

Similarly, Dr. Louis Fisher's explanation of the importance of policy considerations is particularly relevant to the consideration of Attorney General nominations:

"To defer to the President, on the principle that he has a right to select his own assistants, makes a nullity of the Senate's advice-and-consent role. Department heads and their assistants are not merely staff support for the President. They are called upon to administer programs that Congress has enacted into law. A lack of interest by an administrator or overt hostility to a legislative program can eviscerate the policies that Congress has taken pains to announce as national goals. Administrators so disposed can shatter agency morale and create uncertainty for career personnel, who may not know whether they are supposed to implement or sabotage the statutory objectives." ³⁴

Some senators and commentators have suggested that the Senate's consideration of public policy questions in confirming executive nominations improperly interferes with the President's mandate from the voters to carry out policies of his own choosing through his executive officers. ³⁵ The persistence of this "mandate theory" helps to explain why senators are particularly deferential to the nominees of an incoming President.

An examination of the bases for the mandate theory demonstrates that it offers little or no support for a quiescent

role for the Senate in the confirmation process. First, Presidents ordinarily do not have clear mandates from the voters to pursue particular policies. In contrast to foreign nations such as Great Britain, where elections are sometimes referenda on sharply defined issues, American presidential candidates tend to be deliberately vague about the policies that they will pursue. Official party platforms are mostly empty rhetoric designed to placate special interest groups rather than to provide realistic blueprints for a presidential administration. Moreover, the weakness of a President's mandate following a very close or contested election warrants particularly careful scrutiny of his Cabinet nominees.

Even to the extent that a President might have a mandate to pursue particular policies, senators likewise have a mandate from the voters. If, for example, a successful senatorial candidate favors more stringent enforcement of civil rights laws, he has a mandate from his constituents to inquire into the policy positions of an Attorney General nominee, even if the President who made the nomination was outspoken during the presidential campaign in his advocacy of a contrary position. Senator Byrd once aptly declared that "[a] new President's nominee should be viewed with the same probing, careful, meticulous scrutiny, as should the nominee of a President who has served 2 years, 3 years, 4 years, or well into a second term."³⁶

Although senators do not demand that nominees wholly conform to their own political ideals, senators often extensively examine the political philosophy of a nominee in order to assure themselves that the nominee is not too far estranged from a senator's own political views.³⁷

Political scrutiny of nominees is appropriate because politics obviously influences presidential appointments - particularly the Attorney Generalship. It seems incongruous, asymmetrical, and unfair to argue that the President may allow ideology to influence the nomination of an Attorney General but that the Senate must ignore those very same considerations in confirming those very same officers pursuant to the "advice and consent" clause. As Senator Fred R. Harris stated in 1972, "[t]here is no provision in the Constitution that our rejection of a candidate may only be on moral or ethical grounds. In deciding to vote for or against confirmation...Senators may, and should, consider any or all of the criteria the President considers when he nominated" the candidate.³⁸

Senators who oppose a nominee for philosophical reasons should avoid hypocrisy. In many instances, objections to policy positions masquerade as concerns about conflicts of interest, qualifications, or other issues. As Senator East observed, "if our objections to a given nominee are fundamentally of a philosophical or substantial nature, then we have the obligation to say so."³⁹

In addition to carefully scrutinizing an Attorney General nominee's public policy positions, the Senate also needs to pay particular attention to his or her character. As Senator Moss stated during the tumultuous consideration of the Kleindienst nomination, "[m]ore than any other post in the Cabinet, the national role of the Attorney General is determined by the character of the man who holds the position."⁴⁰ Concern about the private conduct of two of Clinton's Attorney General nominees in 1993 led to the withdrawal of their nominations.

In considering character, the Senate needs to discern whether the nominee has an open mind that will enable him to diverge from his political predilections if practical circumstances or justice so require. In numerous confirmation hearings, senators have expressed concern about whether highly ideological nominees have the open-mindedness necessary to fulfill their role with flexibility and fairness.⁴¹ Such attributes are particularly needed in an Attorney General since the Attorney General is the nation's chief law enforcement officer.

In their assessment of character, senators also have emphasized the importance of sensitivity toward racial and gender issues. Accordingly, the Senate in 1977 devoted careful scrutiny to charges that Griffin Bell was insensitive to racial injustice, since the Attorney General has so much power to determine how civil rights laws will be enforced. Similarly, allegations that John Tower was insensitive toward gender issues was a major factor in the Senate's rejection of his nomination as defense secretary in 1989.

The criteria on which senators decide whether or not to approve a nomination are necessarily subjective.⁴² As Senator Robert C. Byrd explained in opposing Alexander M. Haig's nomination as secretary of state in 1981, "the factors that influenced me are subtle and difficult to convey."⁴³ Similarly, Senator Birch Bayh stated aptly during the hearings on Bell that "I do not know of any litmus test on which we can guarantee what kind of Attorney General or what kind of Senator or President or State legislator we get. We look at the facts. In the final analysis, it's the cut of the human being. It is the individual. It is the character of the [person] involved."⁴⁴

Recent hand-wringing over the Senate's rough handling of several Clinton nominees has obscured the fact that the Senate is deferential -- perhaps excessively deferential -- towards most nominees. The scandal-pocked history of all too many administrations of both political parties demonstrates that too many persons of dubious merit have received the Senate's perfunctory approval. Persons who are going to serve in high public office ought to receive careful scrutiny from more than one branch of government.⁴⁵

A robust confirmation process helps to ensure that executive officials satisfy high standards of ability and character. Vigorous and occasionally rambunctious confirmation proceedings also help to prevent the political philosophies of appointed officials from straying too far from the politics of the voters who elect senators to offer advice in connection with Cabinet nominations and to offer -- or withhold -- their consent.

1. The author is a professor of law at the Cumberland School of Law of Samford University in Birmingham, Alabama. A graduate of Stanford and Harvard Law School, Professor Ross is the author of two books about American constitutional history and has published numerous articles about the federal appointments process. This paper is based upon his article, *The Senate's Constitutional Role in Confirming Cabinet Nominees and Other Executive Officers*, 48 SYRACUSE LAW REVIEW 1123-1221 (1998). The views that the author expresses in this statement are provided solely in his personal capacity.
2. 123 CONG. REC. S2089 (1977).
3. *Id.* at S2102.
4. *Hearings Before the Comm. on the Judiciary on the Confirmation of Edwin Meese III, to become Attorney General of the United States*, 98th Cong., 2d Reg. Sess. 480 (984) (testimony of Fred Wertheimer).
5. *Id.* at 2-3(statement of Sen. Biden).
6. See Ross, *supra* note 1, at 1183.
7. 123 CONG. REC. S2081 (1977) (remarks of Sen. Brooke).
8. 118 CONG. REC. S20257 (1972)(statement of Sen. Muskie).
9. Ross, *supra* note 1, at 1185.
10. *Hearings on Meese*, *supra* note 4, at 131. Leahy concluded that the agenda at hearings on an Attorney "is a crowded one" because "we have kind of a proprietary interest in what you are going to be doing if you are confirmed." *Id.*
11. See Ross, *supra* note 1, at 1129-33.
12. 135 CONG. REC. S2461 (1989) (statement of Sen. Kassebaum).
13. See Joseph P. Harris, *THE ADVICE AND CONSENT OF THE SENATE* (1953); Ross, *supra* note 1, at 1133-43.
14. Robert A. Katzmann, *COURTS AND CONGRESS* 16 (1997).
15. See 115 CONG. REC. S1535 (1969) (statement of Sen. Brooke); *id.*, at 1662 (statement of Sen. Bayh).
16. *Hearings Before the Comm. on Foreign Relations, U.S. Senate, on the Nomination of Alexander M. Haig, Jr. to be Secretary of State* (pt. 1), 97th Cong., 1st Sess. 101 (statement of Sen. Biden).
17. 99 CONG. REC. 557 (1953) ("the President should have wide latitude in the choice of his Cabinet, unless there are very real principles involved") (statement of Sen. Morse); 135 CONG. REC. 2460 (1989)("We need an overriding cause to reject a nominee") (statement of Sen. Kasten). For other citations, see Ross, *supra* note 1, at 1144 n.138.
18. See Ross, *supra* note 1, at 1149.
19. G. Calvin MacKenzie, *THE POLITICS OF PRESIDENTIAL*

APPOINTMENTS 95 (1981).

20. THE FEDERALIST NO. 66 (Alexander Hamilton).
21. Ross, *supra* note 1, at 1146.
22. *Id.*, at 1146-47 (quoting Sens. Morse, Percy, and Glenn).
23. 115 CONG. REC. 1659 (1969) (statement of Sen. Jackson); *id.*, at 1662 (statement of Sen. Bayh).
24. "Senators have a responsibility to the people who elected us, as well as to the Nation as a whole," 123 CONG. REC. S2273 (1977) (statement of Sen. Scott); "our job is to give a second opinion...and to render in our best judgment what we think is best for...the United States" 135 CONG. REC. S363 (1989) (statement of Sen. Glenn).
25. 105 CONG. REC. S9982 (1959) (statement of Sen. Magnuson).
26. *Hearings on Tower, supra* note 2, at 351.
27. MacKenzie, *supra* note 19, at 95.
28. 135 CONG. REC. S2417-18 (1989) (statement of Sen. Breaux).
29. *Nomination of Lewis L. Strauss to be Secretary of Commerce Before the Senate Comm. on Interstate and Foreign Commerce, 86th Cong., 1st Sess. 781 (1959)* (statement of Sen. McCarthy).
30. 123 CONG. REC. S2089 (1977) (statement of Sen. Percy).
31. See Ross, *supra* note 1, at 1151 and footnotes. A rare effort to define specific confirmation criteria was made by the Senate Committee on Armed Forces in 1988, which adopted nine criteria that resembled the factors listed above. See *Hearings on Tower, supra* note 2, at 3.
32. MacKenzie, *supra* note 19, at 133. Similarly, Professor MacKenzie has pointed out that controversies over nominations have usually been "rooted in political or policy disagreements" rather "than in questions about the personal qualities of the candidates themselves." *Id.* at 94.
33. Harris, *supra* note 13, at 384.
34. LOUIS FISHER, *CONSTITUTIONAL CONFLICTS BETWEEN CONGRESS AND THE PRESIDENT* 38 (3rd ed., 1991).
35. Ross, *supra* note 1, at 1171-72.
36. 135 CONG. REC. S 2453 (1989) (statement of Sen. Byrd).
37. See Ross, *supra* note 1, at 1174-76, 1187-96.
38. 118 CONG. REC. 20256 (1972). See also Charles Black, *A Note on Senatorial Consideration of Supreme Court Nominees*, 79 YALE L. J. 657, 658 (1970) (making the same argument in the context of judicial nominations).
39. *Hearings Before the Senate Comm. on the Judiciary on the Confirmation of Edwin Meese III to be Attorney General of the United States, 99th Cong., 1st Sess. 72 (1985)* (statement of Sen. East). See also Donald E. Lively, *The Supreme Court Appointment Process: In Search of Constitutional Roles and Responsibilities*, 59 SO. CAL. L. REV. 551, 575 (1986).
40. 118 CONG. REC. S20244 (1972).
41. See Ross, *supra* note 1, at 1177-78.
42. Similarly, Senator George Mitchell observed that "[u]ltimately, the decision is subjective, an individual Senator's judgment of the qualifications and suitability of the

nominee." 135 CONG. REC. 2458 (1989)(statement of Sen. Mitchell).
43. 127 CONG. REC. S610 (1981)(statement of Sen. Byrd).
44. *Hearings Before the Comm. on the Judiciary, U.S. Senate on the Prospective Nomination of Griffin B. Bell, of Georgia, to be Attorney General, 95th Cong., 1st Sess.* 136 (1977) (statement of Sen. Bayh).
45. As William Bradford Reynolds recently observed, "if one is going to enter public service, why should that person receive a free pass to an important political position? Precisely because he or she is not elected -- but, instead, a presidential appointee -- personal views, attitudes and background experiences should come under meticulous scrutiny." William Bradford Reynolds, *Senate confirmation not always fair - but necessary*, HOUSTON CHRONICLE, Dec. 3, 1997 (1997 WL 13075967).

1116

From: RONALD D. ROTUNDA (217) 244-1478 To: Sharon Fricke

Date: 1/11/2001 Time: 1:59:32 PM

Page 1 of 1

RONALD D. ROTUNDA
THE ALBERT E. JENNER, JR. PROFESSOR OF LAW
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HOME PAGE: <http://www.uibc.edu/sh/www/rotunda>

11 January 2001

Senator Orrin Hatch
Senate Judiciary Committee
224 Dirksen Senate Office Building,
Washington, D.C. 20510.

RE: *Senator Ashcroft*

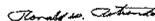
Dear Senator Hatch:

I have read that some people are accusing Senator Ashcroft of being "racist." That is a most serious charge and should not be made lightly. Obviously, no one wants an Attorney General who is racist, but the record does not support such an accusation against the Senator.

For example, I have read a letter that Dorothy White-Coleman, the President of the Mound City Bar Association of St. Louis (which is a respected African-American bar association) wrote to then Governor Ashcroft in April, 1991: "The Mound City Bar Association ('MCBA') applauds your appointment of Sandra Farragut-Hemphill to the Associate Circuit Court in the Twenty-First Judicial Circuit. Your appointment of Attorney Hemphill *demonstrated your sensitivity*, not only to professional qualifications, but also to the genuine need to *have a bench that is as diverse as the population it serves*. Although the members of the KCEA firmly believe that there is still much that needs to be done to increase the number of minorities and women on the bench, the appointment that you have just made, and *your track record for appointing women and minorities*, are certainly positive indicators of your progressive sense of fairness and equity. We commend you and your selection." (emphasis added).

More recently, Senator Carl Levin (D-MI) said of Senator Ashcroft: "While in many instances I have found myself on the opposite side of issues from John, I have always respected his intellect, his integrity, his principled positions and his ability to disagree without being disagreeable." (CONGRESSIONAL RECORD, December 15, 2000). We need a person of high integrity as Attorney General and Senator Ashcroft is that person.

Sincerely,



Ronald D. Rotunda
ALBERT E. JENNER, JR. PROFESSOR OF LAW

1117



STATE OF ILLINOIS
OFFICE OF THE ATTORNEY GENERAL
SPRINGFIELD 62706

JIM RYAN
ATTORNEY GENERAL

January 12, 2001

United States Senate Judiciary Committee
Washington, DC 20510
Via Telefax: 202/224-9102

Dear Members of the Senate Judiciary Committee:

I am writing in support of Senator John Ashcroft's nomination as Attorney General of the United States. He has been an honorable and dedicated public servant for many years.

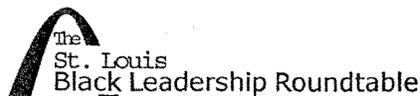
Senator Ashcroft has an extraordinary background, having represented the people of Missouri as their United States Senator, Governor for two terms and Attorney General for two terms. He also served as President of the National Association of Attorneys General.

On a personal note, I have found Senator Ashcroft to be a compassionate and caring person. Senator Ashcroft contacted me both in writing and by telephone to encourage me in my recovery, while I was being treated for cancer at Northwestern Memorial Hospital in Chicago, Illinois.

I urge you to confirm President-Elect Bush's nomination of Senator John Ashcroft as Attorney General of the United States.

Respectfully,


Jim Ryan
ATTORNEY GENERAL



The St. Louis Black Leadership Roundtable

Leaders acting for positive change.

P.O. Box 23003
St. Louis, MO 63156
(314)830-1200

January 16, 2001

Senator Patrick Leahy
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy:

Enclosed is a statement of the positions of the St. Louis Black Leadership Roundtable which we ask that you take into consideration with respect to the candidacy of John D. Ashcroft for United States Attorney General.

Very truly yours,

Sheila Six
Chair
St. Louis Black Leadership Roundtable

Enclosure

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Chair
Eddie G. Davis
Vice Chair
Debra H. Moore
Secretary
M. Darnetta Clinkscales
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Ina Boon
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Dr. Donald L. Suggs
Anthony Thompson
Lottie H. Wade
Khalib Waheed
Dr. James H. Whitico
Jane E. Woods-Miller
Col. William H. Young

Details of Our Partnership with the NAACP in Opposition
to the Candidacy of John D. Ashcroft
for United States Attorney General

The St. Louis Black Leadership Roundtable agreed to partner with the NAACP in opposing the candidacy of JOHN ASHCROFT for United States Attorney General. We agreed that the St. Louis Black Leadership Roundtable members as individuals will write letters to the following persons urging them to VOTE NO. They are:

Senator Jean Carnahan
480 Russel Senate Office Bldg.
Washington, D.C. 20510
Fax: (202) 228-0043

Senator Christopher Bond
274 Russel Senate Office Bldg.
Washington, D.C. 20510
Fax: (202) 224-8149

Share with PRESIDENT-ELECT GEORGE W. BUSH that you are concerned with his nominee JOHN D. ASHCROFT for the position of Attorney General. Forward that communication to:

Transition Headquarters
Washington, D.C. 20510

Senate Judiciary Committee

Phone: 202-224-5225
Fax: 202-224-9102

WHERE: Dirksen Senate Office Building
(Capitol Hill between First St., C St. and
Constitution Ave., NE)

WHEN: Tuesday, January 16, 2001

TIME: 1:30 p.m.

Republicans (10):

Orrin Hatch, UT, Chair
Strom Thurmond, SC
Charles Grassley, IA
Arlen Specter, PA
Jon Kyl, AZ
Mike DeWine, OH
John Ashcroft, MO
Spencer Abraham, MI
Jeff Sessions, AL
Robert Smith, NH

Democrats (8):

Patrick Leahy, VT, Rnk. Mem.
Edward Kennedy, MA
Joseph Biden, DE
Herbert Kohl, WI
Dianne Feinstein, CA
Russ Feingold, WI
Robert Terricelli, NJ
Charles Schumer, NY

Attached is a petition that you may wish to have completed, every tool that we will use in this fight. Please send your completed forms to: Ina Boon, 7335 Melrose, St. Louis, MO 63130.

The Judiciary Committee of the United States Senate will begin holding its hearings on the confirmation of former Senator John D. Ashcroft on Tuesday, January 16, 2001 at 1:30 pm in the Dirksen Senate Office Building in Room 226.

Stated below are statements the NAACP has used. Look also at our Commentary for ideas you may want to put in your letter(s).

The NAACP has strongly opposed this nomination because of Mr. Ashcroft's right-wing-extremist views and strong opposition to the NAACP's "bread and butter" civil rights policy priorities and:

- Former Senator Ashcroft's opposed Hate Crime prevention laws including many of those that the Justice Department is responsible for enforcing.
- Former Senator Ashcroft strongly opposes equal opportunity programs such as Affirmative Action. The Justice Department is responsible for providing oversight and enforcement of these laws.
- Former Senator Ashcroft received a letter grade "F" consistently for the last three Congressional terms on the NAACP's legislative report card. His voting record is exactly the same as South Carolina Senator Strom Thurmond and is considered as extreme right-winged as North Carolina Senator Jesse Helms in the 106th Congress.
- The United States Justice Department is also responsible for pre-clearing all federal court nominees, yet former Senator John Ashcroft's behavior in the confirmation of Missouri Supreme Court Justice Ronnie White was considered disingenuous and deplorable.

Legislators get anti-busing petitions

2/17/81 *Close*

By TIM O'NEIL
Globe-Democrat Staff Writer

About 120 opponents of court-ordered school busing presented petitions Monday to three Missouri congressmen and aides to another congressman and senator, all of whom took turns pleasing the crowd.

"It is great to know that in this great country of ours, when we talk, these guys have to listen to us," said Bob Certotti, president of the Association of Concerned Citizens of Affton.

THREE LOCAL chapters of the National Association for Neighborhood Schools collected 60,000 signatures on petitions that seek federal action to prohibit court-ordered busing to achieve racial balance in public schools. The chapters presented the petitions Monday morning at the St. Louis County Government Center in Clayton.

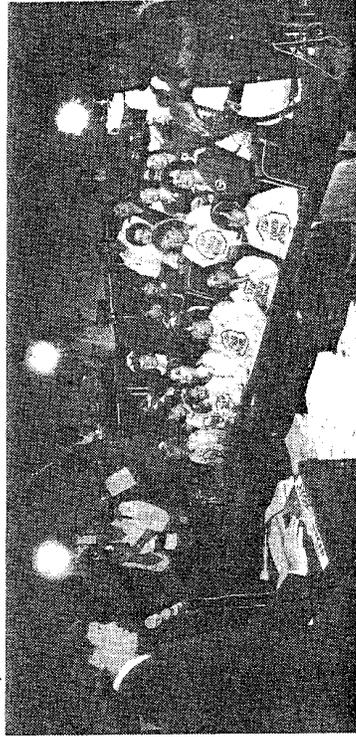
Reps. Richard A. Gephardt, D-St. Louis; Bill Emerson, R-De Soto; and Wendell Bailey, R-Willow Springs; and aides to Rep. Robert A. Young, D-St. Louis County; and Sen. John C. Danforth, R-Mo., accepted the petitions. An aide to Rep. Harold L. Volkmer, D-Hannibal, appeared briefly before the presentation.

Most of the congressmen or proxies said an amendment to the U.S. Constitution would be better than an act of Congress to end court-ordered busing. They also warned that amending the constitution takes time but encouraged the crowd to keep working.

"It is something that can be accomplished," Gephardt said. "The way it will happen is if people like you across the country feel strongly about this and carry through with your beliefs like you have today."

THE ALL-WHITE crowd only failed to applaud once — when Gephardt said elected officials also should work to spread education money evenly among school districts.

"I would hope that as we fight busing, we should



Globe-Democrat Photo

signatures were collected by the National Association for Neighborhood Schools.

U.S. Rep. Richard A. Gephardt, D-St. Louis, accepts anti-busing petitions Monday at the St. Louis County Courthouse in Clayton. About 60,000

advocate better funding for schools," he said. Emerson said court-ordered busing "adds absolutely nothing to quality education."

Bailey said federal courts have abused the Constitution's prohibition against racial discrimination.

"Justice should be colorblind, and you don't bus people just because of the color of their skin," Bailey said. "Forced busing is wrong."

Walter Meyer, aide to Young, called busing a waste of fuel. John Heffrin, Danforth's aide, said Danforth opposes court-ordered busing and is "very interested" in a constitutional amendment to ban it.

but stopped short of saying how such an amendment should be worded.

Stanley Mueller, an officer in the South County Association for Neighborhood Schools and chairman of its political action committee, said the anti-busing groups also invited Sen. Thomas F. Eagleton and Rep. William L. Clay, D-St. Louis. Mueller said representatives of both said they could not attend because of other engagements.

Certotti said the South County, Affton and West County chapters collected the signatures in four months.

Gephardt blames 'white flight' on school busing

GLOBE-DEMOCRAT
6 AUG 62

From Griffin-Larrabee News Bureau

WASHINGTON — St. Louis city schools are suffering from "white flight" because of court-ordered busing implemented two years ago, U.S. Rep. Richard A. Gephardt, D-St. Louis, told a House subcommittee Thursday.

"Minority concentrations have increased on all levels and enrollment is down," Gephardt said, "and we are, in fact, seeing re-segregation, not desegregation."

Gephardt asked the Subcommittee on Courts, Civil Liberties and Administration of Justice to send the Senate's Johnston anti-busing amendment to the House floor for a vote.

THE AMENDMENT would prohibit federal courts from ordering students to be bused more than 10 miles or 30 minutes from their homes and would allow the Justice Department to go to court to overturn existing busing orders. It would also prevent the Justice Department from aiding or participating in any pro-busing suits.

Gephardt is optimistic about getting a vote on the amendment this year because "the Senate leadership is very aggressive with the House leadership in trying to get it out of committee." He said anti-busing citizens' groups are also pressuring House members.

But subcommittee chairman Rep. Robert Kastenmeier, D-Wis., disagreed.

"**THERE IS NO** support for the Johnston amendment — among Democrats or Republicans — on my subcommittee," Kastenmeier said. "While the situation in St. Louis may be somewhat chaotic, it would be a mistake to attempt to limit the federal courts in terms of employing remedies to effect constitutional rights."

Gephardt said that in St. Louis "new statistics show that black enrollment is more heavily concentrated in city schools than before busing began."

Gephardt said money being spent for busing would be better spent on improving the quality of education.

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December 24, 2000, Sunday, FIVE STAR LIFT EDITION

HEADLINE: MR. ASHCROFT AND EQUALITY

THERE is a case to be made that the Senate should confirm John Ashcroft as attorney general. He has a distinguished record of honest and effective public service. He is a smart lawyer who was a strong state attorney general. And the Senate should give some deference to a new president's Cabinet choices.

In addition, Mr. Ashcroft has the institutional tradition of senatorial courtesy on his side. He served in the club and fellow senators will be reluctant to treat him badly.

Nevertheless, the Senate should set aside its sensibilities and scrutinize Mr. Ashcroft's record as it relates to the job of attorney general. In particular, it should investigate Mr. Ashcroft's opposition to civil rights, women's rights, abortion rights and to judicial nominees with whom he disagrees.

The Ashcroft choice is at odds with President-elect George W. Bush's image as a uniter. When Mr. Ashcroft was running for president in 1998, he said: "There are voices in the Republican Party today who preach pragmatism, who champion conciliation, who counsel compromise. I stand here today to reject those deceptions." So much for compassionate conservatism and bipartisanship.

It would be an exaggeration to say Mr. Ashcroft is a racist. He recalls that his father, a noted evangelist, urged him as a boy to read Richard Wright's account of the trials of a black youth in "Black Boy." Africans, whom his father had met on church travels, stayed at the family home in segregated Springfield, Mo.

But Mr. Ashcroft has built a career out of opposing school desegregation in St. Louis and opposing African-Americans for public office. As attorney general in the 1980s he lobbied White House counselor Edwin Meese III to help persuade the Reagan Justice Department to switch sides and oppose a broad school desegregation plan in St. Louis. He eventually succeeded.

In the early stages of negotiating the voluntary city-county school desegregation plan in St. Louis, Mr. Ashcroft's office had actually taken a positive role. But Mr. Ashcroft ended up opposing the plan because the state had to pay for it and because he considered it an example of judicial excess. He told the U.S. Supreme Court that he had "little doubt" that "a minority" would be treated better in court than the state.

Mr. Ashcroft's really inexcusable act was riding his opposition to the St. Louis desegregation plan into the governor's mansion. His so-called "McFlip" TV ad, accusing Gene McNary of flip-flopping on desegregation, is credited with helping win a tough GOP primary in 1984.

Mr. Ashcroft's U.S. Senate record deepens the concern about his attitude toward African-Americans. He tried unsuccessfully to block the appointment of Surgeon General Dr. David Satcher. He scuttled the judicial nomination of Ronnie White of St. Louis. He wrote, in a South Carolina magazine, that, "traditionalists must do more" to defend Confederate leaders "or else we'll be taught that these people were giving their lives, subscribing their sacred fortunes and their honor to some perverted agenda." And he accepted an honorary degree from Bob Jones University in 1999. (It's a wonder that Mr. Bush would want to remind anyone of his own disastrous trip there.)

Mr. Ashcroft's successful campaign against Mr. White is especially troubling. He opposed Mr. White for having voted as a Missouri Supreme Court judge to overturn death sentences. Mr. Ashcroft neglected to mention that some of his own appointees had voted to overturn as many capital sentences. Retired Missouri Supreme Court Judge Charles Blackmar, a Republican appointee, criticized Mr. Ashcroft at the time, saying: "The senator seems to take the attitude that any deviation is suspect, liberal, activist and I call this tampering with the judiciary because of the effect it might have in other states ... where judges, who might hope to be federal judges, feel a pressure to conform and to vote to sustain the death penalty."

Mr. Bush said Friday that he was not worried about the White case because of Mr. Ashcroft's record of appointing African-Americans to the bench. In truth, Mr. Ashcroft had an abysmal record and never appointed a black Supreme Court judge.

Mr. Ashcroft favors the most extreme form of a constitutional amendment to ban all abortions. As state attorney general he filed an unsuccessful antitrust suit against the National Organization of Women because of its economic boycott against states that opposed the Equal Rights Amendment. More recently, he has opposed a strong federal hate crimes law and a bill to bar job discrimination against gays.

All of which raises the question: Is John Ashcroft the person who should be in charge of the nation's civil rights enforcement? Is John Ashcroft the person to protect women who are harassed on their way into abortion clinics? Is John Ashcroft the right person to screen federal judges? In short, is John Ashcroft's commitment to equal justice deep enough to qualify him to be the nation's chief legal officer?

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January 14, 2001, Sunday, FIVE STAR LIFT EDITION

SECTION: EDITORIAL, Pg. B2

LENGTH: 1555 words

HEADLINE: A QUESTION OF FITNESS

BODY:

ATTORNEY GENERAL

JOHN D. ASHCROFT has spent the better part of his political career at odds with core values of the Constitution -- equality, religious freedom, judicial independence and individual autonomy. Now he is nominated to be the people's guardian of those values. The conflict between his record and the duties of the office raises serious questions as to whether John Ashcroft should be confirmed as attorney general.

Disagreeing with Mr. Ashcroft is not reason enough to oppose him. Presidents are entitled, generally, to their pick of Cabinet members. If Mr. Ashcroft were the nominee for secretary of agriculture there would be no problem. But the attorney general vets federal judges, enforces civil rights laws, safeguards the reproductive rights of women and determines the legal position of the United States.

Can Mr. Ashcroft fairly vet federal judges when he believes the judiciary is full of "renegade judges" who have created a "judicial tyranny" where courts are "nurseries for vice?" Can he guard judicial independence when he has repeatedly denied judgeships for political reasons? Can he enforce the civil rights laws when he has doggedly fought school desegregation, affirmative action and gay rights? Can he protect women seeking abortions when he considers abortion murder?

John Ashcroft is indisputably a man of principle. The problem is those principles put him at odds with the Constitution, with contemporary notions of equality and with the mainstream of the American public.

JUDICIAL INDEPENDENCE

Judicial independence is the rock that anchors our judiciary. But Mr. Ashcroft has undermined independence with his attacks on judicial nominees.

Mr. Ashcroft's hostility to judicial independence is an important lesson of the much-told story about his opposition to **Ronnie White** as a federal judge. Mr. Ashcroft may have been motivated by a feud with Mr. White over abortion policy. But by basing his attack on Judge White's death penalty decisions, Mr. Ashcroft sent a chill through the ranks of state judges hoping to be promoted to the federal bench. Mr. Ashcroft said Mr. White was "pro-criminal" because he had voted to overturn death sentences. In fact, Mr. White had upheld 35 of the 55 death sentences.

Mr. Ashcroft focused on Judge White's lone dissent to the conviction of James R. Johnson

Mr. Ashcroft focused on Judge White's lone dissent to the conviction of James R. Johnson in the gruesome murder of a sheriff, two sheriff's deputies and a sheriff's wife. Judge White spoke of his "horror at this carnage" and said Johnson "deserved to die" if he was not insane. But he concluded that Johnson's lawyer was so incompetent that he had not received effective counsel.

A lone dissent in the case that arouses such public passion is the essence of judicial independence. Charles Blackmar, a retired Supreme Court judge, called Mr. Ashcroft's attack "tampering with the judiciary."

Mr. White is not a perfect man, nor is he the nation's keenest jurist. But he upheld the highest values of a judge in his dissent. Will Mr. Ashcroft reject for the federal bench those judges with the temerity to overturn a death sentence?

Mr. Ashcroft's record in Missouri raises similar questions. Judicial nominees say that Mr. Ashcroft asked them their views about abortion before deciding whether to nominate them.

CIVIL RIGHTS

Mr. Bush says that Mr. Ashcroft "has a strong civil rights record." As evidence he cites Mr. Ashcroft's appointment of eight African-Americans to Missouri judgeships, a past commendation from the Mound City Bar Association, an endorsement by the Limelight newspaper, his support of Lincoln University and his signing of bills honoring Martin Luther King and establishing Scott Joplin's home as a historic site.

The appointment of eight black judges is a substantive accomplishment. The rest is resume padding. Mr. Ashcroft was only marginally involved in the Scott Joplin house. The Limelight is a free, marginal publication, by no means the largest or most influential African-American newspaper in St. Louis. The Mound City Bar Association, a black lawyers' group, does not support Mr. Ashcroft because of the "insidious" way he killed Mr. White's nomination.

The actual Ashcroft civil rights record is weak and regressive. As state attorney general he denied that the St. Louis schools were segregated. He lobbied members of the Reagan Civil Rights Division to switch sides in the St. Louis school desegregation case, and eventually became the desegregation plan's chief opponent.

That plan offered responsible politicians the chance support phased, voluntary desegregation. But Mr. Ashcroft insisted on calling it "mandatory busing" and leveled a devastating anti-busing TV ad at his opponents in the 1984 governor's race. U.S. District Judge William L. Hungate summed up Mr. Ashcroft's behavior as "feckless," saying he "voluntarily rode (the desegregation) bus to political prominence."

In 1997 Mr. Ashcroft led the opposition to Bill Lann Lee, the Asian-American head of the Civil Rights Division. First, he distorted Mr. Lee's position on affirmative action, saying he favored quotas. Then, he said Mr. Lee should be rejected for holding a position at odds with the Supreme Court's, when in fact Mr. Lee favored affirmative action in limited cases where the Supreme Court said it could be used.

In 1999 Mr. Ashcroft accepted an honorary degree from Bob Jones University, a fundamentalist Christian college that banned interracial dating until last March. Mr. Ashcroft's claim that he did not know about the university's discriminatory policies stretches credibility. The college's tax exempt status was a huge controversy during the Reagan administration.

Mr. Ashcroft's civil rights record raises serious doubts about his commitment to "equal protection" under the law -- a seed of liberty scarified by the flames of the Civil War and brought to fruition by the civil rights movement.

WOMEN AND REPRODUCTIVE FREEDOM

Mr. Bush says Mr. Ashcroft "has a solid record" on women's issues, citing his appointment of Ann Covington to the Missouri Supreme Court and his support for money to combat violence against women.

But the Women's Political Caucus ranked Mr. Ashcroft last in the nation for appointing women while he was governor of Missouri. As Missouri's attorney general, he opposed the Equal Rights Amendment. When the National Organization for Women boycotted Missouri for opposing the amendment, he stretched antitrust laws to sue the group.

In every office that he has held, Mr. Ashcroft has fought abortion. He supported a Human Life Amendment even before Roe v. Wade. In his view, Roe and its "illegitimate progeny have occasioned the slaughter of 35 million innocents."

As Missouri's attorney general, he personally sought to limit abortion in an argument to the Supreme Court. As governor, he signed the law that led to the 1989 Supreme Court decision that came within one vote of over turning Roe. Mr. Ashcroft has said his top priority is the Human Life Amendment; it would only allow an abortion to save the life of the mother. There would be no exception for rape or incest. Nor could states pass laws permitting abortion. Its tenet that life begins at conception raises questions about the legality of birth control pills, IUDs and the abortion drug RU-486, which Mr. Bush may also seek to restrict.

Mr. Ashcroft has supported a partial birth abortion bill that does not include an exception for the health of the mother, even though the Supreme Court says that exception is required.

Mr. Bush says he does not think the nation is "ready" to overturn Roe and says he will focus on bills such as one outlawing partial birth abortion. Mr. Bush and Mr. Ashcroft have also said they will uphold the law protecting women's access to abortion clinics. But Mr. Ashcroft would have ample room as attorney general to advocate positions that would undermine Roe. And he could help pick Supreme Court justices who would read it out of the Constitution.

RELIGIOUS FREEDOM

Organized prayer in the public schools is unconstitutional. The First Amendment says the government can't tell us when or how to worship. Yet Mr. Ashcroft has long supported organized school prayer. He also supports school vouchers, as does Mr. Bush, that would direct large sums of public money to church schools. As attorney general, Mr. Ashcroft would have the lead role in developing the administration's legal arguments in favor of vouchers. His opposition to four decades of Supreme Court decisions raises questions as to whether he believes in the boundary between church and state.

Perhaps, in several hours of testimony before the Senate Judiciary Committee this week, Mr. Ashcroft can explain why the nation should not feel uneasy with his stewardship of values and principles at war with his own. Perhaps he can reassure the American people that he will enforce principles he has spent a quarter of a century -- his entire career in public life -- fighting. But how could a man swear to uphold constitutional values he rejects, without betraying his own core beliefs? And who would place his trust in a man willing to do so?

Mr. Ashcroft should certainly have a chance to explain how. But if Mr. Bush wanted a uniter, not a divider, he has the wrong man at Justice.

NOTES:

The EARLY FIVE STAR EDITION stated the following in the WOMEN AND REPRODUCTIVE FREEDOM paragraph: . . . IUD's, and the so-called "morning after" pill, which Mr. Bush may also seek to restrict.

LOAD-DATE: January 14, 2001

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January 18, 2001, Thursday, FIVE STAR LIFT EDITION

SECTION: EDITORIAL, Pg. B6

LENGTH: 525 words

HEADLINE: MR. ASHCROFT'S WORDS AND DEEDS

BODY:

ATTORNEY GENERAL

THE QUESTION of whether to confirm John D. Ashcroft boils down to measuring his words against his deeds.

If the Senate bases its decision on Mr. Ashcroft's pledge to enforce the law and not to overturn Roe v. Wade, then it will confirm Mr. Ashcroft. But if it bases the decision on Mr. Ashcroft's many public actions against school desegregation, affirmative action, abortion rights and judicial independence, then it should hesitate to make him the people's lawyer.

In two days of charged testimony, Mr. Ashcroft misrepresented his record on the St. Louis school desegregation case. But, overall, Mr. Ashcroft acquitted himself well during the hearing by promising he would not let his conservative ideology interfere with the enforcement of laws with which he does not agree. Mr. Ashcroft gave a highly effective opening statement in which he linked his religious devotion -- which no one questions -- to his conviction to uphold the law.

Even more persuasive were Mr. Ashcroft's promises Wednesday to abide by Roe, the abortion decision he has called "illegitimate." Mr. Ashcroft said he would preserve the Justice Department task forces that give a high priority to protecting women's access to abortion clinics. He said he would not use abortion as a litmus test for the selection of federal judges. He said the Supreme Court has spoken definitively on abortion and that he would not undermine the Justice Department's credibility by pushing for a reconsideration of Roe. But he still would have considerable latitude as attorney general to limit and undermine Roe without directly seeking to overturn it. In fact, he said he would defend a federal "partial-birth" abortion ban, even though the Supreme Court ruled a Nebraska ban unconstitutional last year.

Mr. Ashcroft angrily defended his anti-abortion lawsuits in Missouri; they were not an attempt to subvert the Constitution, he said, but to develop the law. But Sen. Edward M. Kennedy, D-Mass., pointed out that Mr. Ashcroft's lawsuits were intended to "overturn the law," not develop it. The record demonstrates that Mr. Kennedy is right.

The most disturbing part of Mr. Ashcroft's testimony was his misrepresentation of his opposition to the voluntary school desegregation program in St. Louis. He said the courts had not found the state guilty of wrongdoing, that the state had not been a party to the case when it was

St. Louis Post-Dispatch, January 18, 2001

ordered to pay for the plan and that he had never defied court orders. In fact, the federal courts found that the state was the primary constitutional wrongdoer and the state was a party to the case. And, in 1981 a federal court criticized the state for deliberately deciding to "defy the authority" of the court.

And he continues to misstate the opinion of Judge Ronnie White in a death penalty case that Mr. Ashcroft used to kill Mr. White's nomination to a federal judgeship. Judge White is set to testify today.

Mr. Ashcroft made some progress toward making himself more palatable as attorney general. But the weight of his record, and the tension between his beliefs and the laws of the land, are hard to ignore.

LOAD-DATE: January 18, 2001

HON. ROGER M. SCRIVNER (RET.)
 Circuit Judge
 (618) 397-6231
 Fax (618) 397-9201



January 11, 2001

124 E. Fairway Dr.
 Belleville, IL 62223

Hon. Patrick J. Leahy
 Senator, State of Vermont
 Ranking Democratic Member, Senate Judiciary Committee
 Senate Russell Building, Rm. 433
 Washington, D. C. 20510

RE: Nomination of Senator John Ashcroft

Dear Senator Leahy:

On December 1st, 2000, I retired from the Circuit Court, 20th Judicial Circuit, State of Illinois (which abuts the City of St. Louis), and, thus, have come in contact with many high-powered firms from St. Louis and Kansas City. Having served 17 1/2 years on the bench, mainly in civil litigation, I have presided over many cases involving the above-mentioned firms. Though it has been some time since Senator Ashcroft was Governor of Missouri, the anecdotal stories regarding his selection of all seven members of the Missouri Supreme Court have come to mind as your committee considers the merits of his confirmation.

In Missouri, unlike Illinois, the Governor selects the members of the Supreme Court, as well as other courts, based on a list recommended by a panel. The panel is charged with recommending three "merit" candidates. However, the primary makeup of the panel is heavily influenced by the sitting governor.

As a result of this "merit selection" process, Governor Ashcroft appointed a barely 30-year-old, with little legal experience or ascertainable trial practice as Chief Justice of the Missouri Supreme Court. However, Justice Banks *did* have one major asset; he sang in the same choir in Jefferson City as did Governor Ashcroft. In fact, a number of Governor Ashcroft's judicial appointments were closely allied to him because of their common church interests. As an aside, the Illinois Trial Lawyers used these examples of "merit selection" to thwart efforts in Illinois to adopt a similar system as is in place in Missouri... It was a very successful campaign.

Let there be no mistake, my family and I are Democrats, as was my late father, Dr. W. C. Scrivner, and 93-year-old mother. However, when I put the robe on, party concerns stopped at the courtroom door.

Now the promoters of Senator Ashcroft are citing his moderate and statesman-like performance as the Attorney General and then Governor of Missouri. Yet, the proof of his actions speak louder than his words. In more than one instance, in exercising his discretionary powers as the Governor of Missouri, the most important qualification was the religious views and practice of the nominee to the court. Experience and legal ability were secondary. I submit this theocratic approach in the Senator's views have not changed and, in light of his recent public statements, has become more rigid.

I believe your staff should thoroughly look at his record of appointments in Missouri, and consider, whether or not this is an important body of evidence as to Senator Ashcroft's nomination.

Very Truly Yours,



Hon. Roger M. Scrivner
Circuit Court Judge (retired)

CC: Hon. Richard Durbin
U. S. Senator, State of Illinois

Hon. Jerry Costello
U. S. Congressman, State of Illinois

1130

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9M &



LAWRENCE COUNTY SHERIFF'S OFFICE
P. O. Box 107, Mt. Vernon, MO 65712
Doug Seneker, Sheriff

(417) 466-2131
FAX (417) 466-4222

8.24.98

Senator Ashcroft

I stand alongside my friend and fellow sheriff, Kenny Jones of Moniteau County, in opposing the appointment of Ronnie White to a federal judgeship.

We have way too many liberals in these positions already.

7164207
2421728 10/5 ✓

Doug Seneker
Sheriff of Lawrence Co.

1131

01/11/2001 17:44 FAX 801 538 1121

UT ATTN: GEN EX

003

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



MARK L. SHURTLEFF
ATTORNEY GENERAL

RAY HINTZE
CHIEF DEPUTY - CIVIL

RYAN MECHAM
CHIEF OF STAFF

KIRK TORGENSEN
CHIEF DEPUTY - CRIMINAL

January 11, 2001

The Honorable Orrin Hatch
8402 Federal Building
125 South State
Salt Lake City, Utah 84138

Dear Senator Hatch:

As the Attorney General for the State of Utah, I would like to state my strong endorsement of the nomination of Senator John Ashcroft for the position of U.S. Attorney General.

It has been brought to my attention that Senator Ashcroft is the first U.S. Attorney General nominee in history to serve as a State Attorney General, Governor and U.S. Senator, giving him unparalleled experience to serve. Senator Ashcroft has been a leader in the fight against crime. He helped to enact tougher standards for sentencing, provided funding for local law enforcement, worked to keep guns out of the hands of criminals, protected innocent victims, and led the fight against drugs, particularly methamphetamine. Which, as your know, will be extremely beneficial as we partner with the U.S. Attorney's Office to fight this scourge in Utah.

Senator Ashcroft has not only the experience, but the integrity, to be one of the best Attorney's General our country has every had.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark L. Shurtleff".

Mark L. Shurtleff
Attorney General

MLS/hfp



**TESTIMONY OF DANIEL J. WEISS
SIERRA CLUB POLITICAL DIRECTOR
BEFORE THE SENATE JUDICIARY COMMITTEE
JANUARY 16, 2001**

Mr. Chairman and members of the Committee, my name is Daniel J. Weiss, and I'm Political Director of the Sierra Club. On behalf of the 630,000 members of the Sierra Club, I'm grateful for the opportunity to present to the Committee our opposition to the nomination of John Ashcroft for Attorney General of the United States.

George W. Bush's nomination of John Ashcroft is an extreme, partisan choice for U.S. Attorney General. His poor environmental record and his open hostility to most environmental laws is clearly at odds with the nation's mainstream, bipartisan consensus to protect our air, water, and lands. The Attorney General should vigorously enforce the country's environmental laws. Given his extreme anti-environmental record, we cannot count on John Ashcroft to enforce the laws as the nation's top environmental cop.

As a Senator, Ashcroft voted to weaken enforcement of the Clean Air and Water Acts, and block enforcement of arsenic restrictions in drinking water. He also supported allowing mining companies to dump cyanide and other mining waste on large areas of public lands next to mining sites.

Sen. Ashcroft has sponsored bills that remove enforcement tools from the Clean Air Act, and block the smog and soot standards that he would now be called on to enforce. And some of these bills were so extreme that they were cosponsored by only handful of other Senators.

In the last election cycle, Sen. Ashcroft ranked second for the amount of money he took from polluters: \$633,470 according to a study by the Environmental Working Group. Can we really expect him to vigorously enforce clean air and water safeguards against the same companies that just gave him thousands of dollars?

For instance, he voted to prevent EPA from forcing General Electric to clean up the PCB's it dumped in the Hudson River. Ashcroft also received \$8,000 in campaign cash from GE. Can we count on him to enforce EPA's clean up plan should General Electric continue to resist it?

Senator Ashcroft also opposes campaign finance reform. He voted against the McCain-Feingold bill -- which would have cleaned up politics by banning soft money contributions to political parties. This bill would have closed a loophole that allows mining, timber and other interests to gain influence by contributing huge unregulated sums of money to political parties. We are skeptical that Ashcroft will enforce the law against the companies that gave him thousands of dollars in special interest donations.

It has been a hallmark of John Ashcroft's Senate career that when his attempts to weaken environmental standards were defeated, he would try to weaken enforcement tools as an alternative to accomplish his policy goals. Will this trend continue if he became Attorney General -- using enforcement, or a lack thereof, to pursue his ideological agenda? We believe it would.

Environmental protections, from clean air to public lands, are all facing legal challenges. The next Attorney General will be called upon to enforce these laws, and defend the environmental progress we have made in this country. There are serious doubts that Senator Ashcroft can be counted upon to enforce provisions he has worked so diligently to undermine.

Issues of Concern

Clean Air

The Supreme Court is currently reviewing important soot and smog standards, and could review the new sulfur levels in diesel fuel rule. As a Senator, Ashcroft was a leader in the fight against clean air safeguards.

He was one of only six senators to cosponsor S. 495 in 1999, which would have amended the Clean Air Act to remove a critical enforcement tool available to the EPA Administrator when states do not cleanup air pollution problems. This was a developer-led assault on clean air that, if passed, would have harmed public health, exacerbated sprawl, and reduced the transportation choices available to many Americans.

Ashcroft was one of only 23 Senators to cosponsor a bill that would have blocked strong new clean air health standards designed to protect children, seniors, and others from smog and soot. (S. 1084, 10/22/97) In addition, Ashcroft voted to weaken the budget of the Environmental Protection Agency. (HR 2099, 9/27/95) The enforcement arm of EPA was especially hard hit; this is crucial because our nation's environmental laws are only as good as their enforcement. Senator Ashcroft, as head of the Department of Justice, will be in charge of such enforcement actions.

Not only has Ashcroft fought clean air standards and enforcement at every step, he received more than \$380,000 from "Dirty Air" businesses including mining, coal, and oil groups such as Union Carbide and Exxon in his 2000 race. (Environmental Working Group)

The Sierra Club has serious concerns whether John Ashcroft, as Attorney General, would defend these same important standards to protect our clean air, to prevent the increase of childhood asthma cases, and to clean up the skies over America's cities, after working so vigorously to undermine them.

Citizen Monitoring

The U.S. Supreme Court has accepted for review a large number of high profile cases in recent years that concern "citizen standing" (citizen enforcement of environmental laws and public interest laws).

Senator Ashcroft voted to allow chemical manufacturers to avoid reporting some of their toxic pollution under existing "community right-to-know laws" (S. 343, 7/13/95). During his 2000 race for the U.S. Senate in Missouri, John Ashcroft received more than \$630,000 from "Dirty" PACs - businesses including

mining, coal, and oil groups such as Monsanto and BP Amoco. That ranked Senator Ashcroft as the second worst candidate in the country for accepting polluter money.

In light of his record, the Sierra Club has serious concerns whether John Ashcroft, as Attorney General, would defend the laws that authorize citizens to enforce environmental and public interest laws.

National Monuments

Vice President-Elect Dick Cheney has stated firm opposition to new National Monuments created by the Clinton Administration. Many of these national monuments protect desert wildlands, wetlands, rivers, and wild forests that would otherwise suffer destruction at the hands of oil, mining, and timber interests. Some of these include the Giant Sequoia National Monument (CA), the Hanford Reach National Monument (WA), and the Grand Canyon-Parashant National Monument (AZ).

Senator Ashcroft supported an attack on National Monuments last year, voting for Senator Don Nickels' (R-OK) amendment to undermine the President's authority to protect spectacular American landscapes by prohibiting the designation of any new National Monuments unless authorized by Congress (H.R. 4578).

Senator Ashcroft voted on several occasions, most recently April 6, 2000, to open up the Arctic National Wildlife Refuge to oil drilling. Senator Ashcroft voted against Sens. Roth (R-DE) and Boxer's (D-CA) attempt to remove a provision in the Senate FY 2001 budget resolution that assumed \$1.2 billion in anticipated revenue from oil drilling in the Arctic National Wildlife Refuge. This provision is a backdoor attempt at opening the Coastal Plain of the Arctic Refuge by Big Oil's Senate allies.

Senator Ashcroft raised more than \$150,000 from timber, mining and other anti-wilderness groups such as Weyerhaeuser and Texaco. This fundraising prowess rates him the fourth worst in the category of Public Land Use Dirty Money for 2000. (Environmental Working Group)

The Sierra Club has serious concerns whether Senator Ashcroft, as Attorney General, would defend these monuments from legal attacks.

Clean Water

While in the Senate, Ashcroft voted against additional funding for environmental programs including the Clean Water Action Plan and toxic waste cleanups at Superfund sites. (S.C.R. 86, 04/02/98)

Ashcroft cosponsored S. 2417, an attack on a key enforcement component of the Clean Water Act, the Total Maximum Daily Load (TMDL) program to clean up run off water pollution. For many years, states and EPA largely ignored this critical program. In recent years, lawsuits brought by environmental groups have compelled EPA and the states to start meeting their responsibilities under the TMDL program to

identify and restore impaired waters. As a result of the new attention to TMDLs, the program has come under attack by special interest industry groups.

Ashcroft voted against an amendment that would delete an anti-environmental rider attached to the EPA's funding bill. The rider delays the EPA's efforts to decrease levels of arsenic, a known carcinogen, in drinking water. Research by the National Academy of Science concluded that the current drinking water standard for arsenic is too high and should be revised downward as "promptly as possible" (H.R. 2099, 09/27/95).

Senator Ashcroft raised more than \$160,000 from fertilizer producers, miners, and other anti-clean water groups such as Occidental Petroleum and DuPont, making him the second worst in the category of Dirty Water Money. (Environmental Working Group)

The Sierra Club has strong concerns whether John Ashcroft, as Attorney General, would enforce the key components of the Clean Water Act, rather than seek to circumvent them.

Public Lands

President Clinton recently signed a Wild Forest Protection Policy, one of the most heralded and important conservation initiatives in a generation. The proposal protects America's remaining wild forests by blocking future road building projects, commercial logging, and other activities that benefit timber and exploitative industries.

Senator Ashcroft has consistently opposed attempts to reform the U.S. Forest Services' management practices in our national forests, even voting to continue to allow taxpayer subsidization of money-losing logging on our public lands.

On July 27, 1999, Senator Ashcroft voted against Sen. Patty Murray's (D-WA) amendment to the Department of Interior Appropriations Bill for the year 2000. Her amendment would have stopped an anti-environmental rider that allows mining operations to dump their toxic tailings and other waste across unlimited areas of public lands. The Sierra Club supported Senator Murray's amendment to block the rider because it would limit the size of mining waste dumps on public lands, as required by current law.

Of particular concern to Missourians was Ashcroft's attempt to browbeat the Secretary of the Interior and the Secretary of Agriculture into rubberstamping mining permits for the Doe Run Co. The mining company was trying to get approval to conduct mining activities in the watersheds of the Current, Jack's Fork and Eleven Point Rivers, and the Interior and Agriculture departments were following legally required procedures in processing the permits. Ashcroft wanted these processes short-circuited.

Senator Ashcroft raised more than \$150,000 from timber, mining and other anti-wilderness groups. This fundraising prowess rates him the fourth worst in the category of Public Land Use Dirty Money. (Environmental Working Group)

Given his record of opposition to public land protection, the Sierra Club has strong concerns whether Senator Ashcroft, as the head of the Justice Department, would vigorously enforce protections of America's public lands.

Special Rights for Special Interests

Large developers are mounting legal challenges in their efforts to seek compensation from the federal government for so called "takings." In essence, these developers are seeking taxpayer subsidies to pay them not to harm the environment.

Senator Ashcroft has been in favor of a measure that would let land speculators and developers go directly to federal courts in the event that a local planning and zoning ordinance was standing in their way. This flies in the face of local control of land uses which Ashcroft often advocates, but Ashcroft's friends and donors in the development community persuaded him to support this measure to bypass local and state courts (S. 2271, 07/13/98). Previously, he was one of only 34 Senators to cosponsor much broader versions of this legislation.

According to the Center for Responsive Politics, Senator Ashcroft received more than \$135,000 from Real Estate groups across the country in the 1999-2000 election cycle.

The Sierra Club has strong concerns whether the Justice Department under the direction of Senator Ashcroft would work to protect the interests of citizens, children, and workers rather than defending large companies that demand these "takings" for complying with health and other safeguards.

PCB Pollution

The EPA has ordered General Electric to clean up their PCB pollution in the Hudson River. As a Senator, Ashcroft voted to block the EPA, and General Electric is still fighting the ruling in the courts.

Ashcroft opposed a Sense of the Senate resolution to counteract language in the EPA's funding bill that weakens or precludes the EPA's ability to clean up some of the thousands of miles of our nation's rivers, lakes and bays that are contaminated with toxic chemicals. This includes the 200 miles of the Hudson River in New York that General Electric contaminated with more than 1,000,000 pounds of PCBs. On October 12, 2000, Ashcroft voted against an amendment to give EPA full authority to cleanup the Hudson River.

For his 2000 Senate campaign, Ashcroft received \$8,000 from the General Electric PAC, and an undetermined amount from individual employees.

The Sierra Club has strong concerns whether John Ashcroft, as Attorney General, would work to enforce the government ruling to force cleanup of the Hudson and other polluted waterways.

Global Warming and Energy

The auto industry has spent millions of dollars fighting improved automobile fuel-economy (CAFE) standards. Increasing CAFE standards is the single biggest step we can take to fight global warming.

In the fall of 2000, Senator Ashcroft attempted, for the second time in two years, to continue the ban on Department of Transportation studies of raising miles per gallon standards for cars and trucks, even though this would help consumers faced with soaring gasoline prices. Ashcroft and his allies were out-numbered and did not bring their anti-environmental amendment to the Senate Floor.

Senator Ashcroft raised more than \$386,655 from auto companies, oil companies, and other global warming action groups such as DaimlerChrysler and the American Road and Transportation Builders Association. This fundraising prowess rates him the third worst in the category of Global Warming Dirty Money.

The Sierra Club has strong concerns whether Senator Ashcroft, as Attorney General, would enforce CAFE standards in the auto industry.

Conclusion

Throughout his campaign, President-Elect Bush stated that he was a "a uniter, not a divider." Ashcroft's nomination for Attorney General contradicts that sentiment. I respectfully urge the committee to oppose the nomination of former Senator John Ashcroft for Attorney General of the United States.



Million Dollar Man: *5 Dirty Facts on Former Senator Ashcroft*

Will Ashcroft Enforce Laws Penalizing his Supporters?

Repeat violators of basic environmental laws have helped John Ashcroft run for office. He used his position as Senator to try to weaken environmental protections, and limit the ability of the government to enforce those laws. In addition, he opposes campaign finance reform measures that would clean up a system that gives these corporations so much influence in the first place.

1. Big Polluters Paying his Bills

Senator Ashcroft received more than \$140,000 in Dirty Money from polluting companies that have violated fundamental environmental laws like the Clean Water Act and the Clean Air Act. Many of these big anti-environmental corporations have been cited by the EPA for violations within the past 3 years, let pollution permits expire, or still have court cases pending. The table below is only a sample list of big polluter companies that have given hard money to Senator Ashcroft. See Attachment 1 for complete information on the violations.

2. Unregulated Contributions

The National Republican Senate Committee (NRSC) received more than \$1,110,000 from these same Dirty Money companies since 1995. NRSC money helped make Ashcroft's 2000 reelection campaign one of the most expensive in the country.

Company	Hard Money	Soft Money
American Electric Power Company	\$2,000	
Asarco Inc	\$1,000	\$3,000
Boeing Company	\$18,250	\$95,200
BP Amoco Oil Company	\$3,000	\$317,000
Chevron USA Inc	\$7,500	\$50,000
Duke Energy Corp	\$1,000	\$35,000
Eagle Industries Inc.	\$7,000	
Edison Electric	\$2,000	\$35,000
Exxon Mobil	\$8,000	\$175,000
Ford Motor Co.	\$20,050	\$25,250
General Electric	\$8,000	
General Motors	\$20,850	\$13,100
International Paper Co	\$10,000	\$3,000
Kansas City Power & Light Co	\$3,000	
Koch Industries	\$7,000	\$190,000
Marathon Oil Company	\$2,000	
Phillips Petroleum	\$2,000	\$45,000
The Timken Co	\$6,500	
USX Corp	\$2,000	\$93,000
Utilicorp	\$10,000	\$37,000
Westvaco Corp	\$6,000	
	\$144,150	\$1,113,550
TOTAL POLLUTER \$		\$1,257,700

3. Leading the PAC

John Ashcroft received more Dirty Money than all but one candidate in the 2000 election cycle.

4. Corporate Funders

Senator Ashcroft took more than \$725,000 from big oil, mining, timber, and pro-sprawl companies and interest groups.

5. Won't Cleanup the System

Senator Ashcroft refuses to change the system. In 1999, John Ashcroft voted against the McCain-Feingold soft money ban. This ban would close a 25-year-old loophole that allows large companies, unions and individuals to gain influence by donating huge unregulated sums of money to political parties. These funds are then used for campaign activities.

The Attorney General, as America's top environmental enforcer, should reflect the nation's mainstream, bipartisan consensus to protect our air, water, and lands. Unfortunately, John Ashcroft's poor environmental record and his open hostility to most environmental laws calls into question whether we can count on him to enforce our environmental protections. John Ashcroft is a partisan, divisive choice for a job that should be neither.

Can America count on John Ashcroft to vigorously pursue violators of environmental laws?

For more information, contact Mike Newman at (202) 675-7917.

Sources:

Environmental Working Group (ewg.org --- Dirty Money Tracker)
Common Cause (commoncause.org --- Soft Money Database)
Center for Responsive Politics (opensecrets.org)
Federal Elections Commission (fec.gov - Citizen's Guide to Campaign Finance Data)

Attachment

Attachment 1

ENFORCEMENT FOR BIG POLLUTERS WHO POLLUTE

Companies that own minor facilities in Michigan that have violated the Clean Water Act (CWA) twice in the past two years. No penalties were assessed.

- **General Motors** has one facility in violation of the CWA in Flint, Michigan. General Motor's donated \$20,850 in PAC and individual contributions to John Ashcroft's campaign in the 2000 election cycle.
- **Ford Motor Company** has two facilities in violation of the CWA in Wayne and Wixom, Michigan. Ford donated more than \$20,000 from PAC and individual employee's monies to John Ashcroft's campaign during this election cycle.

ENFORCEMENT FOR COMPANIES WITH PLANTS IN OH & PA WHO POLLUTE

Companies that own facilities that have violated the CWA in Ohio at least once in the past year. Only two fines have been levied out of 14 violations.

- **British Petroleum (BP) Exploration and Oil Inc.** has a facility in Lima, OH that violated the CWA four out of eight quarters in 1998-99. BP gave John Ashcroft \$3,000 in the 2000 election cycle.
- **The Timken Company** in Canton, OH has one facility in violation of the CWA. The facility has also been in violation for four of eight recent quarters. Timken Co. gave John Ashcroft \$6,500 in the 2000 election cycle.
- **USX Corporation** has a facility in Braddock, PA that has violated the CWA. USX Corporation gave John Ashcroft \$2,000 in the 2000 election cycle.

ENFORCING FOR MAJOR WATER POLLUTERS

Major polluter listed in significant non-compliance of the CWA or the Clean Air Act (CAA) not inspected in FY 1998-99.

- **Utilicorp** owns and operates a facility in Sibley, MO considered to be in significant non-compliance of the CWA in 1998-99. Utilicorp gave the maximum PAC contribution of \$10,000 to John Ashcroft in 2000.
- **Eagle Industries Inc.** has one plant in Bowling Green, KY that violated clean air standards. The Eagle Forum PAC gave \$7,000 to the Ashcroft campaign.
- **Kansas City Power and Light Co.** owns a plant in Lacygne, KS that is a major air polluter. Kansas City Power and Light gave \$3,000 to the Ashcroft campaign.
- **Westvaco Corp.** owns one plant in Wickliffe, KY that violated the CAA. The company gave the former senator's campaign \$6,000.

ENFORCING FOR POLLUTING POWER PLANTS

Power plants that have increased their power generation since 1992 despite being cited by the EPA for violations.

- **American Electric Power Company** has one plant cited by the EPA for air pollution in West Virginia. American Electric Power gave John Ashcroft \$2,000 in the 2000 election cycle.
- **The Edison Power Company** has one plant in Jefferson County, OH cited by the EPA for air pollution. Edison related PACs gave John Ashcroft \$2,000 in the 2000 election cycle.

ENFORCING FOR POLLUTING COMPANIES THAT HAVE ALLOWED POLLUTION PERMITS TO EXPIRE

- **Boeing Company** has one plant in Wichita, KS that has allowed their water pollution permit to expire. Boeing has given the Ashcroft campaign more than \$18,000.

ENFORCING FOR CORPORATIONS THAT EMITTED ILLEGAL AMOUNTS OF A POLLUTANT FOR WHICH THEIR COMMUNITY FAILS TO MEET CLEAN AIR GOALS

- **Chevron USA Inc.** has one plant in El Segundo, CA that failed to meet the community clean air goals. Chevron gave \$7,500 to John Ashcroft in the 2000 election cycle.
- **Exxon Mobil Co.** has one plant in Baytown, TX that is in violation of community clean air standards. Exxon Mobil gave Ashcroft \$8,000 towards his 2000 election campaign.
- **International Paper** has a plant in Ticonderoga, NY that violates local clean air standards. The company gave the Ashcroft campaign \$10,000.
- **Asarco Inc.** has a facility in El Paso, TX that exceeds local clean air standards. Asarco gave Ashcroft's campaign \$1,000.
- **Phillips Petroleum** owns and operates a plant in Woods Cross, UT that violates the community clean air standards. Phillips Petroleum gave \$2,000 to the former senator's campaign.

ENFORCEMENT FOR COMPANIES THAT HAVE COURT CASES PENDING (CURRENTLY OR RECENTLY)

- **Duke Energy Corporation** had a court case pending recently on pollution violations. They gave the Ashcroft campaign \$1,000.
- **Koch Industries** has two pollution penalty cases that are being deliberated. The company gave the former senator's campaign \$7,000.

ENFORCEMENT FOR POLLUTING PCBs IN THE HUDSON RIVER

- **General Electric** has been a major polluter of the Hudson River in New York. General Electric has given \$8,000 to the Ashcroft campaign and continues to fight litigation that has forced specific cleanup proposals.

ENFORCEMENT FOR A BUSINESS THAT HAS TEN OR MORE VIOLATIONS OF THE CAA IN 1996-98 AND WERE NOT FINED

- **Marathon Oil** owns and runs a plant in Robinson, IL that has violated the CAA multiple times and was not assessed a fine as of 1998. Marathon Oil gave the Ashcroft campaign \$2,000.

Sources:

Environmental Working Group (ewg.org --- Dirty Money Tracker)
Common Cause (commoncause.org --- Soft Money Database)
Center for Responsive Politics (opencrets.org)
Federal Elections Commission (fec.gov - Citizen's Guide to Campaign Finance Data)

The 60 Plus Association

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*Tax Fairness for Seniors * Repeal Unfair Inheritance Taxes!
Guardian of Seniors' Rights Award * Senior Voice Newsletter*

*Roger H. Zion (R-IN, 1967-75)
Honorary Chairman*

*James L. Martin
President*

TESTIMONY IN SUPPORT OF JOHN ASHCROFT FOR ATTORNEY GENERAL Submitted to the Senate Judiciary Committee

By
James L. Martin, President
The 60 Plus Association
January 12, 2001

Mr. Chairman and Members of the Senate Judiciary Committee,

The 60 Plus Association, a national, nonpartisan senior citizens advocacy group of half a million members nationally (with 8,000 in Missouri), is pleased to endorse strongly former Senator John Ashcroft for confirmation as the next Attorney General of the United States.

John Ashcroft is a former Attorney General of Missouri, a former Governor, and a former United States Senator. He has served in all of these positions competently and with integrity. He will do so as the Attorney General in the Bush Cabinet.

The 60 Plus Association strongly supports senior citizen issues such as repeal of the federal estate or death tax, the protection and strengthening of Social Security and Medicare, a sound and practical drug prescription program for seniors, and promoting a philosophy of lower taxes and more freedom. John Ashcroft has been a champion of seniors rights. He has demonstrated wisdom, courage, and above all, sensitivity and action in protecting seniors' rights.

The highest and most prestigious award 60 Plus gives is the "Guardian of Senior Rights Award," in recognition for voting pro-senior. Senator Ashcroft received this award each time it has been offered.

He also has been the recipient of the Benjamin Franklin Award for his co-sponsorship of legislation to repeal the federal estate or death tax. And why the Benjamin Franklin Award? Franklin said that there are two certainties in life: death and taxes. But because of the death tax, there's a third certainty: taxes after death. That is why 60Plus presented the aptly-named Benjamin Franklin Award to Senator Ashcroft and others because their repeal bill rids society of this third certainty.

And in my dealings, I have found Senator Ashcroft a sincere and hard-working legislator who cares for all people, regardless of race, color, creed, or national origin. He is a true humanitarian.

There are many laws which affect seniors and demand enforcement—those dealing with basic rights—and I am convinced John Ashcroft would be a vigorous champion enforcing the

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law for not only senior citizens but all Americans.

60 Plus has had dealings with Senator Ashcroft on a host of issues, not only repeal of the death tax but also his efforts to protect Social Security in a "lock box" for future retirees.

As examples for the record, I am enclosing two letters from 60 Plus to Senator Ashcroft on other issues of importance to seniors.

On October 12, 1999, 60 Plus commended the Senator for his vote in defeating the nomination of Judge White for a seat on the U.S. District Court.

On June 27, 2000, 60 Plus endorsed a piece of legislation sponsored by Senator Ashcroft, the Pension Opportunities for Women's Equality in Retirement (POWER) Act of 2000 which would provide women with greater retirement benefits and assistance.

I want to address a broader issue regarding the confirmation of John Ashcroft. Reasonable people can have reasonable differences. Senators of both parties vote to confirm nominees even though they may not agree with their philosophy and issue positions. And it has been part of our political and civil tradition to give a President the nominees he desires in his Cabinet, unless there is a major problem or scandal. The point is that President-elect George Bush wants John Ashcroft as his Attorney General and, as Attorney General, Ashcroft will vigorously enforce all the laws.

As someone who has been in Washington, D. C. for nearly 40 years, I have been alarmed by these ferocious attacks and distortions of his record.

I want to address these attacks against a good public servant. Some groups seem determined to destroy his reputation in their efforts to stop his confirmation. This has led to all types of distortions.

First, he has been denounced as a "racist" because he voted against an African-American nominee to the U.S. District Court, Ronnie White, the most liberal member of the Missouri Supreme Court. Mr. Ashcroft has consistently opposed activist judges, despite their color or national origin or gender.

Mr. Ashcroft as governor supported a diverse judicial bench. He appointed the first African-American woman, Sandra Farragut Hemphill, to a state court judgeship. He also appointed the first African-American judge, Ferdinand Gaitan, to sit on Missouri's second highest court of appeals and later supported his appointment as U.S. district court judge for western Missouri. He also demonstrated sensitivity and commitment to African-Americans through other actions such as signing a bill to make the birthday of Martin Luther King a state holiday, led the effort to save Lincoln University (founded by African-American soldiers who served in the Civil War) and strongly backed the effort to turn the home of African-American Scott Joplin into a public museum.

Press accounts indicate that Senator Ashcroft voted for 23 of 26 African-American judges. Is he a "racist" because he opposed three?

Even liberal writer Richard Cohen, The Washington Post columnist (January 11, 2001) who opposes Ashcroft for a variety of reasons, wrote, "John Ashcroft is no racist." He calls attention to Ashcroft's pro-civil rights record of appointments and characterized the racist charge as "a straw man that the slightest breeze will blow over." I am appalled that other critics of Mr. Ashcroft haven't denounced this effort to portray him as a racist. Unfortunately, they may be so committed to defeating him they have allowed distortions to become part of the campaign.

Second, he has become the target of a campaign of groups, many of whom receive funding and special privileges from the federal government time and time again. These groups are determined to spend any amount of money, use any tactic, bring any pressure on their normal allies in the U.S. Senate, to control the media debate and create partisan division within our

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society.

Ms. Patricia Ireland, head of the National Organization of Women, has boasted of this intimidation by saying that her organization will remind Democratic senators up for re-election in 2002 of their contributions to their campaigns. Kate Michelman, president of the National Abortion Rights Action League, has boasted, "We'll all going to spend whatever it takes."

These two groups oppose Mr. Ashcroft's position since he is pro-life.

Let them debate the issue. However, the effort to use pressure tactics—and to join up with other organizations—to intimidate members of the Senate is divisive. These groups are asking the Senators to abandon independent judgment in order to bow to pressure tactics. This is unfair and it is not the American way, and certainly not the process, which our Founding Fathers put in the Constitution when they provided for Senate confirmation for presidential appointments.

Many of these other groups have received special privileges and funding from the federal government, actually the taxpayers of America. Senator Ashcroft has opposed excessive federal spending and centralized government. Some of these groups, such as Planned Parenthood, depend on federal grants (tax dollars). And they have launched this vicious attack against someone who has stood for principles and for the taxpayers over the years.

And yet we see an unholy alliance using money, perhaps even a very large amount of taxpayer money, to arouse a grassroots with distortions and unfair attacks against John Ashcroft. As a matter of fact, a cursory examination of these groups and how they're financed, will show that a vast majority are using taxpayers' money to promote their agendas. They label those of us on the other side the "radical right." If that's the case, I daresay they're part and parcel of the "loony left."

It's been observed that if you took away their government (i.e. taxpayer) funding, Washington would resemble a ghost town as these groups would have to seek employment elsewhere instead of on the backs of the unassuming taxpayers of America.

And if any groups on the "radical right" are using taxpayer dollars to promote their agenda, I say shame on you and remind you that Thomas Jefferson called the use of public monies for causes with which the public might not agree, both "sinful and tyrannical." Have they no sense of decency? Have they abandoned fairness and open debate just to show their reckless power? Have they decided to use pressure tactics to keep the federal funding coming and the donations rolling in to defeat a good person, the President's choice for Attorney General?

The answers are obvious. We on behalf of the 60 Plus Association urge a fair hearing and support for a decent, public-spirited person, who has the required qualifications—in fact, outstanding qualifications as a former Attorney General of his state of Missouri, a former Governor and a former Senator—for Attorney General of the United States. Probably no person ever nominated for Attorney General has been more qualified to serve in this important office than John Ashcroft. We urge his confirmation. Thank you.

60 Plus does not receive federal grants but is supported by voluntary donations from the public.

60 Plus is an eight-year-old non-profit, nonpartisan group with a less government, less taxes approach to seniors' issues. 60 Plus is supported by voluntary donations from its 500,000 citizen lobbyists to print and mail millions of letters, petitions and voting indexes. 60 Plus publishes a newsletter, SENIOR VOICE, and a SCORECARD, bestowing a GUARDIAN OF SENIORS' RIGHTS award on lawmakers in both parties who vote "pro-senior." 60 Plus has been called "an increasingly influential lobbying group for the elderly..."

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The 60 Plus Association

1655 N. Fort Myer Drive * Suite 355 * Arlington, VA 22209
Phone (703) 807-2070 * Fax (703) 807-2073

***Tax Fairness for Seniors * Repeal Unfair Inheritance Taxes!
Guardian of Seniors' Rights Award * Senior Voice Newsletter***

Roger H. Zion (R-IN, 1967-75)
Honorary Chairman

James L. Martin
President

October 12, 1999

The Honorable John Ashcroft
United States Senate
Washington, D. C. 20515

Dear Senator Ashcroft:

We at the 60 Plus Association commend you for your courageous (and successful) action in defeating the nomination of Judge Ron White for a seat on the U.S. District Court.

It was clear from the record of Judge White and the debate in the U.S. Senate that Judge White is a proponent of judicial activism and had a record harmful to victims of crime. The entire country, especially senior citizens, owes you a debt of gratitude.

Sincerely,

James L. Martin

60 Plus is a seven-year-old non-profit, nonpartisan group with a less government, less taxes approach to seniors' issues. 60 Plus is supported by voluntary donations from its 500,000 citizen lobbyists to print and mail millions of letters, petitions and voting indexes. 60 Plus publishes a newsletter, SENIOR VOICE, and a SCORECARD, bestowing a GUARDIAN OF SENIORS' RIGHTS award on lawmakers in both parties who vote "pro-senior." 60 Plus has been called "an increasingly influential lobbying group for the elderly...often viewed as the conservative alternative to the American Association of Retired Persons (AARP)."

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Guardian of Seniors' Rights Award * Senior Voice Newsletter*

*Roger H. Zion (R-IN, 1967-75)
Honorary Chairman*

*James L. Martin
President*

June 27, 2000

The Honorable John Ashcroft
United States Senate
Washington, D. C. 20510

Dear Senator Ashcroft:

The 60 Plus Association is pleased to endorse your Pension Opportunities for Women's Equality in Retirement (POWER) Act of 2000.

This legislation will provide women with greater retirement benefits and assistance. The provision that you include which would allow workers over fifty to make additional pension contributions of up to 50% more than allowed under current law is especially "pro-family" as it would greatly aid those women who left the labor force to raise children and thus allowing them to catch-up before retirement. This measure helps to correct inequities in the present law that especially hurt women.

I hope Congress will act quickly to enact the POWER Act of 2000 into law.

Sincerely,

James L. Martin

60 Plus is an eight-year-old non-profit, nonpartisan group with a less government, less taxes approach to seniors' issues. In accordance with the rules of the House, the 60 Plus Association states that it does not receive federal government grants and contracts, never has in the past, and in fact, as a matter of policy, will not accept said grants and contracts in the future. 60 Plus is supported by voluntary donations from its 500,000 citizen lobbyists to print and mail millions of letters, petitions and voting indexes. 60 Plus has been called "an increasingly influential lobbying group for the elderly."

PARTISAN CONVERSATION

Senator John Ashcroft



Missouri's Champion of States' Rights and Traditional Southern Values.

John Ashcroft has made a career of public service in Missouri. After serving as Auditor (1973-75), Assistant Attorney General (1975-76), Attorney General (1976-84), and Governor (1984-1992), he was elected to the U.S. Senate in 1994. In his short time in Washington, Senator Ashcroft has already become known as a champion of states' rights and traditional values. He is also a jealous defender of national sovereignty against the New World Order. His bold leadership on these issues and others makes this Border State senator a natural for the pages of Southern Partisan. Senator Ashcroft serves on three committees: Commerce, Foreign Relations, and Labor & Human Resources.

Southern Partisan: Senator, our subscribers followed the rise and fall of the McCain tobacco bill very closely. The legislation was quite shocking in that it was even proposed, then so many Northern Republicans jumped on-board with it. For those of our subscribers who don't know anything about the tobacco legislation, what exactly happened there?

Senator Ashcroft: The bill turned into a massive taxing and spending bill. It was a way to extend government substantially under the guise of a program to curtail smoking among teenagers. However, it didn't do anything to place any responsibility on teenagers. The bill would have increased taxes, in my judgment, by a minimum of \$868 billion, and it would have created, according to the bill itself, about 17 new boards, commissions and agencies. I was the only person to stand up and vote against that bill in the Commerce Committee. (I guess so many people thought that it was a lead pipe cinch, that the American people would join with the President and his rhetoric rather than look at the reality of the bill.) But, when we began to expose the nature and extent of governmental extension in the bill, the first thing the proponents of the bill did was to take some of the labeling out of the bill so that the new boards and commissions would have a function. They were de-labeled and tucked into existing Departments so that the extension of government became a stealth extension.

This bill was going to be rushed through prior to the Memorial Day recess after an hour of debate. That's when I decided I would have extended debate! I don't know how much you remember, but earlier in the Memorial Day week, I spent four hours debating the bill without yielding the floor and signaled my willingness to do so for an extended period of time. When they realized they were not going to be able to carry this through at the high velocity they wanted (you know, *velocity* is the enemy of reason) they fell back.

Tucked into this bill were just incredible things, like the \$350 million a year to be spent subsidizing overseas studies about the cost of smoking in

other cultures. I mean, \$350 million a year! That averages \$7 million a state. This was flying under a masthead of teen smoking, but it turned out to be everything from big government to internationalism, all financed under a tax on cigarette companies. But it wasn't a tax on the cigarette companies at all. 59.4% of the taxes would have been paid by people earning less than \$30,000 a year. So what you'd have is a massive tax for an extensive extension of government, and when the American people found out what it was, my colleagues decided that they could afford to join me in opposing it.

Southern Partisan: So many of us remember Ronald Reagan and his campaign against big government, but we can't assume that every Republican is against a more powerful Washington. Still, I'm surprised that so many Republicans fell for this one.

Senator Ashcroft: Well, you know, I'll have to tell you, when the President lines up on something, when he's the power behind something, so many of our guys run to the pole, lower the flag and basically do what he thinks. Frankly, we need to be looking at the substance of things to see if there is something there worth fighting for. If there is, then we ought to take the President on.

Southern Partisan: Another issue to do with the President is this idea of an International Criminal Court. You've again been one of the few that has been willing to stand up against that.

Senator Ashcroft: It's an outrage! It has the potential of subjecting Americans citizens, (at least for their actions abroad and maybe for their actions at home) to vague criminal charges that would spring from so-called "crimes against humanity,"



Some of the things they're listing as "crimes against humanity" are "enforced pregnancies." There are lots of people who wonder if the culture would decide not to make abortion available, would that mean that they were "enforcing a pregnancy"? For heaven's sake, that would make *withholding* of an abortion a crime against humanity when many Americans believe that *providing* an abortion is a crime against humanity. This is a part of this administration's effort at international government, and in order to govern internationally, they have to sacrifice sovereignty at every turn.

You mentioned Ronald Reagan. Let me just run something by you. Ronald Reagan had a profound impact in terms of the way the world operates. But it wasn't because he would sacrifice sovereignty. Ronald Reagan did not see himself as a *governor* of the world, he saw himself as a *leader* of the world. Instead of sacrificing to some coalition or committee bits of U.S. sovereignty as a way of influencing the course of world events, he would strengthen the position of the United States and lead the world to his point of view. That's a profound difference.

Southern Partisan: On the local and national front, we have another effort at twisting meanings and twisting history. It's this idea of national history standards...

Senator Ashcroft: Revisionism is a threat to the respect that Americans have for their freedoms and liberty that was at the core of those who founded



sent home from school because she had a Confederate flag on her knapsack. What do you think about those kinds of incidents?

Senator Ashcroft: Well, you know, I was down in Texas the other day, and someone asked, "Where was Missouri in the Civil War?" I said, "Frankly, it was in Texas." After Fort Sumter, the legislature seceded, and they were run out when the federal troops came in and they set up a government in exile down in Texas.

The right of individuals to respect our history is a right that the politically correct crowd wants to eliminate, and this is just not acceptable. Take those history standards: the standards make no mention of Lee's military genius! I guess there's too much space devoted to Madonna.

Southern Partisan: As Southerners we worry a lot about states' rights because we have been fighting for these rights for a long time; since the founding of this country. Do you think states' rights is dead? Is there any hope for restoring a true federal system?

Senator Ashcroft: A few years ago, when they celebrated the bicentennial of the Bill of Rights, they asked me to be one of the guys who wrote the Tenth Amendment portion. The Tenth Amendment was on life support systems then, there's no question about that. But I think we're on the road back. Maybe this is just an old patriot's desire to see a glimmer of hope in the embers and ashes of a situation, but during my time as governor, the Supreme Court of the United States handed down a decision called *Gregory vs. Ashcroft*. That was one of the first Tenth Amendment cases that expressed a hint that there was still life to be had. Justice O'Connor wrote, "In the tension between federal and state power lies the promise of liberty." Those are profound words. If we lay to rest the states' powers, there's no place, according to Justice O'Connor, for liberty to reside. God help us if we no longer have a place for liberty!

That really was a fight that I waged against federal authority as governor, because our law said that I could



brought against our founders. Your magazine also helps set the record straight. You've got a heritage of doing that, of defending Southern patriots like Lee, Jackson and Davis. Traditionalists must do more. I've got to do more. We've all got to stand up and speak in this respect, or else we'll be taught that these people were giving their lives, subscribing their sacred fortunes and their honor to some perverted agenda.

Southern Partisan: A young lady in North Carolina was recently was

this country, and when we see George Washington, the founder of our country, called a racist, that is just total revisionist nonsense, a diatribe against the values of America. Have you read Thomas West's book *Vindicating the Founders*?

Southern Partisan: I've met Professor West, and I read one of his earlier books, but not that one.

Senator Ashcroft: I wish I had another copy; I'd send it to you. I gave it away to a newspaper editor. West virtually disassembles all of these malicious attacks the revisionists have

retire judges when they hit 70. They appealed—and said no, under federal age discrimination laws they had the right to stay *ad infinitum*. I said, "In the Governor here, I'm appointing your replacement." So we went all the way to the United States Supreme Court to defend that. The Supreme Court said the State of Missouri had the right to legislate in that area and that those judges were history. When the Court said those judges were history, it basically said the Tenth Amendment wasn't history.

We come to *U.S. vs. New York* and now the Lopez decision. All I'm saying is that these indicate there is still some fire left in states' rights. I'm not saying we've arrived, but from my perspective, I agree with Justice O'Connor: "in the tension between federal and state power lies the promise of liberty." I believe that the Tenth Amendment, which was the capstone of our Bill of Rights, does appropriately reserve powers to the states, and it is time for Washington, D.C. to rediscover this founding principle, especially given the fact that the courts have made something of a discovery of it.

I have to say this: I have been as critical of the courts as any other individual, probably more than any other individual in the Senate. I have stopped judges and I have argued against liberal expansionism and I will continue to do so, but there are a couple of areas where the courts have regarded the Constitution with respect, and I haven't seen the Congress do it. Frankly, the court is signaling it's time for us to recognize as a federal government, (and that would include the Congress), that there are rights, not only inherent in, but protected by, the Tenth Amendment to the states.

Secondly, in the most recent affirmative action case (the *Aderand* case in Colorado) the Court has indicated that quotas and preferences are not consistent with the Constitution. What disappoints me is that the Senate, even after that had been done in the United States Supreme Court, continues to pass into law the same quota and preference system that was struck down in the *Aderand* case.



Southern Partisan: That's great. I did not realize that you'd been such a big part of fighting the states' rights fight.

Senator Ashcroft: Well, frankly, there aren't any big parts. There are just a lot of soldiers, and I happened to have been one of the soldiers at whom they fired a shot. Like Churchill said: "There's nothing quite as exhilarating as to be shot at and missed." They tried to take me out of appointing the judges of the State of Missouri on the basis of an interventionist federal age discrimination statute, and they missed on that. That put my name in the history books.

Southern Partisan: My last question has to do with education: it seems that whether you're a standard Old-Right conservative or a religious conservative, education issues continue to rise to the top. What do you see as far as education and particularly the danger of a power grab from Mr. Clinton and his allies on Capitol Hill? Does it look like we're going to be able to stem the tide against nationalization of education?

Senator Ashcroft: Well, you know my role in this. When they came along with the federalized testing system, I was the only person in the Senate to stand up and speak against it on the floor. I got 12 Senators to vote with me at the time, but since then we've fought back. The last time we took a vote on this, there were 52 votes and Jesso wasn't there, so it's safe to say that

there are 53 votes to deny any federal funding for the development, implementation, deployment, or field testing of a national testing system. If you control and specify the tests, you're going to control and specify the curriculum.

For me, education is far too important a thing to cede to faraway bureaucrats. Education happens best at the hands of those closest to those being educated. Moms and dads, school board members, teachers, and the local community are the best educators, and whenever we try to expropriate from them and endow bureaucracy here in Washington as replacements for moms and dads, school boards and local communities, we seriously damage the educational potential of America. We simply have to do everything we can to make it possible for people at a fundamental level of society (it's cultural base, it's families, communities, school districts) to make decisions which will result in far greater educational achievement. Being against federal intermeddling in education is perhaps one of the strongest things you can do in favor of student achievement in education.

Southern Partisan: Well Senator, we thank you so much.

Senator Ashcroft: I'll be seeing you! ○

1151



State of Kansas

Office of the Attorney General

CARLA J. STOVALL
ATTORNEY GENERAL

January 11, 2001

The Honorable Sam Brownback
U. S. Senator
303 Hart Senate Office Building
Washington, DC 20510

Re: U.S. Attorney General-designee John Ashcroft

Dear Senator Brownback:

I am writing to urge you to support John Ashcroft for the esteemed position of United States Attorney General. Senator Ashcroft, as you know, at one time in his career held the position of Missouri Attorney General and served as the president of the National Association of Attorneys General. I am hopeful he will be responsive to the interests and needs of the states as we deal with the Department of Justice on many issues of mutual concern.

While I have numerous philosophical differences with the positions I have read that Senator Ashcroft has taken over the years, I do believe President-elect Bush should be afforded the right to have the men and women he has selected for key posts be confirmed by the United States Senate. I hope his intentions are so honored by your colleagues.

Thank you for your attention to my comments. As always, if there is anything my office can do to assist you or your staffs, please don't hesitate to let me know. I will look forward to seeing you at Kansas Day!

Very truly yours,

A handwritten signature in cursive script that reads "Carla".

Carla J. Stovall
Attorney General

CJS:bls

1152

**University of Chicago Law School
1111 E. 60th Street
Chicago, Illinois 60637**

*Cass R. Sunstein
Karl N. Llewellyn Distinguished Service Professor of Jurisprudence,
Law School and Department of Political Science
Telephone 773-702-9498
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e-mail: csunstei@midway.uchicago.edu*

January 15, 2001

Senator Edward M. Kennedy
Committee on the Judiciary
520 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Kennedy:

This will respond to your request for my views on an unusual constitutional amendment proposed in 1996 by then-Senator John Ashcroft (hereinafter Senator Ashcroft). I should say at the outset that I do not intend, with these remarks, to express a view on whether the Senate should or should not confirm Senator Ashcroft as Attorney General of the United States. No one has challenged Senator Ashcroft's integrity, and everyone should agree that the President deserves a great deal of room to maneuver in selecting Cabinet heads.

In 1996, Senator Ashcroft introduced S.J.Res. 58, which would have amended to Constitution so as to make it easier to amend the Constitution. More specifically, S.J. Res. 58 provides that if two-thirds of the states propose an amendment to the Constitution, the proposal would be submitted to the Congress. If two-thirds of the members of both houses of Congress do not disapprove of the proposal during the same session in which it is submitted, the proposal would be submitted to all the states for consideration, to become an amendment when ratified by the legislatures of three-fourths of the states.

This would represent a real shift from the constitutional design. By reducing Congress' filtering role, it would increase the likelihood of constitutional amendments. Under Article V of the Constitution, of course, constitutional amendments can come via two routes. First, two-thirds of both houses of Congress can propose amendments (to be ratified by the legislatures of three-fourths of the states). Second, two-thirds of the states can call a convention for the purpose of proposing amendments. The second route is most unusual, and shrouded in some legal uncertainty, because it is unclear whether a constitutional convention can be limited to particular proposals, or instead becomes an arena in which most of the Constitution might be reconsidered. Some people believe that two-thirds of the states can only propose "conventions," rather than particular amendments, and this belief has ensured that even a strong majority of states is unlikely to initiate a constitutional amendment on its own.

The upshot is that under the constitutional plan, Congress has considerable power to prevent constitutional amendments, and to do so through inaction rather than action. If Congress fails to propose amendments, they are not likely to be ratified. S.J.Res.58 would have greatly transformed the situation. It would have done this by ensuring that mere congressional inaction would mean that an amendment would be "proposed." Senator Ashcroft apparently believed that Congress would be less likely to take the political heat from disapproving proposals from the states – and hence that the new procedure would make desirable constitutional amendments more likely. At the same time, S.J. Res. 58 would have made it entirely clear that two-thirds of the states could propose a particular amendment without proposing a "convention,"

Standing all by itself, a proposal of this sort should hardly disqualify someone from the position of Attorney General. But it does raise some questions about its proponent's judgment and priorities. The provisions for constitutional amendment were among the most carefully crafted by the Constitution's framers, and they are central part of America's distinctive system of democracy—a deliberative democracy, in which accountability to voters is combined with opportunities for reflection. The Ashcroft proposal would have significantly altered these provisions, by reducing Congress' filtering role, and thus by increasing the risk that temporary majorities in the states could alter the constitutional plan. The consequence would be to increase the likelihood of ill-considered constitutional

amendments, and at the same time to unbalance the careful federal-state relationship in Article V of the Constitution.

Note in this regard that the Ashcroft proposal did not involve a particular amendment, designed to overrule an unfortunate Supreme Court decision or to solve a particular problem. Instead, the Ashcroft proposal would change the system itself, and in fairly fundamental ways. Of course many Members of Congress, of one or another party, have supported constitutional amendments in the last decade. But because its effects would be to alter the system as a whole, S.J. Res. 58 is a more extreme proposal. To be sure, S.J. Res. 58 would have retained the requirement for ratification (approval by three-fourths of the states), and the two-thirds requirement for a "proposal" would ensure against the most ill-considered amendments. But the reduction in Congress' filtering role would be a large change from the constitutional plan.

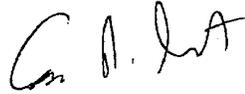
It is not easy to see why a conservative, respectful of longstanding traditions, would support a constitutional change of this dimension. It has been reported that in proposing this amendment, Senator Ashcroft was responding to his perception that two constitutional changes, allowing the federal income tax and the popular election of Senators, had unsettled the constitutional balance, in a way that justified S.J. Res. 58. But this train of thinking is hard to follow. The popular election of Senators -- an important democratizing measure -- does not mean that the Constitution fails to protect the interests of states. In any case reduction of Congress' filtering role, in the amendment process, does not seem like a sensible response to the popular election of Senators. True, the federal income tax increases the power of the national government, by giving it an ample source of funds. But does the federal income tax justify a reduced role for Congress in filtering constitutional amendments? It is hard to see why.

The process for amending the Constitution is a difficult one, to be sure, but that process has served the nation exceedingly well. Any constitutional change that would increase the ease of amendment would threaten to produce excessive instability -- and also to open up the process to self-interested pleas by a wide range of interest groups, operating at the state level.

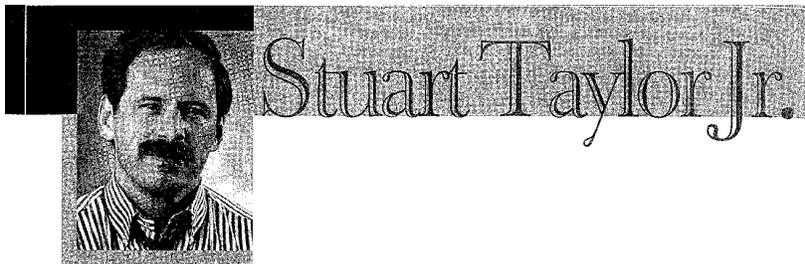
I emphasize that I do not intend here to suggest that Senator Ashcroft, by all accounts a man of great integrity, should or should not be confirmed as Attorney General. But Senator Ashcroft's apparent enthusiasm for an amendment of this sort is a reason for concern. It is a reason for concern not least because proposals of this sort are so closely connected with the duties of the Attorney General – an officer whose special role consists, of course, in advising the President about legal issues, including legal issues relating to changes in the Constitution.

I hope that these comments are helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "C. R. Sunstein". The signature is written in a cursive, flowing style.

Cass R. Sunstein



A CHARACTER ASSASSIN SHOULD NOT BE ATTORNEY GENERAL

Former Sen. John Ashcroft, R-Mo., is an able and accomplished man who won the respect of many Senate colleagues in both parties. But he is unfit to be Attorney General. The reason is that during an important debate on a sensitive matter, then-Sen. Ashcroft abused the power of his office by descending to demagoguery, dishonesty, and character assassination.

The debate was over President Clinton's nomination of Missouri Supreme Court Judge Ronnie White to become a federal district judge. Although too liberal to be picked by a Republican President, White had shown himself to be an honest, skilled, and sometimes eloquent jurist, well within the moderate mainstream. But Ashcroft, leaning hard on Republican Senators who would otherwise have voted to confirm, engineered a 54-45 party-line vote on Oct. 5, 1999, to reject White's nomination. Worse, Ashcroft claimed on the Senate floor that Judge White had "a serious bias against ... the death penalty"; that he was "pro-criminal and activist, [and would] push law in a pro-criminal direction"; and that he had "a tremendous bent toward criminal activity." The first statement was a wild exaggeration. The second was a demagogic distortion. The third was a malicious smear.

Ashcroft is not the man to head the Justice Department. The job is vested with such vast authority over the lives of people great and small, and such symbolic importance, that the minimum qualifications should include honesty, fair-mindedness, and judicious self-restraint in the exercise of power. Every new President is entitled to Senate deference in choosing his Cabinet, even when the nominee's policy views draw bitter liberal or conservative opposition. (Linda Chavez might have become a distinguished Labor Secretary but for her sad mistake of failing to tell Bush voters up front what they needed to know about her illegal-immigrant issue.) But no Presi-

dent is entitled to put a character assassin in charge of law enforcement.

All this would be true even if Judge White were white, if Ashcroft had not expressed such fondness for the Confederacy, if race were not an issue, and if Ashcroft were in tune with the Bush pledge to be a uniter, not a divider. But White is black. The racial context makes Ashcroft's orchestration of a floor vote against a judicial nominee, the first since 1987 (when Robert H. Bork's Supreme Court nomination went down), all the more deplorable. And Ashcroft's confrontational advocacy of absolutist views makes him a divider, not a uniter.

This is not to endorse the unfounded and tiresomely irresponsible suggestions by some liberal critics that Ashcroft's attacks on Judge White were motivated by racial bias or hostility to antidiscrimination laws. Nor is it to join the clique who would fight any conservative nominee for Justice as racially insensitive and divisive. But it does appear that Ashcroft was deliberately engaging in inflammatory racial politics—in part to boost his own 2000 reelection prospects by hanging the "pro-criminal" label both on Judge White and on then-Gov. Mel Carnahan, who had appointed White and was gunning for Ashcroft's Senate seat. Ashcroft must have known that accusing a black judge (falsely) of being "pro-criminal" and of "a tremendous bent toward criminal activity" would stir the worst instincts of those voters who stereotype criminality as black.

One result of Ashcroft's reckless roiling of racial tensions is that he would have especially low credibility with the vast majority of African-Americans, including moderates and conservatives who eschew the race-baiting rhetoric of victimologists such as the Rev. Jesse Jackson. Indeed, people who hope to see the Justice Department move away from its long-standing advocacy of race-based affirmative action preferences (as I do) should wonder: Can John Ashcroft be a credible ad-

OPENING ARGUMENT

JOHN ASHCROFT

SMEARED

JUDGE RONNIE WHITE

FOR HIS OWN

PARTISAN,

POLITICAL PURPOSES.

vocate of making the law more color-blind? I doubt it.

Deceptive rhetoric aside, is Ronnie White soft on crime? Not unless one equates measured concern for civil liberties with softness. According to Justice Department numbers, White, as of October 1999, had voted to uphold 41 (almost 70 percent) of the 59 death sentences he had reviewed. He voted to reverse the other 18, including 10 that were unanimously reversed and just three in which he was the only dissenter. (Some say that White reviewed 61 death sentences and voted to reverse 20.) His rate of affirmation was only marginally lower than the 75 percent to 81 percent averages of the five current Missouri Supreme Court judges whom Ashcroft himself appointed when he was governor.

Ashcroft stressed that Judge White had dissented from decisions affirming death sentences four times as often as any Ashcroft-appointed colleague. True. But does this suggest that White would "push law in a pro-criminal direction," as Ashcroft said—or that Ashcroft appointees were rubber-stamping unfair trials?

The two dissents most directly assailed by Ashcroft in fact exude moderation and care in dealing with the tension between crime-fighting and civil liberties. In a 1998 decision, the majority upheld the murder convictions and death sentence of a previously law-abiding Vietnam veteran named James Johnson, who had suddenly turned violent. He stalked and killed a sheriff, two deputies, and another sheriff's wife in a horrifying succession of shootings that erupted out of a domestic dispute. The only defense was insanity. The immediate issue was whether Johnson should get a new trial, after which he would either go back to death row or be locked up in a mental hospital.

If Johnson "was in control of his faculties when he went on this murderous rampage," Judge White wrote, "then he

assuredly deserves the death sentence he was given." But the jury's consideration of the insanity defense had been skewed by an egregious blunder. Johnson's court-appointed attorney had begun by stressing that a rope-and-tin-can "perimeter" around Johnson's garage was evidence that he had been under a delusion that he was back in Vietnam, at war. This was a gift to the prosecution, which blew the back-in-Vietnam strategy to bits by showing that the police had set up the perimeter.

Both Judge White and his colleagues faulted the defense attorney (for inadequate investigation) as well as the prosecution (for leaving the defense attorney with a false impression of the facts). They differed only on whether there was a "reasonable probability" that the jury might otherwise have found Johnson insane. The majority said no. Judge White said yes. His conclusion was plausible, debatable, highly unpopular (especially among police), and (for that reason) courageous. For Ashcroft to call it "pro-criminal" was obscene.

In the second case, one Brian Kinder was sentenced to die for a heinous rape-murder. Judge White's "only basis" for voting to give Kinder a new trial, Ashcroft claimed, was that the trial judge had said he was "opposed to affirmative action." False. In fact, Judge White's dissent

termed that comment (made in a campaign press release) "irrelevant to the issue of bias." Instead he stressed another "indefensibly racist" assertion in which the trial judge had contrasted "minorities with hard-working taxpayers." This cast grave doubt on the impartiality of a judge who was to try a black man for murder just six days. Judge White concluded, "I dissent was far more candid and convincing than the majority opinion."

Pro-criminal? Some police groups including 77 of Missouri's 114 sheriffs criticized Judge White's record. But other law enforcement officials praised him as a good judge and "an upright, fine individual," in the words of Carl Wolf, president of the Missouri Police Chiefs Association.

The smearing of Judge White mal the many testimonials to Ashcroft integrity ring a bit hollow. But quite apart from that episode, it was most unwise. President-elect Bush to choose Ashcroft for Attorney General. The reason is that Ashcroft is an uncompromising absolutist with a bellicose approach to issues ranging from gay rights and gun control to abortion (which would be a crime, Ashcroft had his way, even in cases of rape and incest). He is also dead wrong (in view) on major issues, including an aggressive push to cram even more notorious, small-time offenders who pose a threat to society into our prison-industrial complex, which has already mushroomed to 2 million inmates.

What would I be saying if it were President-elect Al Gore trying to put the Justice Department under (say) Sen. Edward Kennedy, D-Mass.—who smeared another judicial nominee (in 1987) by saying "Robert Bork's America is a land in which women would be forced into back-al abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens' doors in midnight raids."

I would be saying that a character assassination should not be Attorney General. How about you?

1158



Texas Legislative Black Caucus

807 Brazos Street, Ste. 304
Austin, Texas 78701

Ph. (512) 236-8121
Fax (512) 457-0362

January 10, 2001

Senator Patrick Leahy
U.S. Senate
Room 433 Russell Senate Office Bld.
Washington, D.C. 20510

Dear Senator Leahy:

I am writing on behalf of the Texas Legislative Black Caucus which includes fourteen (14) members of the Texas House of Representatives, to express our strong opposition to President Bush's nomination of Senator Ashcroft as the U.S. Attorney General.

Seldom in the history of the presidency has there been such overwhelming resistance and opposition to a Presidential appointment. The Texas Legislative Black Caucus is very clear on the issues which impact their constituents and there is no question, based on Senator Ashcroft's record, that he is not only opposed to the concerns of African-Americans but that he would actively work against our efforts.

As evidenced in the following actions taken by Senator Ashcroft, it is very clear that he would reverse the efforts we have achieved in affirmative action, anti-discrimination policies and gun violence.

*In 1989 former President George Bush appointed Ashcroft to a federal commission to study the obstacles faced by minorities in America. Ashcroft was one of only two people on the 40 member panel who refused to sign the final report.

*As Missouri's Attorney General in the 1980's, Ashcroft successfully urged white House Counsel Edwin Meese to persuade the Reagan Justice Department to oppose a school desegregation plan in St. Louis.

*Ashcroft lead a drive to kill the nomination of Missouri Supreme Court Judge Ronnie White, the first African American to be appointed to the bench.

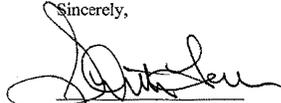
*Ashcroft worked on a failed 1999 NRA backed referendum in Missouri that would have allowed the carrying of concealed handguns by convicted criminals.

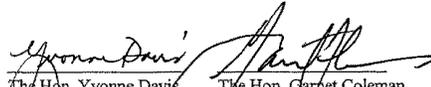
*Ashcroft opposed the federal assault weapons ban.

At this point, the members of the Texas Legislative Black Caucus have every assurance that Senator Ashcroft would make every effort to wipe out the efforts we have achieved.

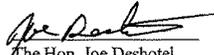
We urge you to oppose Senator Ashcroft's nomination and to consider what is truly at stake if his appointment were to succeed. Thank you for your consideration and review of our request.

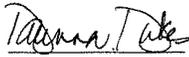
Sincerely,


The Hon. Sylvester Turner
Houston, Texas


The Hon. Yvonne Davis
Chair, TLBC
Dallas, Texas

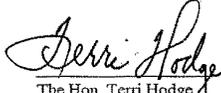

The Hon. Garnet Coleman
Houston, Texas

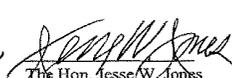

The Hon. Joe Deshotel
Beaumont, Texas

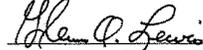

The Hon. Dawna Dukes
Austin, Texas


The Hon. Helen Giddings
Dallas, Texas

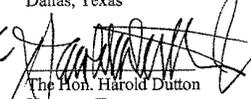

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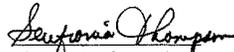

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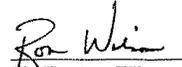

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My Boss the Fanatic

by Tevi Troy

Post date 01.18.01 | Issue date 01.29.01

A woman I recently met at a Bat Mitzvah asked me what I do for a living. Experience told me what was coming, so I kept my answer generic: I work in politics. She followed up, pressing until she got the answer she wanted—or, more accurately, did not want: I work for Senator John Ashcroft, Republican of Missouri. I'm used to fellow Jews disliking my boss, but her answer still took me by surprise: "I'm speechless."

With his nomination to be George W. Bush's attorney general, Ashcroft's image among my co-religionists seems to have deteriorated even further. The National Council of Jewish Women opposes his appointment. Jewish senators like Barbara Boxer and Charles Schumer have expressed their displeasure. Abraham Foxman, national director of the Anti-Defamation League, said this week, "We question whether his religious views will have an impact on his role as attorney general." I'm beginning to wonder whether I'll ever be able to safely cruise Bat Mitzvah buffet tables again.

Critics imply that Ashcroft, because of his strong Christian beliefs, is intolerant of Jews. Actually, he's more than tolerant; he's downright philo-Semitic. Ashcroft was born to a gentile family in a predominantly Jewish Chicago neighborhood. His mother served as a *Shabbos goy*, turning ovens on and off as needed (a practice many Jews found charming when practiced by a young Colin Powell—but then Powell is African American and pro-choice). Ashcroft's father even took a mezuzah with the family when they moved from Chicago to Springfield, Missouri, where he kept it affixed to his doorpost until his death, in 1995. Ashcroft, I'd wager, knows more about Judaism than half the Jewish members of the Senate.

When I first told Ashcroft that, as an observant Jew, I would not be able to work on Saturdays and certain holidays, it was a point in my favor, not a strike against me. Once, I stood up during a Friday afternoon briefing and said I needed to leave. He asked me where I was going, as it is unusual for staffers to walk out of

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going, as it is unusual for staffers to walk out of briefings. I told him that the sun was setting, and he immediately understood and ordered me to hurry along.

Ashcroft, his detractors suggest, is a religious fanatic, because his religion dictates that he cannot smoke, gamble, drink, curse, or dance. But it may be precisely because he is scorned as a "fanatic" that he has been so tolerant of my own somewhat odd religious practices. After all, when I go to weddings, I won't participate in mixed dancing. I fast half a dozen times a year, and I unscrew the lightbulb in my refrigerator every Friday so I won't turn on the light on the Sabbath. I'm every bit the "fanatic" that he is--maybe more so.

What most liberals and most Jews don't understand about people like Ashcroft is that their deep respect for religious faith genuinely transcends sectarian divides. And that often makes it easier for me, as a religious Jew, to work for them than for Jews or Christians who don't take any religion seriously as a force in people's lives. In my experience, when you tell a nonobservant Jewish boss you need time off for Shavuot, there is often a moment of discomfort, as if he thinks you are acting superior for taking off what many Jews see as a minor holiday. When you tell an observant gentile, he may ask you what the holiday is and then say he is happy that you are observing Pentecost.

As senator, Ashcroft held a voluntary Bible study in his office every morning. I didn't go and suffered no adverse consequences. But the office's other Orthodox Jewish staffer--Ashcroft may well have employed more Orthodox Jews than any other senator--attended regularly. And every other attendee, including the senator, was impressed by this staffer's knowledge and understanding of the Old Testament. Whenever staffers ate with the senator, someone began the meal with a prayer. While the prayers were of the Christian extemporized variety--as opposed to the Jewish approach of reciting specific blessings for specific foods--they were ecumenical in content. In fact, Ashcroft pointedly insisted that prayers not mention Jesus, in order to be inclusive of all the religions in the office.

And there's another reason for Ashcroft's sensitivity. It's not just that as a devout person he feels an affinity to other believers. He feels a particular affinity to members of minority religions, because, hard as it is for many Jews to understand, he also sees himself as part of a small, sometimes scorned religious minority.

Ashcroft is a member of the Assemblies of God (often called Pentecostals). Members of the AOG are probably even less well-represented in the upper echelons of American politics, industry, and academia than are Orthodox Jews. In fact, Ashcroft would be only the second AOG Cabinet member ever. I know

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Ashcroft has suffered religious bigotry, because I've seen it. In St. Louis before the election, some people told me they were uncomfortable with the fact that his faith forbids him to gamble, smoke, dance, drink, or curse. I could not help but wonder how these people would feel about a non-Jew who expressed similar misgivings about a Jewish politician--like Joseph Lieberman--who did not eat cheeseburgers or ride on the Sabbath and who threw out all his bread products every spring. When Al Gore chose the Connecticut senator as his running mate, **The New Republic** wrote: "What is so startling about Lieberman's observances, and so edifying about them, is that they appear to have served as the basis for his engagement with the world. His career stands as a rebuke to those Jews--and those Christians--who insist that a religious life requires a withdrawal from society" ("Lieberman," August 21, 2000). Ashcroft, in his own way, represents a model just as unusual and just as impressive.

Jews sometimes seem to view members of the Christian right as contemporary versions of the Christian zealots who oppressed Jews in eighteenth-century Ukraine or fifteenth-century Spain. But I see them as more like the Puritans, who encountered religious prejudice in England and braved death to come to the New World, where they could be "fanatics" in peace. And, because they know that their observances made them objects of scorn in the old world, they helped create a new world that demanded religious toleration, even for religious beliefs that they themselves rejected. If Jews, or anyone else, oppose Ashcroft because of his views on affirmative action or abortion or antitrust, I might disagree, but I can understand. But if they oppose him because they think his faith oppresses others, then they misunderstand his religion, and perhaps even their own.

TEVI TROY, former policy director for Senator John Ashcroft, is writing a book about intellectuals in the White House.

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WOMEN'S DIVISION
 Washington Office
 (202) 488-5660

January 17, 2001

The Honorable Patrick J. Leahy
 United States Senate
 433 Senate Russell Office Building
 Washington, DC 20510

Dear Senator Leahy:

On behalf the organization, United Methodist Women and the one million plus members we represent, we write to you today on an issue of importance to all Americans concerned with fairness in the administration of justice by our federal government.

You will soon be asked to consider President-elect George W. Bush's nomination of Senator John D. Ashcroft (R-MO) for the position of Attorney General of the United States. Because the Attorney General is the nation's chief law enforcement official with a responsibility for enforcing the federal laws on behalf of all persons under the Constitution, we strongly believe that this appointment is one of the most important that any new president can make. Your responsibility for "advice and consent" of this nomination, therefore, assumes special importance.

Numerous issues of concern are presented by Senator Ashcroft's nomination. Many are better left to be discussed at a confirmation hearing. We will address briefly a few matters that have already received considerable public scrutiny.

Of significant concern was the obstruction of Justice Ronnie White's nomination to the U.S. District Court. Justice White is the first African American appointed to the Missouri Supreme Court and the question has been raised about whether race was a factor in Justice White's treatment. Stuart Taylor, Jr., writing in the *National Journal* and offering one of the more comprehensive reports on the White vote ("The Shame of the Ronnie White Vote," October 16, 1999), reports that Senator Ashcroft characterized Justice White as "pro-criminal and activist" exuding a "serious bias against . . . the death penalty," and exhibiting even "a tremendous bent toward criminal activity." In addition to misrepresenting Justice White's voting record, Senator Ashcroft committed what Taylor calls a "cynical distortion" of one of Justice White's two lone death penalty dissenting opinions criticized by Senator Ashcroft, the case of *State of Missouri v. Kinder*. What seems clear, however, is that Senator Ashcroft acted in disregard of the facts and used these misrepresentations to lead the successful opposition against Justice

White. We also find Senator Ashcroft's praise of a racially divisive publication profoundly disturbing. Senator Ashcroft's praise of the journal "Southern Partisan" is extremely troubling. This quarterly magazine has a history of publishing virulently racist views and has been called "the leading journal of the neo-Confederacy movement" by the New Republic.

In addition to these issues we also call into question Senator Ashcroft's willingness to enforce the law. Senator Ashcroft has a long record of vigorous opposition to current federal policies regarding affirmative action; the environment, a woman's right to choose, which includes disdain for pertinent precedents, and current protections from discrimination in the context of "charitable choice" policies. As Attorney General, he will be charged with determining which laws are enforced, how they are enforced and perhaps more importantly, where resources and priorities are directed in the Department of Justice. His hostility to the very laws and policies that protect the rights of minorities, women, lesbian and gay people and other under-represented groups in our society, brings forth the central concern of whether he is capable of genuinely and vigorously enforcing existing laws with which he has so publicly disagreed.

Furthermore, Ashcroft's poor environmental record and his open hostility to most environmental laws is clearly outside the nation's mainstream, bipartisan consensus to protect our air, water, and lands. Given his extreme anti-environmental record, can we count on John Ashcroft to enforce the laws as the nation's top environmental law enforcer?

In determining the standard by which to judge this nominee, many will cite deference to the President in selecting his team, looking only to qualifications to "do the job" as the standard. What Senator Ashcroft stands for is important and should be the subject of serious consideration through this process. We strongly urge that you withhold support for this nominee until a searching and thorough review of his records and positions can be completed. This decision is too important to do otherwise.

Sincerely,



Susie Johnson
Executive Secretary for Public Policy
United Methodist Women's Division



January 10, 2001

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, DC 20515

The Honorable Thomas Daschle
Minority Leader
United States Senate
Washington, DC 20515

The Honorable Orrin Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20515

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20515

Dear Senators:

You will soon be asked to consider President-elect Bush's nomination of Senator John Ashcroft for the position of Attorney General of the United States. Because the Attorney General is the nation's chief law enforcement official with responsibility for enforcing federal laws on behalf of all persons under the Constitution, we strongly believe that this is one of the President-elect's most important appointments. Your responsibility for "advice and consent," therefore, assumes special importance.

Senator Ashcroft's nomination poses a grave threat to the enforcement of civil rights and consumer protection laws. An Attorney General must have a demonstrated commitment to equal justice and the protection of all Americans. We have profound concerns about John Ashcroft's record and his ability to carry out the Attorney General's duties to enforce the nation's civil rights laws.

John Ashcroft's record on consumer issues raises serious questions about his fitness as America's number one law enforcement official. As a Senator, Ashcroft demonstrated repeated uncritical acceptance of the corporate agendas that harm the American consumer. Ten out of ten times in 106th Congress, he voted to let producers of faulty products – products like Firestone which killed many consumers while the manufacturer covered up the defect – escape full legal responsibility for their actions.

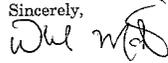
Ashcroft also sponsored legislation to extend special patent protection to the allergy drug Claritin. The bill would keep competitors from selling a cheaper version of the \$2.66 per pill drug for an extra five years, a deal worth \$9.64 billion to Schering-Plough. Again, this alliance by Ashcroft with corporate interests at the expense of consumers raises serious questions about his ability to represent the all Americans as the nation's Attorney General.



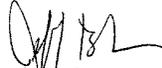
Ashcroft also fails the test on civil rights, women's rights, and the rights of gays and lesbians. His public disdain for members of these groups and extreme views on their rights – from his acceptance of an honorary degree from Bob Jones University to his praise of the virulently racist "Southern Partisan" magazine – raises serious questions as to whether he would enforce the civil rights laws of this country.

USAction and its 37 affiliates, which represent four million members, strongly urge you to withhold support for this nominee until a searching and thorough review of his records and positions can be completed. We call on the Judiciary Committee to ensure that its hearings include the voices of individuals who will look to the next Attorney General for equal protection under the law. This decision is too important to do otherwise.

Sincerely,



William McNary
President



Jeff Blum
Executive Director

FILED

JUL 11 1984

EYVON HENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

COALITION FOR SENSIBLE AND)
HUMANE SOLUTIONS, et al.,)
)
Plaintiffs,)
)
vs.)
)
JERRY B. WAMSER, et al.,)
)
Defendants.)

No. 84-0016 C (5)

MEMORANDUM OPINION

This suit challenges the constitutionality of some of the voting registration procedures of the Board of Election Commissioners of the City of St. Louis. As the Board's procedures are constitutional, judgment will be entered in favor of the defendants.

The amended complaint consists of two counts, each with different plaintiffs. Count I contains the claims of the Coalition for Sensible and Humane Solutions ("Coalition"), an unincorporated association whose offices are located in the City of St. Louis. The Coalition is the local chapter of the People's Coalition of Missouri, a statewide organization. The plaintiff Coalition's membership consists of individuals and various organizations. The Coalition was formed to oppose governmental policies believed to be inimical to minority and low-income groups. Although the Coalition is not affiliated within any political party, membership is open to all persons; accordingly, Democrats and Republicans may join (and presumably some already have).

Count II presents the claims of Jean Townsend and a class (which has not yet been certified) of similarly situated persons. Townsend is a citizen of the United States and a resident of the City of St. Louis. She is eligible to register to vote, but is not registered. She is an unemployed, thirty-four year old grandmother.

The defendants are members of the Board of Election Commissioners of the City of St. Louis, and the Board itself. The Chairman of the Board is Jerry B. Wamser (Republican). The other Board members are Rita M. Krapf (Democrat), Jean D. Green

(Democrat) and Curtis C. Crawford (Republican). The present Board members assumed their offices in the summer of 1981. Board members are appointed by the Governor and must belong to one of the two major political parties, §115.027, R.S.Mo. 1978, which currently are the Democratic Party and the Republican Party. The Board employees must belong to one of the two major parties as well, an equal number coming from each party. §115.047, R.S.Mo. 1978.

The Board has adopted several methods of voter registration. The primary method has been the establishment of approximately 150 permanent sites distributed through the City where persons may register. The sites are located at public schools, private high schools, public libraries and the Board's downtown office. The schools are open on weekdays except for certain community schools, which are also open during some evening hours. The public libraries are open on weekdays, Saturdays, and some evenings. The Board's office is open during its daytime business hours. Registration is available at these sites during the hours they are open. Most of the schools are closed one month each summer. Registration at the schools and libraries is conducted by regular employees at those institutions, the employees being deputized as registrars under §115.143.1, .3, R.S.Mo. Cum. Supp. 1983. Registration at the Board's office is performed by its employees.

The Board also holds special City-wide registration drives. The temporary sites for the drives are supermarkets, churches and other locations with substantial traffic. Each drive lasts two days (Friday and Saturday). The drives have been held in June, 1982, October, 1983, March, 1984 and April, 1984. The October and March drives used two and three sites, respectively, in each of the City's 28 wards. The April drive used ten supermarkets spread throughout the City. The drives are publicized in advance. Registration is conducted by bipartisan teams of Board employees, chiefly election judges. The drives coincide with times of increased public interest in elections and registration.

The Board also sends out bipartisan teams of employees to register physically incapacitated persons. The registrars go to individual homes and institutions upon request.

The Board does not use a fourth available method, which is deputization of citizen volunteers. Section 15.143.2, R.S.Mo. Cum. Supp. 1983, provides that the Board "may appoint any number of additional persons to serve as deputy registration officials." For several reasons, the Board refuses to exercise its discretion to deputize volunteers. First, the Board believes using volunteers would provide another opportunity for private groups to engage in vote fraud. Among other things, city-wide and ward elections are often hotly contested, some being decided by a very small percentage of the votes cast. Second, the Board believes that its policy is necessary to ensure impartiality, avoid favoritism, and prevent manipulation of the registration process by organizations. Third, the Board's policy is adopted out of concern for administrative efficiency, for the Board believes that volunteers are more likely to make administrative mistakes in registering. Budget concerns also limit the defendants' abilities to conduct special registration drives on demand and to effectively direct and monitor drives conducted by others.

In 1982, the Board did deputize volunteers from a group called the Coalition for Nonpartisan Voter Registration. This was done as an experiment. Although a number of persons were registered, the volunteers caused numerous administrative problems, including errors in filling out registration forms, delays in turning in completed forms and other problems. Shortly thereafter, canvasses of registration rolls produced an unusually high number of deletions. In contrast, the Board's own special registration drives have not had these problems, and the difference is attributable to the use of Board personnel, including election judges.

The main issue in this case is the constitutionality of the Board's refusal to deputize volunteer registrars. The Board has refused to deputize members of the plaintiff Coalition and other community groups. The Board has applied this policy consistently.

Contrary to the plaintiffs' allegations, the Board does not refuse to deputize volunteers because its members wish to discourage minority and low-income persons from registering, or because the Board members wish to advance partisan interests at the expense of the political views of others. Instead, the Board refuses to deputize volunteers for the three reasons mentioned previously: prevention of fraud, ensuring impartiality and administrative efficiency.

Count I

Count I alleges that the Board's refusal to deputize members of the Coalition as registrars violates various constitutional rights, the principal ones of which are First Amendment guarantees of free speech, expression and association, and due process of law and equal protection of the laws. The Coalition argues that a compelling state interest for the Board's policy must be shown and that such a compelling interest does not exist. Count I essentially requests an injunction ordering that members of the Coalition be deputized as registrars.

The Coalition's First Amendment claim is based essentially on four points. First, the members of the Coalition have a right to speak, as registrars, to unregistered individuals, particularly low-income and minority persons. Second, the Board's policies prevent the Coalition and its members from engaging in voter registration. Third, the Board uses Democratic and Republican election judges and other Board employees as registrars. Fourth, the Board's registration policies limit the number of persons eligible to vote on issues of concern to the Coalition.

The first point is not a valid First Amendment claim. "[T]here is no right, in the abstract, to be appointed to a public office such as that of voter registrar. . . ." Rhode Island Minority Caucus, Inc. v. Baronian, 590 F.2d 372, 376 (1st Cir. 1979). An election board need not conduct registration through citizen volunteers. If the Coalition and its members wish to urge persons to register, they may freely do so in their individual

capacities. The fact they cannot do so in the official capacity of registrar does not unconstitutionally burden their right of free speech. Cf. Clements v. Fashing, 457 U.S. 957, 973 (1982) (appellees' constitutional claim failed because they did not show that "the challenged provision significantly impair[ed] interests protected by the First Amendment.").

The second point also is not well founded. Although not affiliated with any political party, the Coalition essentially wishes for its members to be deputized in order to further the political, social and economic goals of the organization. Among other things, the Coalition believes that if its members register more low income and minority persons, legislators will be influenced to adopt the Coalition's programs. See, e.g., Miller Dep. at 45. But the First Amendment does not require that the Board support the Coalition's aims by deputizing its members as registrars. Cf. Regan v. Taxation with Representation, 103 S.Ct. 1997 (1983) (First Amendment does not require that Congress subsidize lobbying through favorable tax treatment); Perry Education Association v. Perry Local Education Association, 103 S.Ct. 948, 955-56 (1983) (school district need not allow public to use interschool mail system); P.O.W.E.R. v. Thompson, 727 F.2d 167, 172 (7th Cir. 1984) (community group does not have a right to have state facilitate registration of voters likely to support organization's goals). There is no constitutional requirement that a registration system be used for political purposes. The fact that volunteers may be deputized under Missouri law does not alter this conclusion, for §115.143.2 leaves this decision to the discretion of local election authorities.

On the third point, the Coalition argues that the Board gives preferential treatment to Democrats and Republicans. In the Board's special drives, the registrars are primarily election judges, who, like all other Board employees, are required by statute to belong to one of the two major parties. §115.081, R.S.Mo. Cum. Supp. 1983; §115.083, R.S.Mo. 1978. Relying on cases such as Branti v. Finkel, 445 U.S. 507 (1980), and Elrod v. Burns, 427 U.S. 347 (1975), the Coalition argues that its non-partisan members are

unconstitutionally excluded from being registrars on the basis of their political affiliation.

It is rather clear from the record that the election judges are public employees, not independent contractors, so Branti and Elrod are potentially applicable. See Fox & Co. v. Schoemehl, 571 F.2d 303 (8th Cir. 1982); Sweeney v. Bond, 669 F.2d 542 (8th Cir. 1982), cert. denied, 103 S.Ct. 174 (1982). But Branti and Elrod are distinguishable on three grounds. First, the employees in these cases were dismissed because their government employers disapproved of their political beliefs. But the Board does not use election judges and its other employees as registrars because it wishes to advance the interests of the Republican and Democratic parties. The Board uses judges and its other employees because they are familiar with the paperwork involved and the internal workings of the election process and because the use of bipartisan teams encourages fairness in registration. This reasoning is not invalidated by the fact that registrars in schools and libraries do not work in bipartisan teams; the Board need not use only one mechanism to further the goal of fairness.

The second distinction is that the employees in Branti and Elrod were not claiming a right to use their government positions to advance the goals of their political associations. Here, the Coalition claims a First Amendment right for its members to serve as registrars in order to advance the organization's ideological goals. There is no evidence, however, that the election judges and the other Board employees use their positions as registrars to advance the interest of their parties, such as by increasing the registration of party members at the expense of other groups.

Third, the employees in Branti and Elrod had been or were about to be dismissed from their employment. They were forced to choose between their livelihood and their political associations — a choice which clearly burdened their freedom to choose the political associations to which they would belong. The situation here is quite different. Only a few Republicans and Democrats become election judges, and only some of the

judges participate in each special registration drive. By not affiliating with either political party, Coalition members merely forgo the speculative possibility of some day becoming an election judge and thereafter serving in a special registration drive. The burden on associational choice is de minimis, so a compelling state interest need not be shown. Cf. Clements v. Pashing, supra, at 973. The alleged burden is even more insubstantial because Coalition members do not have a First Amendment right to use the position of registrar to advance their organization's aims.

The Coalition also relies on the case of Preisler v. Calcaterra, 362 Mo. 662, 243 S.W.2d 62 (1951), which held that members of the Socialist Party had a constitutional right to serve as poll watchers and challengers. The Coalition argues that its members likewise have a right to serve as registrars if Democrats and Republican judges also serve. But Preisler is distinguishable. It rested in part on the principle that, under Missouri law, poll watchers and challengers are supposed to use their positions for private political purposes. 243 S.W.2d at 65-66. That is not the case with election judges and voting registrars. Furthermore, Preisler was not a First Amendment case. It was based on the perceived irrationality of a particular statute, but, as seen below, the Board's policy against deputizing volunteers is rational.

On the fourth and final First Amendment point, the Coalition argues that the Board's registration policies restrict the number of persons able to vote on issues of concern for the Coalition. In particular, the Board's policies allegedly prevent low income and minority persons from registering. Here the Coalition not only attacks the board's refusal to deputize volunteer registrars, but also it apparently contends that the board should establish more permanent registration sites and should hold more frequent special registration drives. This is not a valid First Amendment claim. The Board is not required to increase the Coalition's potential audience in order to make its advocacy more effective. P.O.W.E.R. v. Thompson, supra, at 172.

Furthermore, for the Coalition to have standing to make this fourth point, it would have to show that the relief requested would increase the relative number of voters likely to support its goals. Standing requires injury caused by the defendants and redressable by the Court, e.g., Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472 (1982), but the Coalition is not caused injury (in the sense of its political goals being impeded) to the extent that those who do not register are opposed to the Coalition's goals. But the First Amendment does not give the Coalition a right to have the registration process skewed in its favor. P.O.W.E.R. v. Thompson, *supra*, at 172.

In summary, the First Amendment does not require that members of the Coalition be deputized as registrars. This being the case, it would be inappropriate to construe the Due Process and Equal Protection Clauses of the Fourteenth Amendment as requiring a compelling state interest, for that would in effect be creating a fundamental right to be a registrar. Cf. San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1972) (refusing to create a fundamental right to public education).

There being no infringement of a fundamental right or creation of a suspect classification, the only remaining question is whether or not there is a rational basis for the Board's policy of refusing to deputize citizen volunteers. All that is necessary is that the policy bear some "rational relationship to a legitimate state purpose." Holt Civic Club v. Tuscaloosa, 439 U.S. 60, 70 (1978). The concerns of the Board—preventing fraud, maintaining impartiality and administrative efficiency—are all legitimate state purposes. The refusal to deputize volunteers is rationally related to these purposes, for regular employees are more accountable to the Board and have proven superior in the past. It is true, as the Coalition contends, that some jurisdictions use volunteer registrars and believe them to be successful, but it is also true that other election authorities do not. The fact that there are two sides to these questions does not mean that the defendants' policy is irrational. The Board's refusal to deputize volunteers, including members of the Coalition, is constitutional.

Count II

Count II of the amended complaint presents the claims of plaintiff Townsend. She also seeks to represent a class consisting of St. Louisians who are eligible to register to vote, but who are not so registered. She alleges that various policies of the Board infringe the right to vote guaranteed by the Equal Protection Clause of the Fourteenth Amendment. She also contends that the Board's policies violate due process and the First Amendment, but these legal theories do not add anything to her right-to-vote claim. She wishes for the Board to deputize members of non-partisan community groups as registrars. She also wants the Board to expand the number of permanent registration sites and to hold more frequent special registration drives.

"[R]estrictions affecting the right to vote must cause a discrimination of some substance before the compelling state interest test is triggered." United States v. State of South Dakota, 636 F.2d 241, 244 (8th Cir. 1980), cert. denied, 452 U.S. 939 (1981). Cf. McDonald v. Board of Election Commissioners of Chicago, 394 U.S. 802 (1968) (standard of rationality, not compelling state interest, applies when voting procedures do not absolutely preclude individuals from voting); see also O'Brien v. Skinner, 414 U.S. 524, 529-30 (1974). Accordingly, the Board is not required to use all practical means to register voters. As the Board's policies provide Townsend with adequate opportunities to register, her voting rights claim fails.

Throughout this lawsuit, Townsend has lived at 2700a Accomac, at the corner of Accomac and Ohio. This is only three or four blocks from McKinley High School, a permanent site with six registrars. One of her daughters apparently attends McKinley. Townsend Dep. at 11-12. She also lives five or six blocks from the Barr Library, which is open for registration on weekdays, Saturdays and some evenings. Townsend claims that it would take 45 minutes to an hour to walk one way to the library, but this claim is not credible, given the short distance involved.

Townsend also is not limited to walking. She has access to and uses public transportation. She also regularly goes to church and shopping. While she does not own a car, her brother provides her with transportation on a regular basis.

Townsend also claims that she cannot register on weekdays because she must stay at home and babysit her grandchildren, but this claim is specious. Although she cannot afford to hire a babysitter, she knows other women on her block who are unregistered and who stay at home with young children. A simple solution would be for Townsend and one of the other women to take turns watching each other's children while one registers, but the women choose not to do so. The women have discussed the matter and they do not want to watch each other's children. Townsend Dep. at 30. Needless to say, this is not a problem for a federal court to solve.

Nor is Townsend a member of some racial or income group which has been discriminated against. She has a low income and is black. The amended complaint alleges that the Board's policies restrict registration by low-income and minority persons, but the facts are otherwise. Under the Board's policies, there has been an increase in the percentage of eligible voters who are registered, despite continuing efforts to update voter lists by deleting ineligible voters. Over 50,000 persons have been registered. Expert testimony establishes that registration in the predominantly black (and low-income) wards has increased from about 60% to approximately 80%. The registration rate in these wards exceeds that in predominantly white (and somewhat higher income wards). In light of these statistics and the number of available registration opportunities, the Court finds that the defendants' policies do not have a discriminatory impact on registration by minority and low-income persons, or any other socio-economic group. Furthermore, the Board's policies are not motivated by any discriminatory purpose. The Board refuses to deputize volunteers for the reasons mentioned previously and believes that present methods provide fair and adequate registration opportunities. Absent a discriminatory purpose, even a showing of a discriminatory impact would be insufficient

to prove invidious discrimination justifiable only by a compelling state interest. Rogers v. Lodge, 458 U.S. 613 (1982); Washington v. Davis, 426 U.S. 229 (1976).

Finally, Townsend has failed to show it would be any easier for her to register under one of the methods proposed by her attorneys. They propose registration at unemployment and welfare offices, but she does not go to the former and she goes to a welfare office only once every six months. They propose registration at churches, and she goes to church weekly. But we do not know if her church will have a volunteer registrar and she hardly has a right to have the Board establish a permanent site with its own employee at her particular church. Her attorneys propose having registration at supermarkets, but she claims that she goes grocery shopping only once a month, and then she goes to a farmers' market, not a supermarket. Similarly, Townsend has failed to show that it would be easier for her to register at other proposed sites, such as universities, union halls or public housing projects. It is true that Townsend would have to make a special trip to one of the Board's sites (or a side trip on the way to some other place), but that is hardly unconstitutional. Registration has long been conducted in such a manner.

Plaintiff Townsend has adequate opportunities to register. The Board has also provided sufficient opportunities throughout the City for others to register, so its policies meet the standard of rationality. The Board's policies have been adopted in good faith, and not for the purpose of making it harder for some classes or groups to register to vote than for others. Given these facts, the exact number and location of permanent sites, as well as the number of special drives, are matters of administrative detail, not constitutional adjudication. After all, it is the job of the Board, not this Court (or the Coalition) to run the City's registration system. Furthermore, the Board's policy of refusing to deputize volunteers from community groups is constitutional. Townsend's constitutional rights have not been violated.

Townsend has filed a pending motion for class certification. As she does not have

a valid claim of her own, she may not represent the proposed class. The motion for class certification is therefore denied.

The foregoing constitutes findings of fact and conclusions of law pursuant to F.R.Civ.P. 52. In evaluating the testimony, exhibits and other evidence, the Court has considered the parties' objections thereto and given the materials such weight as they deserve. Judgment will be entered in favor of the defendants.

Dated this 11th day of July, 1984.


UNITED STATES DISTRICT JUDGE

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 84-1929

Coalition for Sensible and Humane *
Solutions and Jean Townsend, *
individually and on behalf of all *
other persons similarly situated, *

Appellants, *

v. *

Jerry B. Wamser, in his official *
capacity as Chairman of the Board *
of Election Commissioners of the *
City of St. Louis, Rita M. Krapf, *
Jean D. Green, and Curtis C. *
Crawford, in their official *
capacities as members of the *
Board of Election Commissioners *
of the City of St. Louis, and *
Board of Election Commissioners *
of the City of St. Louis, *

Appellees. *

* Appeal from the United
* States District Court
* for the Eastern District
* of Missouri

Submitted: September 14, 1984

Filed: August 26, 1985

Before LAY, Chief Judge, McMILLIAN and ARNOLD, Circuit Judges.

McMILLIAN, Circuit Judge.

The Coalition for Sensible and Humane Solutions (the
Coalition) and Jean Townsend, individually and on behalf of all
other persons similarly situated, appeal from a final judgment

entered in the District Court¹ for the Eastern District of Missouri holding that certain voter registration policies adopted by the Board of Election Commissioners of the City of St. Louis (the Board) were not unconstitutional. Coalition for Sensible & Humane Solutions v. Wanser, No. 84-0016C(5) (E.D. Mo. July 11, 1984). For reversal appellants argue that the challenged voter registration policies unconstitutionally denied them the right to register qualified persons to vote and discriminated against them on the basis of their political beliefs. Appellants also argue that the district court erred in denying class certification. For the reasons discussed below, we affirm the judgment of the district court.

The following statement of facts is based upon the memorandum opinion of the district court. The Coalition is a nonpartisan, unincorporated association of individuals and approximately seventy organizations which was formed to help minorities and low income persons achieve social and economic equality through more effective participation in the political process. The Coalition educates minorities and low income persons about the importance of voter registration and voting and encourages eligible persons to register to vote.

Jean Townsend is a citizen of the United States and a resident of the City of St. Louis. Although she is eligible to register to vote, she is not registered to vote. Townsend is an unemployed, single parent.

The Board is the election authority for the City of St. Louis. The Board conducts all public elections within its jurisdiction, 8A Mo. Ann. Stat. § 115.023 (Vernon Supp. 1985), and registers eligible voters, id. § 115.145. See also id.

¹The Honorable Stephen N. Limbaugh, United States District Judge for the Eastern and Western Districts of Missouri.

§ 115.043. The election commissioners are appointed by the governor with the advice and consent of the state senate and by state law must be evenly selected from the two major political parties. Id. § 115.027 (1980). State law also requires the Board's employees to be evenly selected from the two major political parties. Id. § 115.047. State law specifically defines the term "major political party" as "the political party whose candidates received the highest or second highest number of votes at the last general election." Id. § 115.013(13) (Supp. 1984). At the present time, as well as historically, the two major political parties in Missouri are the Democratic and Republican parties.

The present case raises questions about the accessibility of voter registration facilities in the City of St. Louis. By state law the Board is required to conduct voter registration at its office or offices throughout the entire year on all usual business days and during its regular business hours, to instruct and direct deputy registration officials and supply them with the proper registration forms and supplies, and to designate the times, dates and places or areas for additional voter registration by any deputy registration official and to publicize the times, dates and places or areas of such registration in any manner reasonably calculated to inform the public. Id. § 115.145. The Board may appoint as deputy registration officials persons regularly employed in the office of the clerk of any city, town or village, any department of revenue fee office, or any school (including nonpublic schools in which grades nine or ten through twelve are taught), library or other tax-supported public agency, and any number of additional persons who are registered voters in that jurisdiction. Id. § 115.143. Deputy registration officials must comply with the Board's instructions and, if they are employees of tax-supported public agencies, must conduct registration at the particular agency's regular place of business throughout the entire year on all usual business days

and during the usual business hours, or, if they are not employees of tax-supported public agencies, must conduct registration during the dates and times and at the places or areas designated by the Board. Id. § 115.147.

The Board has established, in addition to its office located in downtown St. Louis, approximately 150 fixed or permanent registration sites. These permanent registration sites are distributed geographically throughout the city and are located in public schools, private high schools and public libraries. Eligible voters may register to vote at these permanent sites during the hours that these facilities are open to the public. According to the Board, the public schools and private high schools are open on the weekdays during the day and some public community schools are also open during some evenings. The public schools and private high schools are closed for one month during the summer. According to the Board, the public libraries are open on weekdays during the day and some evenings and on Saturdays. The Board's downtown office is open during business hours on most weekdays.

In addition to the permanent sites, the Board also periodically conducts special registration drives. The special registration drives are organized by the Board on a city-wide basis at times which roughly coincide with periods of increased public interest in elections. The special registration drives are conducted for two days (Friday and Saturday), include evening hours on Friday, are widely publicized in advance, and use temporary sites such as supermarkets, businesses and other heavily trafficked locations. According to the Board, special registration drives were held in June 1982, October 1983, March 1984 and April 1984. The April 1984 special registration drive was conducted at ten supermarket locations throughout the city; the October 1983 and March 1984 special registration drives were conducted at multiple sites within each ward in the city. The Board assigns

its employees and appoints bipartisan teams of election judges to serve as deputy registration officials at these temporary registration sites.

The Board also sends bipartisan teams of deputy registration officials to residences and institutions upon request to register persons who are physically unable to register at either the permanent or temporary registration sites.

Although authorized to do so by state statute, the Board refuses to appoint qualified volunteers as deputy registration officials. According to the Coalition, many other jurisdictions, including comparable jurisdictions in Missouri, use volunteer deputy registration officials with great success and in fact the Board itself appointed volunteers from the Coalition for Non-partisan Voter Registration as deputy registration officials as recently as 1982. According to the Board, the volunteer deputy registration officials were appointed on an experimental basis only and made many mistakes which resulted in a high number of deletions from the voter lists following Board investigation. In addition, the Board refuses to send any Board employees or deputy registration officials to sites or events which are not officially sponsored or organized by the Board. However, the Board did send deputy registration officials to a local music festival in August 1983 and to a voter registration drive sponsored by the Disabled Voters Council in January 1984.

In July 1983 the Coalition asked the Board to appoint qualified Coalition members as deputy registration officials. The Coalition wanted to conduct voter registration in "outreach" locations such as welfare offices, unemployment offices, food stamp offices, public housing projects, and supermarkets, locations that the Coalition argued were more accessible and convenient for most unregistered voters, especially minorities and low income persons. Two public meetings were held in August

1983. The Coalition submitted a written proposal and a second request in August 1983. The Board denied the Coalition's request because Board policy prohibited voter registration drives that were not Board-sponsored and the appointment of volunteers as deputy registration officials. According to the Coalition, the Board has denied at least 25 requests from individuals, businesses and organizations for additional voter registration services since 1981.

Frustrated by the Board's policies, appellants brought this action in federal district court seeking declaratory and injunctive relief. The Coalition alleged that the Board's refusal to appoint individual Coalition members as deputy registration officials or to sanction non-Board-sponsored voter registration drives violated the fundamental constitutional rights of Coalition members to freedom of speech and association, due process and equal protection. Townsend alleged that the Board's refusal to appoint volunteer deputy registration officials, to increase the number of permanent registration sites, to conduct additional special registration drives, or to sanction non-Board-sponsored voter registration drives violated her fundamental constitutional rights to vote, freedom of political association, due process, and equal protection.

The district court rejected appellants' claims, holding that individual Coalition members did not have a constitutional right to appointment as deputy registration officials. Slip op. at 4. The district court also held there was a rational relationship between the Board's refusal to appoint qualified volunteers as deputy registration officials and the Board's concerns that volunteer deputy registration officials could engage in voter fraud, could manipulate the registration process for partisan political purposes and would be administratively burdensome to supervise. *Id.* at 8. With respect to Townsend's claims, the district court held that the Board's policy on deputy registra-

tion officials did not infringe her constitutional right to vote because the Board had afforded her reasonable opportunities to register to vote. Id. at 9. The district court noted that there were two permanent registration sites less than ten blocks from her residence, the permanent sites are reasonably accessible by public transportation, and one permanent site is open for voter registration on Saturday and some evenings. Id. at 9-10.

The district court also held that the record did not establish that the Board's challenged voter registration policies had a disparate impact upon minorities or low income persons. Id. at 10. The district court also denied the motion for class certification on the ground that Townsend as the named plaintiff did not have a valid individual claim and thus could not represent the class. Id. at 12. This appeal followed.

With respect to the preliminary jurisdictional question of standing, we hold that the Coalition has standing to sue. "A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Allen v. Wright, 104 S. Ct. 3315, 3325 (1984), citing Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 472 (1982). The Coalition has standing on the basis of any injury to its members. Here, the Coalition alleged that the Board's refusal to appoint individual Coalition members as deputy registration officials injured them by preventing them from registering new voters. See, e.g., NAACP v. Alabama, 357 U.S. 449, 459 (1958). This is an injury which was "likely" to be redressed by the declaratory and injunctive relief requested by the Coalition.

People Organized for Welfare & Employment Rights v. Thompson, 727 F.2d 167 (7th Cir. 1984) (POWER), is distinguishable from the present case. In POWER an association of community organizations dedicated to increasing the political power of

unemployed and low income persons sued to force the state to allow registrars to conduct voter registration in the waiting rooms of state public aid and employment offices. The Seventh Circuit held that POWER did not have standing to sue because it had not alleged that the state had prevented or made it difficult for any of its members to vote or that it had sought to register new voters itself and had been prevented from doing so by the state. Id. at 170-71. Here, the Coalition, unlike POWER, sought to register new voters itself by having individual Coalition members appointed as deputy registration officials and was prevented from doing so because the Board refused to appoint volunteers as deputy registration officials.

We also hold that Townsend has standing to sue. She alleged that she is not registered to vote and that her failure to register is fairly traceable to the Board's refusal to make voter registration facilities more accessible and convenient to her and others like her. Townsend further alleged that the Board's refusal to make voter registration facilities more accessible and convenient infringed her right to register and thus her right to vote.

"[T]he right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively . . . rank among our most precious freedoms." Williams v. Rhodes, 393 U.S. 23, 30-31 (1968). However, "there is no [first amendment] right, in the abstract, to be appointed to a public office such as that of voter registrar . . ." Rhode Island Minority Caucus, Inc. v. Baronian, 590 F.2d 372, 376 (1st Cir. 1979). As noted by the Supreme Court in Anderson v. Celebrezze, 460 U.S. 780, 788 & n.9 (1983), a ballot access case, the rights of voters to associate or to choose among candidates are fundamental, but reasonable election restrictions which are generally applicable and evenhanded are justified by the state's important

regulatory interests in protecting the integrity and reliability of the electoral process itself.

The Board defends its refusal to appoint qualified volunteers as deputy registrars on the ground that the appointment of Board employees and election judges as deputy registrars, persons who have some training and experience with handling voter registration materials, is a reasonable, nondiscriminatory restriction that is rationally related to important state regulatory interests: prevention of fraud, maintenance of impartiality and administrative efficiency. We agree. Further, the Board's appointment of election judges as deputy registrars does not discriminate in favor of the Democratic or Republican party because the qualifications of election judges are defined in terms of membership in the two major political parties, not affiliation with the Democratic or Republican parties specifically.

The claim that the Board's refusal to appoint qualified volunteers as deputy registrars restricts the accessibility of voter registration facilities and thus indirectly constitutes an unconstitutional infringement of the right to vote is more troublesome. We believe that the limited accessibility of voter registration facilities cannot be analyzed only in terms of relative inconvenience. Comments, Access to Voter Registration, 9 Harv. C.R.-C.L. L. Rev. 482 (1974); Voting Rights Act: Hearing on S. 53, S. 1761, S. 1975, S. 1992, and H.R. 3112 before the Subcomm. on the Constitution of the Committee of the Judiciary, 97th Cong., 2d Sess. (1982). It is apparent that disproportionate numbers of unregistered voters are poor. We cannot overlook the fact that many persons are deterred from registering to vote during normal business hours at the Board's office in the downtown business district by factors that are essentially financial. For example, persons who work during those hours may be unable to take time off to register to vote; others may be discouraged by the location of the Board's office, which, although

convenient for persons who work downtown, may be quite a distance from home." Others may be inhibited by physical disability or childcare responsibilities.

Sensitivity to these considerations supports increasing the availability of voter registration facilities, whether by increasing the number of voter registration locations or expanding office hours to include evenings and weekends or appointing qualified volunteers as deputy registrars. However, we cannot agree that there is a constitutional right to greater access to voter registration facilities per se. The Board makes voter registration facilities available at its downtown office and at numerous neighborhood locations throughout the city during normal business hours and occasionally beyond business hours. There is no evidence in the record establishing that the Board has limited accessibility to voter registration facilities even indirectly on the basis of impermissible or suspect classifications such as race, language, or wealth. We note that the record shows that voter registration facilities are geographically distributed throughout the City, although it must be acknowledged that many of the secondary facilities are available for voter registration on a limited basis.

Accordingly, we affirm the judgment of the district court. In view of our disposition of the merits, we do not reach the question of class certification.

A true copy.

ATTEST:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

1189



MISSOURI SHERIFFS' ASSOCIATION

229 Madison • Jefferson City, MO 65101 • Telephone (573) 635-5925 • FAX (573) 635-2128
E-Mail: MSA@Socket.Net

PRESIDENT
Tod Boehm
Sheriff of Boone County

1ST VICE-PRESIDENT
Glenn Boyer
Sheriff of Jefferson County

2ND VICE-PRESIDENT
James W. Murphy
Sheriff of St. Louis City

3RD VICE-PRESIDENT
Don Blankenship
Sheriff of Phelps County

SECRETARY
John Pope
Sheriff of Camden County

TREASURER
J.T. Roberts
Sheriff of Pulaski County

SERGEANT-AT-ARMS
Richard Hill
Sheriff of Stone County

September 27, 1999

EXECUTIVE DIRECTOR
James L. Vermeersch
Attorney at Law

Senator Orrin Hatch
Chairman
Senate Judiciary Committee
SD-224 Dirksen Senate of Building
Washington D.C. 20510

Dear Senator Hatch:

Attached please find a copy of the dissenting opinion rendered by Missouri Supreme Court Judge Ronnie White in the case State of Missouri, Respondent, v. James R. Johnson, Appellant.

Also, please find attached a copy of a petition signed by 92 law enforcement officers in Missouri, including 77 Missouri sheriffs.

In December 1991, James Johnson murdered Pam Jones, wife of Monteau County Sheriff Kenny Jones. He shot Pam by ambush, firing through the window of her home during a church function she was hosting. Johnson also killed Sheriff Charles Smith of Cooper County, Deputy Les Roark of Monteau County and Deputy Sandra Wilson of Miller County. He was convicted and sentenced to death. When the case was appealed and reached the Missouri Supreme Court, Judge White voted to overturn the death sentence of this man who murdered Mrs. Jones and three good law officers.

As per attached, the Missouri sheriffs strongly encourage you to consider this dissenting opinion in the nomination of Judge Ronnie White to be a U. S. District Court judge.

Sincerely,

A handwritten signature in cursive script that reads "James L. Vermeersch".

James L. Vermeersch
Executive Director

JLV/ksl

Enclosures: 2

PETITION

We, the undersigned, understand that Judge Ronnie White of the Missouri Supreme Court, has been nominated to be a United State's District Court Judge.

We need judges who can balance the duty of the law enforcement officer to enforce the law with the preservation of the Constitutional rights of the accused.

In 1993, one James Johnson was convicted and sentenced to death for the ambush and murder of Pam Jones, the wife of the Moniteau County Sheriff Kenny Jones and three other law enforcement officers. Judge White rendered the only dissenting opinion to reverse this conviction.

We respectfully request that consideration be given to this dissenting opinion as a factor in the appointment to fill this position of U.S. District Judge.

NAME	POSITION/AGENCY
<u>Jerry Jurling</u> " "	<u>Sheriff, MISSISSIPPI Co.</u>
<u>J. T. ROBERTS</u>	<u>Sheriff, Pulaski Co.</u>
<u>Wayne Spain</u>	<u>Dade Co. Sheriff</u>
<u>McKay D. Mason</u>	<u>Sheriff of Vernon Co.</u>
<u>Mark Eganly</u>	<u>BARRY COUNTY SHERIFF</u>
<u>David Bowman</u>	<u>Barre, Co Sheriff</u>
<u>Franklin</u>	<u>FRANKLIN COUNTY SHERIFF</u>
<u>Don D. Nicks</u>	<u>Sheriff of Macon County</u>

NAME	POSITION/AGENCY
Sally McCoy	Clerk / Clay County SO
Loring Lompton	Lt / Clay County
Sharon Albin	Human Resources - Clay County
Bob Boydston	Sheriff Clay County MO
David R. Lewis	Sheriff Madison County, MO
Daniel R. Bullard	SHERIFF, ST. FRANCIS Co., MO
Billy R. Heater	SHERIFF BUTLER COUNTY MO
Jerry Ames	Lt Butler County Mo
L M Earnest	Sheriff of Morgan Co.
Brenda Schmitz	LT. SCOTT COUNTY SHERIFF'S OFFICE
James O. Chambers	LT. SCOTT Co SO
Joseph P. Arnold	SHERIFF CARROLL COUNTY MO
Paul Miller	COOPER Co. SHERIFF
CHARLIE POLSON	HOWARD CO. SHERIFF
Ron Blankenship	PHELPS Co. SHERIFF
Bob Clappard	Deaf Co Sheriff
W. Ricie	SHERIFF, JASPER Co.
H. L. Mitchell	SHERIFF WRIGHT CO.
Chuck Heiss	SHERIFF JOHNSON CO.
Larry R. Stoeck	SHERIFF, PETTIS Co.

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MO SHERIFF'S

004

NAME	POSITION/AGENCY
Christ Hughes	Sheriff of Christian County
Mike Binger	Sheriff of Lewis County
Bill Conner	Sheriff of Clark County
Mark R. Danner	Sheriff of Scotland County
Donald B. Brown	Sheriff of Schuyler County
James Conwell	Sheriff of Madison Co. Mo.
David Martin	Sheriff of Atchison Co. Mo.
Jan W. Jones	Sheriff - Clinton County Missouri
Tom Swartz	Deputy Sheriff Caldwell Co.
Wayne C. Adkins	Sheriff - Chariton Co. Mo.
Glenn O. Elton	Sheriff Gasconade Co. Mo.
Malcolm A. Parks	Sheriff Dallas Co. Mo.
Ray Henry	Chief Deputy, Taney Co.
Sharon Jenkins	Sheriff of Taney Co.
Carl Taylor	Sheriff Osage Co. Mo.
Robert Watson	Sheriff Laclede Co.
Thomas D. Russell	Sheriff Miller Co.
Loace Walden	Sheriff Worth Co. Mo.
Richard Stebbins	Sheriff - Shannon Co.
Gary Howard	Andrew Co. Sheriff

NAME	POSITION/AGENCY
Elmer E. Luffin	Sheriff Gentry County
Mickey Hill	SHERIFF BUCHANAN Co.
Eugene Mafford	Sheriff DeKalb County
Wally Hoge	SHERIFF SALINE COUNTY
Randy Skiles	SHERIFF WASHINGTON County
Gary Barton	SHERIFF Reynolds County
Johnson	SHERIFF Lincoln County
[Signature]	DETECTIVE LINCOLN COUNTY
Tom Houghton	sheriff Daviess CO
Bill Shepherd	Sheriff: Howell Co
Tim Ward	SHERIFF Oregon Co.
Dan Burp	SHERIFF Knox Co.
Dennis [Signature]	SHERIFF Mercer Co
Tommy [Signature]	SHERIFF PERMISCOT CO.
Greg Conard	SHERIFF ST. CLAIR C.O.
Jim Wells	Sheriff Putne County
Richard Hill	SHERIFF STONE COUNTY
Tom [Signature]	Sheriff Linn County
Cher [Signature]	LT. INVESTIGATOR PERMISCOT County
D.D. Mill	SHERIFF - Audrain County

NAME	POSITION/AGENCY
Don Alker	Deputy Anderson County
Don R. Adleson	Sheriff McPhail Co Mo
Steve Anthony	Sheriff Christian Co.
W. Patton	Sheriff Webster Co.
August Ouel	Sheriff Cass Co.
John J. Simpson	Sheriff Greene Co.
Don Blankenship	Sheriff - Phelps County
Dean Babler	Sheriff - Taylor Co.
John W. Page	Sheriff Gordon Co.
Gene Coon	Sheriff Grundy Co.
Richard J. Anderson	Sheriff, Platte County
John H. Bay	Sheriff Jefferson Co.
Bob Holden	Sheriff Duncanson Co.
Steve Bartlett	Ozark Co. Sheriff
Jim M. Eppley	Chief Deputy Lafayette Co.
Robert J. Schmidt	SHERIFF OF LAFAYETTE CO.
Darren Heintz	LT. LAFAYETTE County
W. S. P. ...	Deputy Sheriff SALINE CO CIRCUIT COURT
Charles J. ...	Clerk/Assoc. Div 6
Dary Roop	Sheriff Douglas Co.

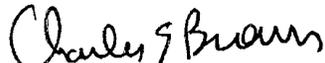
Victims Rights Political Action Committee
1400 Sixteenth St., N.W., Suite 330
Washington, DC 20036
Ph. 202.462-8800. fax 202.265-6564

To Members of the Senate Judiciary Committee:

The Victims Rights Political Action Committee OPPOSES John Ashcroft to be the Attorney General.

Mr. Ashcroft has not recognized that all victims are important. His record of insensitivity to African Americans, women, and non-Protestants indicates that he will not give sufficient attention needed to minority victims. In addition, it is simplistic and jingoistic to make the death penalty the litmus test for being tough on crime.

Victims' rights advocates are divided on the Ashcroft nomination, just as America is divided. We were promised that this Administration would unite us – let's start with the Attorney General, the nation's chief law enforcement officer.


Charles G. Brown
Director
January 16, 2001

Vietnamese Community of Houston and Vicinity, Inc.

9947 Harwin Drive, Suite K • Houston, Texas 77036 • 713-974-5591 • Fax 713-974-5677

January 16, 2001

Senator Patrick J. Leahy, Chairman
Senate Judiciary Committee
Washington, DC 20510

Re: Confirmation hearing of Senator John Ashcroft

Dear Senator Leahy:

We are writing to express our deep appreciation of Senator John Ashcroft's position and action in support of refugee protection. His commitment to fairness and justice has helped many thousand refugees escape communist persecution in Vietnam.

The Vietnamese-American community has been most appreciative of his strong support for the protection of the rights of Vietnamese boat people stranded in Hong Kong and Southeast Asia. Under the Comprehensive Plan of Action, these victims of communist persecution had been denied refugee status pursuant to a seriously flawed refugee "screening" procedure implemented by first asylum countries. In 1995 these countries started forced repatriation of these would-be refugees. The US State Department, most regrettably, supported the repatriation of Vietnamese boat people to their place of persecution.

Congressman Christopher Smith introduced a provision in the Foreign Relations Authorization Act, Fiscal Years 1996 and 1997 to prevent this humanitarian catastrophe by establishing a thorough review of all refugee cases that might have been wrongly denied refugee status. Senator Ashcroft fully supported this provision in the Conference Committee.

Although this provision did not survive a Presidential veto, it gave rise to the

Resettlement Opportunity for Vietnamese Returnees (ROVR) program. This program re-adjudicates the refugee claims of the boat people after their repatriation to Vietnam. Over 18 thousand of them have since been found to be refugees and resettled to the US.

Senator Ashcroft, along with many of his colleagues in Congress who supported the said provision, showed the most commendable commitment to justice without regard to race, religion, nationality, or political opinion. This unconditional commitment to justice has saved tens of thousands of lives half way around the world.

We believe that our country will benefit from his integrity, courage, compassion, and deep respect for justice.

Sincerely,



Khiet Nguyen
President

cc: Sen. Orin Hatch, Ranking Minority Member

Statement of the Violence Policy Center, Washington, DC

The Violence Policy Center respectfully submits the following testimony in opposition to the nomination of John Ashcroft to be Attorney General of the United States.

Introduction

During the first year of the Clinton Administration, 39,595 American lives ended in gunfire. By 1998, the latest year for which statistics are available, that number was reduced by nearly a quarter to 30,708. Much of this progress is attributable to innovative policy strategies and vigorous enforcement of our nation's gun laws by the U.S. Department of Justice (DOJ). America still has a long way to go to end the scourge of gun violence. Unfortunately, John Ashcroft as Attorney General would take us in exactly the wrong direction.

John Ashcroft is undeniably sympathetic to the positions and policies of the National Rifle Association and the gun industry. In its "Election '94" round-up, the NRA boasted, "Gun Owners Win Big!" and counted Ashcroft as one of the new senators NRA members had worked hard to elect. Last May, NRA chief lobbyist James Jay Baker stated that reelecting Ashcroft to the U.S. Senate was one of the organization's top priorities. According to *The Hill* newspaper, Mr. Baker said, "That is a clear good-guy bad-guy race from our stand point. We plan to do whatever it takes to make sure John Ashcroft retains that seat."¹

Not surprisingly, Ashcroft's selection has been hailed by the gun lobby. On January 5, 2001, Neal Knox, former NRA board member and leading pro-gun activist, declared, "George W. Bush's now-complete cabinet is the most solidly conservative,

¹ *The Hill*, May 10, 2000, p. 3.

and most generally pro-gun, of any President in memory—including Ronald Reagan's."²

During the 2000 elections, the National Rifle Association claimed that if George Bush won the presidency, the NRA would be working out of his office. With John Ashcroft as Attorney General, the NRA will be firmly entrenched in the Department of Justice.

The Ashcroft Record on Guns

The shared positions of John Ashcroft and the NRA are hostile to an important mission of the Department of Justice: vigorous and impartial enforcement of our nation's gun laws. The following are examples of areas where Ashcroft's record and pro-NRA sentiments are likely to conflict with the mission of the Department of Justice.

Gun Lobby Campaign Spending

John Ashcroft would be the first Attorney General in recent history who has been the beneficiary of massive spending by a special interest group with a political agenda that is in direct conflict with the duties of the office. The NRA spent a

² Neal Knox, "What A Great Cabinet!," *Neal Knox Report*, January 5, 2001, downloaded from www.NealKnox.com, Internet.

combined total of \$374,137 on behalf of Ashcroft in his failed 2000 Senate reelection bid. The NRA's Political Action Committee contributed \$9,900 directly to the Ashcroft campaign and spent \$339,237 in independent expenditures on his Senate effort. The NRA also contributed \$25,000 to the Ashcroft Victory Committee in March of 2000.

Dismantling the Brady Law

Ashcroft supports NRA efforts to immediately destroy essential records maintained under the Brady law's National Instant Criminal Background Check System (NICS). NICS serves as the foundation for the background check required under the law. Currently the records are temporarily retained for six months because the FBI has determined that to be the time necessary to conduct audits of the system's accuracy and effectiveness. The Department of Justice has described the purpose of the six-month retention rule as follows:

The audit log [constructed from the retained records] enables the FBI to monitor the use of the NICS by firearms dealers, states serving as points of contact, and FBI personnel. The FBI also examines whether the FBI employees and contractors are making correct determinations as to whether potential transferees are disqualified, to ensure that "proceed" responses are not being supplied with regard to persons who are disqualified. Decisions to allow a firearm purchase are not fully automated, and thus officials must review and evaluate records before making a decision. Review of decisions made by NICS examiners is necessary to ensure that responsible individuals make correct decisions on whether a transfer is permissible, and to enable supervisors to provide additional training where necessary.³

³ Brief of the U.S. Attorney General, *National Rifle Association, Inc. et al v. Reno*, 216 F.3d 122 (D.C. Cir. 2000).

In response to the document retention policy, the NRA sued the Department of Justice to require the immediate destruction of the records, which would have seriously undermined the effectiveness of the background check system.⁴ The NRA suit was dismissed by a federal appeals court on July 11, 2000. However, Ashcroft is on record as opposing the position of the Department of Justice and siding with the NRA. On July 21, 1998, he voted for legislation offered by Senator Robert Smith (R-NH) that would have required the FBI to destroy immediately any records relating to an approved handgun transfer.

As recently as last Congress, Ashcroft voted to weaken the Brady law. Current federal law provides the FBI with three business days to conduct background checks under the Brady Handgun Violence Prevention Act.⁵ The Department of Justice has determined that, while 95 percent of background checks are completed within two hours, "22 percent of all gun buyers who are found to be prohibited persons are not found to be prohibited until more than 72 hours have passed." The NRA has repeatedly argued, however, that 24 hours is sufficient time to complete the checks. This is in spite of the fact that the FBI has estimated that under a 24-hour rule, more than 17,000 people who were stopped by the current Brady instant check system in a six-month period would have been sold the firearms.

During the May 1999 Senate vote on whether to expand the current Brady background check to all sales at gun shows (not just those by licensed dealers), Ashcroft sided with the NRA and voted against the measure, notwithstanding the fact that the Department of Justice and the Department of the Treasury had recently issued a report concluding, "Gun shows provide a large market where criminals can shop for

⁴ *National Rifle Association v. Reno, supra.*

⁵ 18 USC § 922 (t)(1)(B)(ii).

firearms anonymously.”⁶ At the same time, Ashcroft supported the NRA’s 24-hour position, voting in favor of legislation sponsored by Senate Judiciary Chair Orrin Hatch (R-UT) that would have weakened our nation’s gun laws by reducing the time allowed to conduct the background check by *all* gun show sellers—including licensed dealers—from three business days to 24 hours.

Placing Prosecution of Illegal Gun Traffickers at Risk

Under President Clinton, the Department of Justice has taken the lead in prosecuting illegal gun traffickers. Of 1,090 cases involving illegal firearms trafficking recommended for prosecution by agents of the Bureau of Alcohol, Tobacco and Firearms, nearly 90 percent were referred to the U.S. Attorney’s Office. The U.S. Attorney declined prosecution in only 10 percent of the cases. Many of these cases involved licensed gun dealers who were diverting large quantities of firearms to the illicit market.

In 1998 Ashcroft expressed serious concerns regarding a bill sponsored by Senate Judiciary Chair Orrin Hatch—the Violent and Repeat Juvenile Offender Act of 1997—which would have expanded federal authority to prosecute illegal firearm traffickers. Ashcroft’s concerns centered on a provision in the bill that would have added federal firearms violations to the list of offenses that would trigger prosecution under the federal Racketeer Influenced and Corrupt Organizations (RICO) statute. The change would have subjected firearm traffickers to harsh federal penalties.

⁶ *Gun Shows: Brady Checks and Crime Gun Traces*, U.S. Department of the Treasury, U.S. Department of Justice, Bureau of Alcohol, Tobacco and Firearms (January 1999).

The Violence Policy Center has obtained a copy of a handwritten note to Larry Pratt, executive director of the Gun Owners of America (GOA),⁷ in which Ashcroft thanked Pratt for “bringing to my attention the RICO (2nd amendment) problems with the juvenile justice bill.” He went on to say, “I am working to see that the RICO provisions are stripped from the bill prior to floor consideration.”⁸ He then referenced a letter that he and Senator Larry Craig (R-ID) had written to Senator Hatch. The bill was later amended to weaken the provision dealing with illegal firearms trafficking.

Opposing the Federal Ban on Assault Weapons and High-Capacity Magazines—Placing Reauthorization at Risk

Ashcroft opposes the federal ban on assault weapons and high-capacity ammunition magazines.⁹ This 1994 law, which passed with the support of virtually every major national law enforcement organization in the United States, is scheduled to sunset on September 13, 2004. Reauthorization and much-needed improvements in the law will require the support of the nation’s chief law enforcement officer. The NRA strongly opposes the ban on semi-automatic assault weapons and high-capacity magazines and has vigorously worked to repeal it. Ashcroft has stated his opposition

⁷ GOA describes itself as “the only no-compromise gun lobby in Washington.” In February 1996 Larry Pratt was forced to take a leave of absence as co-chairman of Pat Buchanan’s presidential campaign after a report from the Center for Public Integrity linked Pratt with white supremacists and right-wing militia leaders.

⁸ Copy of letter in files of Violence Policy Center.

⁹ 18 USC § 922 (v) and (w).

to the ban.¹⁰ He twice voted—on May 13, 1999, and on July 28, 1998—against legislation offered by Senator Dianne Feinstein (D-CA) to ban the importation of high-capacity magazines. Absent reauthorization in 2004, it will be legal to once again manufacture semi-automatic assault weapons—including the AK-47 used most recently in the shooting of seven in a Wakefield, Massachusetts, Internet firm and the TEC-9, the weapon of choice of the killers at Columbine High School—along with high-capacity ammunition magazines which can hold 20, 32, or even 100 rounds of ammunition.

Support for Arming Felons

A Department of Justice led by John Ashcroft may literally result in more guns being put in the hands of convicted felons. The Department of Justice has resisted attempts by convicted felons to use the courts to obtain restoration of their firearm privileges. This is the direct result of Congress' refusal to continue funding for the federal "relief from disability" program, despite support for the program from the National Rifle Association. Until 1992, that program existed solely for the purpose of restoring the ability of felons convicted of federal crimes to legally buy and possess guns. In the 10-year period from 1982 until 1992, this guns-for-felons program processed 22,000 applications from convicted felons, and restored gun privileges to approximately one-third of those applicants. Crimes committed by felons who obtained "relief" include sexual assault, homicide, and firearm violations. When Congress de-funded the program in 1992, felons resorted to the courts as a backdoor

¹⁰ See, for example: "Senate Rivalry Deepens; Issue of Crime Comes to Forefront in Missouri Contest," *Kansas City Star*, July 5, 2000, p. A1; "Ashcroft Brings Bid for Senate to Main Street; Ex-Governor States His Case," *St. Louis Post-Dispatch*, August 30, 1994, p. 1.

avenue to obtain restoration of their firearm privileges. The Department of Justice has vigorously fought the cases brought by felons. To date, only the Court of Appeals for the Third Circuit has agreed to restore the gun privileges of felons although several other federal circuits have considered such cases. Following the Third Circuit's ruling, the lower courts have restored the gun privileges of at least three felons.

In addition, on May 14, 1999, Ashcroft voted for an amendment offered by Senator Orrin Hatch (R-UT) which would have required the FBI to create a database to identify felons who have been granted "relief" to ensure that these felons are able to easily buy firearms when their names are checked through the NICS. The amendment passed the Senate 48 to 47. This database would have included individuals such as Jerome Sanford Brower, who pleaded guilty in an international terrorist plot to transport explosives to Libya. The database would also have included Sherman Dale Williams, who pleaded guilty to two counts of illegal transfer of machine guns. Williams received "relief" despite the fact that local law enforcement officials expressed fears that he would be a threat to the community if armed. Many felons granted "relief" are subsequently rearrested. For example, Michael Paul Dahnert of Wisconsin was convicted in 1977 of burglary. He was granted "relief" in 1986. Two months after "relief" was granted, he was rearrested and charged with first degree sexual assault and four counts of second degree sexual assault. Dahnert received five years in prison.¹¹

¹¹ For more information on the "relief from disability" program, see *Putting Guns Back Into Criminals' Hands*, Violence Policy Center (1992) and *Guns for Felons: How the NRA Works to Rearm Criminals*, Violence Policy Center (March 2000).

Placing Current Federal Gun Laws at Risk

As Attorney General, Ashcroft will be charged with defending federal gun laws from lawsuits seeking to have them invalidated. This may well place all existing laws—as well as any new laws passed by Congress—at serious risk. The gun lobby, firearm manufacturers, or other plaintiffs routinely sue to overturn existing federal gun laws. This has been the case with the Brady Handgun Violence Prevention Act, which requires a background check on purchasers buying guns from licensed dealers. Also challenged in court were the federal assault weapons ban, the Gun Free School Zones Act, and the Domestic Violence Offender Gun Ban, which prohibits firearm possession by individuals convicted of misdemeanor crimes of domestic violence. In each of these cases, the Justice Department zealously defended the law in the courts.

Two important cases are currently pending in which the actions of the Department of Justice could be determinative. In *United States v. Emerson*,¹² the Department is appealing a ruling which held that a federal law prohibiting firearms possession by persons subject to a restraining order for domestic violence is unconstitutional under the Second Amendment (this is virtually the only federal court ruling interpreting the Second Amendment as protective of an individual right). This case is now pending before the United States Court of Appeals for the Fifth Circuit. Whatever the outcome at the appeals court level, the case may be appealed to the U.S. Supreme Court. Ashcroft has made very clear that his interpretation of the Second Amendment comports with that articulated by the trial judge in *Emerson*.¹³

¹² *United States v. Emerson*, 46 F. Supp. 2d 598 (N. Dist. Tex. 1999).

¹³ *Hearing before Subcommittee on the Constitution, Senate Judiciary Committee*, 105th Congress, September 23, 1998, pp. 105-123.

The second case was filed November 14, 2000, in the United States District Court for the District of Columbia.¹⁴ It seeks to weaken the laws regulating the transfer and possession of firearms regulated under the federal National Firearms Act (NFA). That law strictly regulates the manufacture, transfer, and possession of certain types of firearms including machine guns, silencers, short-barreled rifles and shotguns, and destructive devices. The NFA requires a background check of buyers of such weapons and that the firearms be registered with the federal Bureau of Alcohol, Tobacco and Firearms (ATF). The suit argues that certain components of the background check required before an NFA weapon may be transferred are unconstitutional. Specifically, the plaintiffs are challenging a regulation requiring certification by a local chief of police, county sheriff, district attorney, or other appropriate local official of the applicant's identity and that the local official has "no information indicating that the receipt or possession of the firearm would place the transferee in violation of local law or that the transferee will use the firearm for other than lawful purposes." This campaign is in response to the actions of some local law enforcement officials who out of a concern for public safety are often reluctant to complete such "sign-offs." Without this requirement, local law enforcement officials will have no control over how many of these dangerous weapons are brought into their jurisdiction.

Support for Criminals Carrying Concealed Handguns

Ashcroft endorsed, and worked on behalf of, a failed 1999 NRA-backed referendum in his home state of Missouri that would have allowed the carrying of concealed handguns by convicted criminals. Opponents of "Proposition B" pointed out

¹⁴ *Lomont, et al v. Summers*, filed U.S. District Court, District of Columbia (November 14, 2000).

that the measure would have granted concealed handgun licenses to convicted criminals, including child molesters and stalkers, throughout the state. Despite these serious concerns, Ashcroft did radio ads supporting the NRA's referendum that, according to *Associated Press* reports, "blanketed the Missouri airwaves."¹⁵ The NRA and Ashcroft lost the referendum on April 6, 1999, despite outspending their opponents by a five-to-one margin.

Conclusion

For the above stated reasons, the Violence Policy Center opposes the nomination of John Ashcroft to be Attorney General of the United States.

¹⁵ "Concealed Guns Backer Ashcroft Once had 'Grave Concern' About Proposal," *Associated Press*, April 10, 1999.

1210



Tuesday, January 16, 2001

The Honorable Patrick J. Leahy
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I write today to strongly support the confirmation of John Ashcroft as the next Attorney General of the United States.

Senator Ashcroft is a man of superb qualifications and enormous integrity. He has an outstanding record as an Attorney General, Governor, and as a Senator for enforcing laws and fighting crime.

Senator Ashcroft has been a loud and strong voice for law enforcement and crime victims. As Host of America's Most Wanted I have seen firsthand the scarce resources that law enforcement has to do its job and how the criminal justice system often revictimizes crime victims. Senator Ashcroft has been an advocate to bring fairness to the criminal justice system and has been a loud voice for victims. He is a true friend of law enforcement and is overwhelmingly supported by them for this position.

I know Senator Ashcroft will enforce all laws with fairness and impartiality and I urge the Judiciary Committee's full support for President-elect Bush's nominee.

Sincerely,

John Walsh
Host
America's Most Wanted

1211

MLG

CITY OF PEVELY
POLICE DEPARTMENT

CHIEF RON WEEKS

P.O. BOX 304
PEVELY, MISSOURI 63070 - 0304

911
EMERGENCY 314-475-5201
OFFICE 314-475-4408
FAX 314-475-4832

RECEIVED AUG 27 1999

August 23, 1999

Honorable Senator John Ashcroft
United States Senate
Washington D. C. 20510

Senator Ashcroft

It is with a great deal of concern that I read the letter sent by Sheriff Kenny Jones of Moniteau County. What a tragedy the Sheriff has experienced and then to be faced with Judge Ronnie White's death penalty vote is a complete miscarriage of justice.

I do not feel we need United States District Judges of this stature, and I urge you to oppose his appointment.

I thank you for giving me an opportunity to voice my opinion, and I support your efforts in this area of law enforcement.

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2420964
10/1 ✓*

Respectfully
Chief Ron Weeks
Chief Ron Weeks

1212

January 16, 2001

Honorable Richard Durbin
U.S. Senate Committee on the Judiciary
Room SD-224, Dirksen Senate Office Building
Washington, D.C. 20510-6275

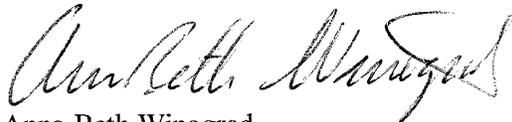
Dear Senator Durbin:

The Attorney General is the nation's chief enforcer of civil rights laws. Given his record as Missouri's Attorney General, Governor and Senator, John Ashcroft is the wrong person for the job. More specifically, Mr. Ashcroft's actions regarding the Ronnie White nomination demonstrate a clear lack of integrity.

In fact, Mr Ashcroft lacks the very qualities that should be considered prerequisites for the job. He has an extremely poor record when it comes to protecting and promoting the civil rights of all Americans.

I strongly oppose Mr. Ashcroft's confirmation and I urge you to reach the same conclusion after reviewing the Ashcroft record. I look forward to your response in writing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anna-Beth Winograd".

Anna-Beth Winograd
83 Mill Street
Amherst, MA 01002-1156



**WISCONSIN LEGISLATIVE
BLACK & HISPANIC CAUCUS**

P. O. Box 7882 Madison, WI 53707-7882

January 16, 2001

Honorable Members of the U.S. Senate Judiciary Committee
107th Congress
Washington, D.C.

Democrats

Patrick Leahy, VT Chairman
Edward Kennedy, MA
Joseph Biden, DE
Herb Kohl, WI
Dianne Feinstein, CA
Russell Feingold, WI
Robert Torricelli, NJ
Charles Schumer, NY

Republicans

Orrin Hatch, UT Ranking Member
Strom Thurmond, SC
Chuck Grassley, IA
Arlen Specter, PA
Jon Kyl, AZ
Mike DeWine, OH
Jeff Sessions, AL
Bob Smith, NH

Dear Chairman Patrick Leahy and members of the Senate Committee on Judiciary,

We are writing in regard to former Missouri Senator John Ashcroft, President-elect George W. Bush's nominee for United States Attorney General. We want to voice our collective concern about this nominee as your Committee begins its deliberations on his appointment. You are urged to uphold the views and interests of your constituents on this most important matter, rather than allowing yourself to be guided by any preconceived conceptions of loyalty that you may feel toward this former colleague.

During the course of these nomination hearings, the Senate has an obligation to ask serious questions about Mr. Ashcroft's past record while serving as a former United States Senator, Governor and Attorney General of Missouri on issues important to the African-American constituency in Wisconsin and throughout the nation. As the *New York Times* opined on January 12, 2001, "many points in Mr. Ashcroft's career suggest that he would not necessarily preserve the Justice Department's modern tradition of defending civil liberties and minority rights." The Committee should fully explore Mr. Ashcroft's past record and current beliefs on

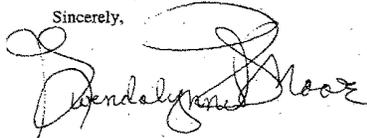
Committee must leave no stone unturned when trying to discern whether or not Mr. Ashcroft intends to uphold the basic tenets of the United States Constitution and the rights and protections it affords citizens. Prior to confirmation, he must be able to effectively demonstrate his ability to put aside personal opinions and religious beliefs. The ability of Mr. Ashcroft to enforce the laws of this country for all its citizens is our highest concern.

The United States Attorney General plays an important role not only in establishing the nation's law enforcement policies but also is a decisive voice in the appointment of federal judges nationwide; there are currently 78 vacancies on the federal judiciary. Therefore, former Senator Ashcroft's role in blocking the nomination of Missouri Supreme Court Justice Ronnie White's confirmation to a federal judgeship gives us pause. Judge Ronnie White is a former colleague as a member of the National Black Caucus of State Legislators, and Mr. Ashcroft's actions were particularly troubling to members of the Wisconsin Legislative Black and Hispanic Caucus.

A basic assumption underlying the nomination process is that, under normal circumstances, a President deserves to have his or her nominees approved and that standard differences along party lines are not adequate reason for blocking an appointment. We would like to emphasize that the circumstances surrounding the 2000 Presidential Election were by no means "normal." The Democratic Candidate for President, Vice-President Al Gore, while winning the popular vote and winning the overwhelming support of the minority vote, lost the election when the United States Supreme Court ordered the State of Florida to stop counting the votes in Florida. Further, the events surrounding the 2000 presidential election are still with us. On January 11, 2001, the United States Commission on Civil Rights began hearings in Tallahassee, Florida, to investigate allegations of voter harassment, voter registration irregularities, and erroneous purges of voting registration lists. The U.S. Attorney General must be able to bring charges and grant relief if wrongdoing is found as a result of this investigation.

Thank you for your attention to the items contained in this letter.

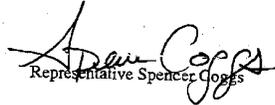
Sincerely,



Senator Gwendolynne S. Moore



Representative Annette Polly Williams



Representative Spencer Coggs



Representative Robert Turner



Representative Johnnie Morris-Tatum



Representative Antonio Riley



Representative Leon Young



Representative Pedro Colon

Cc: The Honorable David Obey, Member of Wisconsin Congressional Delegation

<p>1 2 3 4 IN THE MATTER OF: 5 6 ST. LOUIS PUBLIC HEARING ON THE 7 NOMINATION OF JOHN ASHCROFT 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">JANUARY 18, 2001</p> <p style="text-align: center;">BE IT REMEMBERED that on the 18th day of January, 2001, at the Sheet Metal Workers Union Hall, 301 South 10th the City of St. Louis, State of Missouri, that above entitled matter came before Frankie Freeman, Moderator, and the Distinguished Panel Members were present as follows: Rita Days, Pat Dougherty, Jerry Christmas, Norma Day, and Susan Uchitelle.</p> <p style="text-align: center;">JENNIFER A. DUNN Registered Professional Reporter Certified Court Reporter 422 Chestnut Hill St. Louis, MO 63104 (636) 740 6888</p>	<p style="text-align: right;">Page 1</p> <p>1 Susan Uchitelle. Amy Smoucha and Mary Wertsch may be 2 joining the panel later. Thank you for agreeing to serve 3 the Missouri community in this way this afternoon. 4 And thank you, and thank you for coming to 5 voice your opinion about the nomination of John Ashcroft 6 for U.S. Attorney General. Welcome, Frankie? 7 MRS. FREEMAN: Good afternoon. At the outset, 8 I would like to say it is a privilege for me to have the 9 opportunity to be the moderator for this hearing. I'd 10 also like to say that this hearing here in St. Louis is 11 being held in response to the need to give more citizens 12 an opportunity to submit information and to express their 13 opinions concerning the nomination by President-Elect 14 Bush of former Senator John Ashcroft to be Attorney 15 General of the United States. 16 As you know, the Judiciary Committee of the 17 U.S. Senate has been conducting a hearing on the 18 nomination since Tuesday. And we have been informed by 19 the organizers of the hearing, as you've heard it 20 earlier, that the testimony, the transcript, and the 21 documentation, particularly of the day, will be 22 immediately transmitted to the Judiciary Committee to be 23 included in the record and to be considered by the 24 committee in its deliberations concerning the nomination 25 of John Ashcroft to be Attorney General. And so we know</p>
<p style="text-align: right;">Page 2</p> <p>1 MS. SCHUTZIUS: Good afternoon. I'm Mary Jane 2 Schutzius, President of the St. Louis Branch of the 3 Women's International League for Peace and Freedom. And 4 I have this thing about starting on time, so it's 5 4 o'clock, we're going. 6 People will be coming and going during the next 7 three hours, hopefully with a minimum amount of 8 disruption. At our board meeting on January the 2nd, the 9 idea rose of a hearing in St. Louis on the nomination of 10 John Ashcroft for U.S. Attorney General. And with the 11 immediate and eager collaboration of many women's labor, 12 choice, religious and civil rights organizations, this 13 event was planned. 14 We're very sorry if the hall is not acceptable, 15 but with the timing of the Senate hearings, availability 16 and location became our principal concern. 17 We persist in our effort to have the transcript 18 of this hearing introduced in the Judiciary Committee 19 hearings and will express mail and fax the record to them 20 before noon tomorrow. 21 Our distinguished and well known moderator and 22 panelists this afternoon are the Honorable Frankie 23 Freeman, Jerry Christmas, Rita Days, who I presume is on 24 her way, Pat Dougherty, Norma Day, who are currently 25 being interviewed on another matter on Channel 4, and</p>	<p style="text-align: right;">Page 4</p> <p>1 that there is a very real meaningful participation that 2 witnesses will be making today. 3 We have certain instructions for the witnesses. 4 All who testify will be asked first to give your name and 5 organization, and you have also been notified that we ask 6 you to hold to that, that the testimony will be limited 7 to three minutes. There is a timekeeper who will raise a 8 card indicating there is one minute and then another card 9 indicating 30 seconds are left. A bell will ring when 10 three minutes go by. 11 And so now we will begin with the first 12 witness, Paula Gianino, President and CEO of Planned 13 Parenthood. 14 MS. GIANINO: Thank you, Miss Freeman and 15 distinguished panel. My name is Paula Gianino. I'm 16 speaking today on behalf of Planned Parenthood of the 17 St. Louis Region and our affiliated corporation, 18 Reproductive Health Services of Planned Parenthood 19 St. Louis Region. I serve for the board of directors and 20 our staff of volunteers. 21 This morning the Senate Judiciary Committee 22 heard from our national president, Gloria Feldt, so I 23 will not give back to the Judiciary any of her comments, 24 but I will tell the Judiciary a story about why we at 25 Planned Parenthood at the local level and state level and</p>

<p style="text-align: right;">Page 5</p> <p>1 national level vigorously oppose John Ashcroft's 2 appointment as Attorney General. 3 In February of 1999, a group of anti-choice 4 extremists, unlawful extremists, members of a group 5 called the American Coalition of Black Activists, was 6 tried in Oregon and found to be guilty of making 7 significant threats, unmerciful threats to physicians and 8 workers at reproductive health centers throughout this 9 country. One of those physicians, who bravely testified 10 and for a series of two months was in Oregon testifying, 11 is our own physician at Reproductive Health Services and 12 Planned Parenthood. 13 One of the defendants for the ACLU, Timothy 14 Dreste, a local resident here of St. Louis County, served 15 for years in a leadership role in the local Republican 16 party at a committee mid level. 17 We are greatly concerned about John Ashcroft's 18 very visible, very deliberate record, not standing up and 19 showing leadership around the issue of clinic violence, 20 the safety of our physicians, staff and patients. 21 In this matter we implored upon him that it was 22 absolutely irresponsible to have someone who had been 23 convicted of a national crime serving in a leadership 24 role in the Republican party. John Ashcroft has never in 25 his tenure as our Attorney General, nor as Governor, nor</p>	<p style="text-align: right;">Page 7</p> <p>1 of America for the following reasons: 2 While Mr. Ashcroft sincerely believes he can 3 discern the difference between enacting the law and 4 enforcing the law and that he can administer aggressively 5 the laws of the land, we cannot believe that he would do 6 so without undo hardship to women and children. As an 7 example, when Mr. Ashcroft was Attorney General of 8 Missouri, he attempted to subvert the law when he 9 aggressively sued the National Organization for Women, 10 taking the case all the way to the Supreme Court against 11 all legal recommendations. NOW had called for a 12 convention boycott against states who refused to ratify 13 the Equal Rights Amendment. While Mr. Ashcroft said he 14 was trying to protect Missouri businesses from loss of 15 money, he was spending excessive dollars taking every 16 tact possible to redefine laws instead of upholding and 17 enforcing what was and is legally permitted. 18 He has boldly and proudly demonstrated his 19 commitment to what he feels is right and aggressively 20 chosen legal avenue to try to impose his very 21 conservative mind set on a public which is not 22 unanimously in favor of his restricted policies. While 23 he professes respect to those who do not agree with him, 24 he has too often chosen an aggressive path to restrict 25 those with differing beliefs.</p>
<p style="text-align: right;">Page 6</p> <p>1 as a U.S. Senator, taken a leadership role, speaking out 2 against the unlawful violence of extremist individuals 3 and groups. 4 As Attorney General, one must not have deeply 5 held religious convictions, but one must have leadership. 6 We vigorously oppose his nomination. We urge people in 7 this community to look at a record of decades of service. 8 Not just at what's been said over the last 48 hours. 9 Thank you, Panel. 10 MRS. FREEMAN: Our next witness is Renee 11 Michaelson, the National Council of Jewish Women. 12 MS. MICHAELSON: Thank you for having us here. 13 I'm Renee Michaelson with the National Council of Jewish 14 Women, St. Louis Section. I'm Vice President of 15 Advocacy. If you don't mind, I'm going to read my words. 16 I gave copies. 17 The National Council of Jewish Women, St. Louis 18 Section, founded in 1885, was a non-for-profit volunteer 19 organization with a membership of 2,000 women from 20 varying walks of life and differing political 21 persuasions. NCJW volunteers fulfill our mission in 22 helping women, children and families in need. No matter 23 what their ethnic, religious, or racial background. 24 We speak in opposition to the nomination of 25 John Ashcroft for Attorney General for the United States</p>	<p style="text-align: right;">Page 8</p> <p>1 In subtle and not so subtle ways, the record of 2 John Ashcroft indicates a person who does not respect the 3 needs of women. A relatively small budget item for 4 domestic violence was lined out in 1990 when he was 5 Governor of Missouri, and in 1992 he vetoed a budget item 6 for domestic violence. We are concerned that his record 7 does not indicate a concern about women in need. 8 We are also concerned about the potential for 9 judicial appointments and what criteria will be applied 10 even though Mr. Ashcroft claims the choices should not be 11 based on a litmus test but chosen based on ethics and 12 ability to interpret the law and not create law from the 13 bench. Nevertheless, we are concerned that 14 Mr. Ashcroft's recommendations will be based on his very 15 narrow approach to the rights of all persons. 16 When Mr. Ashcroft talks about both sides 17 meeting and coming up with the right decisions, we feel 18 concern. Clearly what is right for him is not always 19 right for others. The compromise should be what is in 20 the best interest for all, not what he thinks is right. 21 Since I only have 30 seconds left, I'm going to 22 quickly go to the end. We question the integrity of a 23 man whose morals disenfranchise the whole segment of our 24 population, women. And yet he is described as ethical 25 and with integrity. We applaud his honesty in expressing</p>

<p>Page 9</p> <p>1 what he feels is wrong. He has a right to feel as he 2 does. We do not, however, applaud how he has continually 3 tried over and over again to dismantle laws which provide 4 equal rights to women. 5 We question the integrity of a person who is 6 willing to accept a job that protects many of the rights 7 he feels are so wrong. A truly ethical person with 8 sincere integrity would not have spent so many years 9 publicly trying to dismantle freedoms so fervently 10 sought. 11 Therefore, we find it difficult to believe that 12 John Ashcroft could truly uphold the laws of our land as 13 they were meant to be interpreted. Thank you. 14 MRS. FREEMAN: One of the panelists has a 15 question. 16 MS. UCHITELLE: could you clarify, please, 17 specifically why he sued NOW? 18 MS. MICHAELSON: NOW had suggested that there 19 be a boycott against conventions in states that had not 20 supported the ERA Amendment, and I'm sorry, I thought I 21 had that. And Ashcroft chose to take it all the way to 22 the Supreme Court fighting the right to boycott, and he 23 lost the battle and has accepted the fact. He says that 24 we now have the right to boycott businesses. Thank you 25 for letting me clarify that.</p>	<p>Page 11</p> <p>1 When the National Rifle Association backed an 2 initiative in Missouri to make it easier for residents to 3 carry concealed weapons almost anywhere, including 4 daycare centers and on school grounds, John Ashcroft 5 championed the idea. He was quoted as saying, an armed 6 society is a polite society. 7 When a member of the St. Louis Chapter of the 8 Million Mom March approached then Senator John Ashcroft 9 to ask for help in bringing the murderer of her son to 10 justice, Senator Ashcroft sent a letter stating, sorry 11 for your loss, but I cannot help you. When the same 12 mother sent the same plea to President Clinton, he 13 immediately turned the matter over to the Justice 14 Department. This action led to the arrest and 15 prosecution of the shooter. 16 Do we really want a man such as this being our 17 nation's top cop? I think not. The Attorney General is 18 responsible for making our community safer. John 19 Ashcroft is a pro-gun extremist who consistently puts the 20 gun lobby first. Is it any wonder that in the 2000 21 Senate race alone, the NRA contributed \$350,000 to the 22 Ashcroft campaign? Certainly the children of this great 23 country deserve a better Attorney General than John 24 Ashcroft. After all, it's their lives at stake. 25 MR. CHRISTMAS: I have one question. Do you</p>
<p>Page 10</p> <p>1 MRS. FREEMAN: Our next witness is Kirstin 2 Ware, Million Mom March. 3 MS. WARE: Thank you. My name is Kirstin Ware, 4 I'm the Vice President of the St. Louis Chapter of the 5 Million Mom March. I too will go ahead and read a 6 statement. 7 The citizens of the United States need an 8 Attorney General that would support common sense gun laws 9 that will protect our children. John Ashcroft certainly 10 will not. You may ask how I know this, and I say let his 11 record in the United States Senate speak for itself. 12 When the Senate considered requiring all buyers 13 at gun shows to undergo a background check, John Ashcroft 14 voted to kill the idea. When the Senate considered 15 allowing only federally licensed gun dealers to sell guns 16 on the Internet, John Ashcroft voted no. 17 When the Senate considered eliminating the 18 requirement that background checks be conducted when 19 people reclaim pawned guns, John Ashcroft voted yes. 20 When the Senate considered a proposal to ban the 21 importation of large capacity ammunition clips, more than 22 10 rounds, John Ashcroft voted to kill the idea. When 23 the United States Senate considered requiring that child 24 safety locks be included with all new handguns, John 25 Ashcroft voted to kill the idea.</p>	<p>Page 12</p> <p>1 know in what publication he was cited saying that an 2 armed society is a polite society? 3 MS. WARE: I believe in the Post-Dispatch, but 4 I'm not positive. 5 MRS. FREEMAN: Next witness is Trent Taylor of 6 the Human Rights Council, Parkway Central. 7 MR. TAYLOR: First of all, I'd like to thank 8 the committee for letting me speak today at this hearing. 9 I represent the Parkway Central Human Rights Council. 10 The Human Rights Council was founded a year ago, 11 dedicated to the proposition that us as human beings all 12 possess the same civil liberties and civil rights. John 13 Ashcroft stands opposed to this proposition. 14 There are two very main areas of concern in 15 which John Ashcroft opposes a threat to civil rights and 16 civil liberties. The Human Rights Council is mainly 17 concerned with one, his race relations and his record of 18 race relations. 19 Secondly, he stands opposed to the death 20 penalty. First of all, if we look at John Ashcroft's 21 record and the issue of race relations, we can only 22 conclude that this man has an abysmal record. He is 23 opposed to any sort of affirmative action; and secondly, 24 as Attorney General, he would take the position of 25 enforcing law, forcing policies that protected minorities</p>

<p style="text-align: right;">Page 13</p> <p>1 and women.</p> <p>2 Secondly, if you look at John Ashcroft's</p> <p>3 record, we can see that he wouldn't protect any sort of</p> <p>4 minorities from the practice of racial profiling. Over</p> <p>5 the past decade, racial profiling has become a main</p> <p>6 concern for many people and many minorities. Racial</p> <p>7 profiling includes the practice of pulling over</p> <p>8 minorities and then proceeding to search their car based</p> <p>9 on the premise that race has now become reasonable</p> <p>10 suspicion to stop someone, suspicion of a crime.</p> <p>11 As Attorney General, we can see that John</p> <p>12 Ashcroft would not protect America from racial profiling;</p> <p>13 would not protect the privacy of the American people. If</p> <p>14 we move on and we look at John Ashcroft's record</p> <p>15 concerning the death penalty, John Ashcroft claims that</p> <p>16 the reason that he opposed Ronnie White's appointment was</p> <p>17 that he was too soft when concerning the death penalty.</p> <p>18 Now, the death penalty is a basic threat to the</p> <p>19 human necessity and the human right to live. John</p> <p>20 Ashcroft poses a serious threat when concerning this</p> <p>21 issue. For these reasons, the Human Rights Council and I</p> <p>22 stand opposed today and we reject the confirmation of</p> <p>23 John Ashcroft. Thank you.</p> <p>24 MRS. FREEMAN: I've been asked to ask all of</p> <p>25 the speakers to speak slowly and clearly.</p>	<p style="text-align: right;">Page 15</p> <p>1 in St. Louis. He fought community health care and</p> <p>2 education, even about condoms and sexually transmitted</p> <p>3 disease and birth control, he even attempted to</p> <p>4 criminalize people who spoke out about it and wanted to</p> <p>5 educate about it.</p> <p>6 He remained silent during the fire bombing of</p> <p>7 the Reproductive Health Services in 1986, and opposed the</p> <p>8 practice of midwifery. In fact, one of my friends was</p> <p>9 prosecuted by him. He filed suits of Sherman Antitrust</p> <p>10 Laws against the RRA in the 1970's in St. Louis,</p> <p>11 Missouri, and as Attorney General did little or nothing</p> <p>12 to place qualified women and racial minorities and paid</p> <p>13 leadership positions from judgeships to department heads</p> <p>14 to administrative positions. Making police drug</p> <p>15 checkpoints legal, found later to be unconstitutional is</p> <p>16 and was his idea of crime prevention.</p> <p>17 He supports the death penalty even in the face</p> <p>18 of all mistaken judgments made mostly about male African</p> <p>19 Americans, who wrongly lost their lives. I call it legal</p> <p>20 lynching. He has been less than supportive of</p> <p>21 affirmative action until we demonstrated, blockading</p> <p>22 I-70. Few women, racial minorities, have been afforded</p> <p>23 such skills in the construction area, and since the many</p> <p>24 years ago closing of the Kennecoy Skill Center, no public</p> <p>25 school in St. Louis has offered vocational construction</p>
<p style="text-align: right;">Page 14</p> <p>1 Our next witness is Laura A. Moore, St. Louis</p> <p>2 1999.</p> <p>3 MS. MOORE: fellow citizens, the only thing</p> <p>4 Mr. Ashcroft and I have had in common the past 30 years</p> <p>5 is our passionate activism, mine unpaid and his paid,</p> <p>6 quote, public service, end quote, in Missouri, where he</p> <p>7 has been allowed to expend our public money and resources</p> <p>8 on his view of what is constitutional, often</p> <p>9 misinterpreting or applying the law, what he wrongfully</p> <p>10 accused Judge White of doing one time.</p> <p>11 Even with public scrutiny of his 30 years of</p> <p>12 obstructionism to the principles of equal protection for</p> <p>13 all under the law. He has stood in the way of progress</p> <p>14 for children, women, racial minorities, working and</p> <p>15 nonworking poor, sexual orientation minorities, the ill</p> <p>16 and the disabled, public health care, housing and</p> <p>17 education. The right to privacy, free choice, real power</p> <p>18 sharing, i.e., personal, political, economic development</p> <p>19 of and by all discriminated against citizens, those who</p> <p>20 have been discounted, discarded and left behind because</p> <p>21 they are perceived as not, quote, playing by the rules,</p> <p>22 end quote. And at times, with Judge White, he has</p> <p>23 opposed people who did play by the rules.</p> <p>24 He supported school prayer, vouchers, instead</p> <p>25 of public education, and fought voluntary desegregation</p>	<p style="text-align: right;">Page 16</p> <p>1 trades training. Soon to change because of court-ordered</p> <p>2 replacement of the schools.</p> <p>3 In the neighborhoods voter fraud and the same</p> <p>4 machines as in Florida were in place with Ashcroft's</p> <p>5 election board appointments that continues to</p> <p>6 discriminate or disenfranchise the City of St. Louis</p> <p>7 voters in the last collection. We continue to be</p> <p>8 bushwhacked in the City of St. Louis, State of Missouri,</p> <p>9 and now nationally by persons of Ashcroft, who are so out</p> <p>10 of touch or don't get it or understand the profound</p> <p>11 impact negatively on the people of this community and all</p> <p>12 of our lives.</p> <p>13 He has been able to use his white male</p> <p>14 privilege, his improperly perceived morality in causing</p> <p>15 human pain and death to those of us we love, not being</p> <p>16 allowed to be a legislator, judge administrator, and</p> <p>17 using his power over people, less privileged people than</p> <p>18 himself.</p> <p>19 To entrench all of his systematically legal,</p> <p>20 administrative, legislative, political, constituted</p> <p>21 racist, classist, sexist, homophobic principles, and I</p> <p>22 put that in quotation marks, and beliefs by his</p> <p>23 discretionary enforcement of civil, legal and human</p> <p>24 rights.</p> <p>25 We cannot tolerate his lack of ability to be</p>

<p style="text-align: right;">Page 17</p> <p>1 inclusive and diverse. We must do better as a nation. 2 Reject the nomination of Mr. Ashcroft. 3 MRS. FREEMAN: Do any of the panel members have 4 a question? 5 MS. MOORE: St. Louis 1999 started in 1998, and 6 it was actually about trying to protect the interests of 7 people who live in public housing from the takeover of 8 their neighborhoods with the so-called Hope projects, 9 disenfranchising them with their neighborhoods, and this 10 is happening with the tiff monies that Ashcroft proposed 11 when he was Governor, giving these tax giveaways. He 12 likes welfare for the rich, but not for the poor. We 13 call ourself St. Louis 1999, because we can't wait for 14 2004 with direct opposition for Danforth with his 15 \$10 million payoff. 16 MRS. FREEMAN: Thank you. Our next witness is 17 Marge Polcyn. 18 MS. POLCYN: Margaret Polcyn, Older Women's 19 League. Madom Chairman and members of the panel, thank 20 you for giving me the opportunity to speak today on 21 behalf of OWL, the only national grassroots advocacy 22 group speaking for mid life and older women. 23 Missouri citizens have lived with John Ashcroft 24 as Governor and Attorney General. We know him well. 25 When the Missouri schools were trying to integrate</p>	<p style="text-align: right;">Page 19</p> <p>1 the women of Missouri, but for everyone in the country. 2 John Ashcroft did not lose the Senate election 3 just because Mel Carnahan had a tragic accident. He 4 would have lost it anyways, because Missourians have had 5 enough of John Ashcroft. We've finally gotten rid of him 6 in Missouri, we don't want another four years of him in 7 Washington. 8 MRS. FREEMAN: Thank you. Our next witness is 9 James Morgan, President of the St. Louis Branch of NAACP. 10 MR. MORGAN: I'd like to thank the panel for 11 the opportunity to speak today. And for everyone else 12 for coming. I said I would like to thank the panel for 13 the opportunity to speak and to everyone coming. 14 I'm here today representing the oldest, 15 largest, civil rights organization in the nation, the 16 National Association for the Advancement of Colored 17 People. Two days ago, January 16th, when the 18 confirmation hearings on former Senator John Ashcroft 19 began, our President and CEO, Kweisi Mfume stated, 20 senators who vote for Ashcroft will not be able to run 21 away from this and assume people will forget it. We're 22 going to fund major information campaigns for the next 23 four years in states where senators voted to confirm. 24 And I remind them that in November of 1999, when, then 25 Senator, John Ashcroft opposed the nomination of Judge</p>
<p style="text-align: right;">Page 18</p> <p>1 according to federal law, John Ashcroft threw up one 2 roadblock after another. I was working in the public 3 affairs division of the St. Louis Public Schools when 4 Ashcroft repeatedly appealed and lost court decisions 5 that found the State of Missouri liable for a portion of 6 the cost of desegregation. We know that Mr. Ashcroft was 7 the chief opponent of the St. Louis desegregation plan. 8 His weak, regressive and dishonest record on civil rights 9 has been well documented in other areas. 10 Members of OWL have worked since the '70's to 11 pass the Equal Rights Amendment in Missouri, which John 12 Ashcroft opposed. When the National Organization for 13 Women boycotted Missouri for opposing the amendment, he 14 stretched antitrust laws to sue the group. 15 During the recent election, OWL asked 16 repeatedly for a meeting with Mr. Ashcroft to talk about 17 prescription drug benefits, gun control, or reproductive 18 health rights. He refused to see us. Is this a man that 19 cares about women, children or minorities? 20 The Attorney General of the United States does 21 more than just enforce the law. He has great influence. 22 He can choose where he wants to put the government's 23 efforts and what he wants to oppose or ignore. As 24 Attorney General of the United States of America, John 25 Ashcroft would be a frightening prospect, not only for</p>	<p style="text-align: right;">Page 20</p> <p>1 Rommie White, we promised him that we would not let 2 people forget. 3 But democratic centers in particular, this vote 4 comes as close to a litmus test as one can get on issues 5 of civil rights and equal justice under the laws from the 6 party's most loyal constituency. 7 I have taken the opportunity to observe the 8 first two days of hearings, and I have been most amazed 9 by Mr. Ashcroft's repeated insistence that he would 10 enforce the law. What are we to believe? What he now 11 tells us or what he has done in the past? 12 I have a statement prepared by former St. Louis 13 Board of Education President, Richard K. Gaines, that I 14 would like to read. As a former member, 1983 to 1989, 15 and as President from June 1987 to June 1988 of the 16 St. Louis Board of Education, I am requesting the Senate 17 Committee review the actions of Mr. Ashcroft during his 18 term as Attorney General, which was 1997 to '85, as well 19 as Governor, 1985 to 1993, for the State of Missouri; 20 specifically, the actions related to involvement in the 21 desegregation, Liddell vs. Board of Education. 22 Mr. Ashcroft's involvement is replete with 23 tactics, attitudes and directives specifically utilized 24 to thwart the efforts of the Federal District Court and 25 the Eastern District of Missouri and the Eighth Circuit</p>

<p style="text-align: right;">Page 21</p> <p>1 Court of Appeals. During the litigation phase of this 2 case, as Attorney General, Mr. Ashcroft was admonished by 3 the courts for filing feckless appeals. 4 Discovery has revealed that certain State 5 officials were apparently prepared in 1980 to comply with 6 their affirmative duty to aid in program implementation 7 and improvement, but these same State officials were 8 ordered by a Defendant Attorney General not to 9 participate in dismantling the dual system. These State 10 Defendants informed the Court's experts that they were 11 forbidden to do anything because the Attorney General was 12 running the show and it was a legal issue. Given the 13 State's position as an adjudicated constitutional 14 violator, such directives not only violate the Court's 15 orders, but are an additional segregative act against the 16 children of St. Louis. 17 One such example occurred in the paragraph 18 12(b) filing as reported by Dr. Orfield, which states the 19 basic problem at this stage is not technical but a policy 20 decision by the State government not to comply with the 21 May order to prepare a plan for consolidation or merger 22 and full desegregation. This decision, taken in the 23 final days of the planning period, broke a series of 24 commitments by state education officials to submit a plan 25 for merger or consolidation. Although I don't believe</p>	<p style="text-align: right;">Page 23</p> <p>1 reproductive health clinics from violence or harm, which 2 is one of the responsibilities of the Attorney General. 3 Now our concern is based on what Paula Gianino reminded 4 us of his history as a Missouri elected official when he 5 did nothing as anti-choice intimidation, harassment, and 6 violence increased at Missouri reproductive health 7 clinics. 8 Now I wish to make something very clear here. 9 We're not opposed to Mr. Ashcroft because he is a 10 religious man or because he is a Christian. We are an 11 organization made up of religious people, many of whom, 12 like myself are Christian. We respect that Mr. Ashcroft 13 holds deep religious convictions. However, we question 14 whether he would be able to separate his personal 15 religious beliefs from his duty to uphold the law of the 16 land, particularly when they conflict, in the case of 17 abortion. Mr. Ashcroft claims that it is against his 18 religion to impose his religious beliefs. 19 Yet, his past voting history again gives our 20 coalition reason to be concerned. His support for a 21 proposed Human Life Amendment to the United States 22 Constitution exemplifies his repeated attempts to enact 23 his own religious views. Such an amendment defines 24 fertilization as the beginning of human personhood. It 25 would prohibit all abortions, including for reasons of</p>
<p style="text-align: right;">Page 22</p> <p>1 this change originated with the professional educators 2 who had been working on the plan, it does not create 3 great uncertainty about the ability of the State 4 officials to fulfill commitments and to obey orders of 5 the Court. Thank you. 6 MRS. FREEMAN: Panelists have any questions? 7 Our next witness is Reverend Andy Bumb, Religious 8 Coalition for Reproductive Choice. 9 REVEREND BUMB: I'm Reverend Cindy, or Cynthia 10 Bumb, the Executive Director of the Missouri Religious 11 Coalition for Reproductive Choice. We are a statewide 12 organization whose governing board is composed of 13 representatives of 19 different faith and ethical groups 14 which are prayerfully pro-choice. I speak today on 15 behalf of the Missouri Religious Coalition for 16 Reproductive Choice in opposition to the nomination of 17 John Ashcroft as Attorney General of the United States. 18 Mr. Ashcroft's voting record on reproductive 19 health shows a lack of respect for religious freedom, 20 religious diversity and individual conscience. As 21 Missouri Attorney General and Governor, and as U.S. 22 Senator, Mr. Ashcroft supported and even sponsored 23 numerous legislative measures to restrict freedom. The 24 Missouri Religious Coalition is concerned that 25 Mr. Ashcroft will not vigorously defend our nation's</p>	<p style="text-align: right;">Page 24</p> <p>1 rape or incest, with the very narrow exception of those 2 performed to save the life of the woman. It could even 3 be interpreted so as to prohibit widely acceptable forms 4 of birth control, such as the pill and intrauterine 5 device. 6 In particular, though, a Human Life Amendment 7 would impose one religious view about the beginning of 8 life on all Americans. In his past behavior and voting 9 record, Mr. Ashcroft has not demonstrated recognition 10 that his personal beliefs about abortion and reproductive 11 choice conflict with those. Thus, we're very concerned 12 about his ability to safeguard religious freedom and 13 uphold the separation of church and state. 14 In conclusion, we agree with all those who 15 maintain that Mr. Ashcroft's nomination is one that 16 divides rather than unites our nation, and we believe he 17 is the wrong person to be the chief law enforcement 18 officer of a religiously diverse nation such as the 19 United States. 20 Thank you very much. 21 MS. MENDELSON: I have a brief announcement. 22 First, we are very fortunate today to have a court 23 reporter who is taking down every word, so I want to 24 remind everyone again please speak slowly and clearly so 25 we can get your words.</p>

<p style="text-align: right;">Page 25</p> <p>1 The second point is over on the side table 2 there is a sheet that tells you how to contact our 3 senators and the senators on the Judiciary Committee. 4 It's a little bit confusing because the e-mail address is 5 underlined actually between the name of the senators. 6 Sometimes there is the mark of underscore, which just is 7 the underlining mark. It's not underlined all the way. 8 So if anyone has a question about that, if you ask some 9 of us over at that table, we'll show you what that means. 10 Thank you. 11 MRS. FREEMAN: The witness, one of the 12 panelists has a question for you. 13 MS. UCHITELLE: Do you happen to have any 14 numbers on his voting record? 15 REVEREND BUMB: In terms of what? 16 MS. UCHITELLE: His voting on reproductive 17 health or any numbers that could go? 18 REVEREND BUMB: I know he has both 100 percent 19 voting record approval from the Christian Coalition and 20 100 percent disapproval from Planned Parenthood in terms 21 of his voting record. His support of the human life 22 record was as recent as 1988. 23 MRS. FREEMAN: Mary Dutcher, former Assistant 24 Attorney General to the Attorney General Ashcroft. 25 MS. DUTCHER: Good afternoon. I would like to</p> <p style="text-align: right;">Page 26</p> <p>1 I thank you all, members of the panel, for taking your time 2 and attention and giving seriousness and weight to this 3 proceeding, and I'd like to thank all of you for being 4 here. It's heartening. 5 My name is Mary Dutcher. Before I was the 6 attorney in charge of the St. Louis Office of the 7 Missouri Attorney General under John Ashcroft, I was the 8 first woman attorney hired at Anheuser-Busch, so I speak 9 as a woman, and my primary testimony is to say how 10 uncomfortable I was when I was the attorney in charge of 11 John Ashcroft's St. Louis Office, as a woman, to discover 12 that he had filed suit against the National Organization 13 of Women because the National Organization of Women had 14 called for a boycott of Missouri for Missouri's lack of 15 passage of the ERA. And that's the primary thing I have 16 to say. I was not all that close to him. 17 I guess the one other thing that impacted me 18 during those two years from 1976 to 1978, we would go on 19 float trips as a staff, and one afternoon I ended up in 20 the same canoe with him, and we argued all the way down, 21 I don't know whether it was the Cuivre River or the 22 Meramec, but I could not believe that he was not aware 23 that the budget that was available for APDC for children 24 living in poverty at that time was not enough to really 25 provide a nourishing diet for them, and that some</p>	<p style="text-align: right;">Page 27</p> <p>1 children ended up with malnutrition and some children 2 ended up with brain damage from malnutrition. 3 And I -- I mean, I just remember feeling so 4 shocked that he was unaware of that. But I think you 5 should not have that kind of discretion that he will have 6 in that powerful position if you're that ignorant about 7 how many children in this country. 8 MRS. FREEMAN: Miss Dutcher, the panelists have 9 questions for the witness. 10 MS. DAYS: I just need a point of 11 clarification. What does it mean when you run the 12 St. Louis Office of the Attorney General? What kind of 13 things did you have to do there? 14 MS. DUTCHER: The main thing we did in the 15 St. Louis Office was consumer protection. We enforced 16 Chapter 407 of the Missouri Statutes. 17 MS. DAYS: Thank you. 18 MR. CHRISTMAS: When you were serving as an 19 Assistant Attorney General and John Ashcroft was the 20 Attorney General, correct? What grade would you give him 21 in hiring women and minorities in that office at that 22 time? 23 MS. DUTCHER: Well, I was the only woman in our 24 office. And there were four attorneys. And there were 25 probably about 20 at least in the Jefferson City Office,</p> <p style="text-align: right;">Page 28</p> <p>1 and then there was another office in Kansas City served 2 like ours. Well, let me say this, I don't remember any 3 other assistant attorneys general who were women. I 4 don't remember any. 5 MR. CHRISTMAS: What years? 6 MS. DUTCHER: '76 to '78. 7 MR. CHRISTMAS: What about African Americans? 8 MS. DUTCHER: Don't remember any of those 9 either, maybe poor memory. I don't remember any. And 10 yes, if my memory is accurate, it would be a poor grade. 11 MR. CHRISTMAS: Thank you. 12 MRS. FREEMAN: The next witness is John Hickey, 13 Missouri Citizens Education Fund. 14 MR. HICKEY: Hi. My name is John Hickey, I'm 15 with the Missouri Citizen Education Fund. I'm going to 16 talk quickly about two items. 17 First item is something that Senator Kennedy 18 was asking people about. I know ACORN is going to speak 19 about or has spoken, is going to. So I'll let them talk 20 about the voter registration issue. 21 I will talk about Ashcroft's interview in the 22 Southern Partisan in his connection with Bob Jones 23 University. The Southern Partisan magazine is something 24 that came up in the course of the hearings, but I think 25 there hasn't been a full airing of what it is actually</p>
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<p style="text-align: right;">Page 29</p> <p>1 about.</p> <p>2 The Southern Partisan is a magazine published</p> <p>3 out of South Carolina. It's been published for about 20</p> <p>4 years. If you read back issues, it's full of vicious</p> <p>5 racist praises. David Duke, former Ku Klux Klan leader</p> <p>6 thinks that African Americans and Asians are incapable of</p> <p>7 democracy. It says slavery was good for slave families.</p> <p>8 John Ashcroft, in the interview, said he was --</p> <p>9 he congratulated the Southern Partisan for their history,</p> <p>10 what he called setting the record straight. So he</p> <p>11 indicated he was appointed with the magazine. Now when</p> <p>12 he was quizzed about the magazine yesterday on the</p> <p>13 witness stand, he seemed to have forgotten about that</p> <p>14 statement and seemed to indicate that he just willy-nilly</p> <p>15 did this interview, run into somebody on the sidewalk</p> <p>16 with a pad and started talking.</p> <p>17 If you look at who publishes the Southern</p> <p>18 Partisan, and if you look at the regular columnist, one</p> <p>19 of the regular columnists is Samuel Francis, his day job</p> <p>20 is editor of the National Council for Conservative</p> <p>21 Citizens Newspaper and national editor of Citizen</p> <p>22 Informer, is the largest white supremacist group, is</p> <p>23 headquartered in Bridgeton, Missouri. Gordon Lee Batts is</p> <p>24 the CEO. Samuel Francis was the keynote speaker at the</p> <p>25 national gathering in Virginia in 1999, so I say that to</p>	<p style="text-align: right;">Page 31</p> <p>1 It's a group that Jim Nickelson said in The New York</p> <p>2 Times in 1999, if you're a member of the CPCC, you got to</p> <p>3 quit one because the CPCC is racist. It's even too</p> <p>4 racist for the Republicans, which is pretty bad.</p> <p>5 Apologies to any Republicans in the audience. It's your</p> <p>6 party, not mine.</p> <p>7 MRS. FREEMAN: The next witness is Barbara</p> <p>8 Black, Service Employees International Union.</p> <p>9 MS. BLACK: Good afternoon. I'm Barbara Black,</p> <p>10 and I represent the Service Employees International Union</p> <p>11 Local 2000. I work as a Business Agent. I work with</p> <p>12 health care brokers in the nursing facilities that we --</p> <p>13 that we have organized. John Ashcroft has voted against</p> <p>14 everything that recognizes that labor has implemented to</p> <p>15 him. John Ashcroft is -- has shown so much racial</p> <p>16 insensitivity toward Ronnie White, he was -- he got an</p> <p>17 honorary award when he made his -- he spoke in the</p> <p>18 commencement at the Bob Jones University.</p> <p>19 Prescription drugs is something that a lot of</p> <p>20 the working families or seniors cannot afford the cost of</p> <p>21 these drugs. And John Ashcroft voted against this. We</p> <p>22 work with people that have low income salaries and can't</p> <p>23 afford this -- these drugs. It's -- it means the</p> <p>24 difference between getting drugs for your health and for</p> <p>25 purchasing food. So John Ashcroft voted against</p>
<p style="text-align: right;">Page 30</p> <p>1 say that the Southern Partisan is well wired in the white</p> <p>2 supremacist world.</p> <p>3 John Ashcroft, in his interview, said that</p> <p>4 Jefferson Davis did not fight for a perverted agenda. I</p> <p>5 think now he's trying to make it seem like he said, boy,</p> <p>6 wasn't Robert E. Lee a good general. That's not what he</p> <p>7 said. I think it's important we look at exactly what he</p> <p>8 did say and what he said it in.</p> <p>9 One last thing he said, he was asked where was</p> <p>10 Missouri during the civil war. His answer was Missouri</p> <p>11 was in Texas. Out of curiosity, anybody know what that</p> <p>12 means? Marvin knows everything, I'm going to steal his</p> <p>13 thunder. The Governor of Missouri, who was pro</p> <p>14 Confederate, pro slavery. Texas, they are still in</p> <p>15 exile. They didn't come back to Jeff City. Ashcroft</p> <p>16 said Missouri was in Texas, he felt the legitimate</p> <p>17 government was in Texas and not Missouri.</p> <p>18 It's not just an offbeat little publication out</p> <p>19 of South Carolina, it's a key document or a key magazine</p> <p>20 in the white supremacist world in this country.</p> <p>21 MR. CHRISTMAS: You said that was the National</p> <p>22 Council of Conservative Citizens?</p> <p>23 MR. HICKEY: The Council of Conservative</p> <p>24 Citizens, the CPCC, which is headquartered here in metro</p> <p>25 St. Louis, but it's got chapters all over the country.</p>	<p style="text-align: right;">Page 32</p> <p>1 everything that represents labor, and we're working to</p> <p>2 give these people higher wages, better benefits, and John</p> <p>3 Ashcroft is not for the working people.</p> <p>4 The -- our new elect president, Mr. Bush, our</p> <p>5 elected president, Mr. Bush, stated that he wanted to</p> <p>6 bring this country together. And with -- if you have</p> <p>7 someone that's going to run the country, sit in this high</p> <p>8 office and run this country, with his prejudice demeanor,</p> <p>9 the only thing that he can do is bring division in this</p> <p>10 country.</p> <p>11 We do not need a John Ashcroft sitting in that</p> <p>12 high office. If he could not run Missouri, how is he</p> <p>13 going to run our country?</p> <p>14 MRS. FREEMAN: Our next witness is Shirley</p> <p>15 Breeze, Missouri Women's Network.</p> <p>16 MS. BREEZE: Madam Chair, I'm going to talk</p> <p>17 about the Equal Rights Amendment, and a lot has been said</p> <p>18 already, so I will be brief. Thousands of Missourians</p> <p>19 are currently working to get Missouri to ratify the Equal</p> <p>20 Rights Amendment in the United States Constitution.</p> <p>21 Congress passed the amendment in 1972 and sent it to the</p> <p>22 states for ratification by three quarters of them with a</p> <p>23 seven-year deadline, which was later extended for three</p> <p>24 years.</p> <p>25 Although 35 states ratified by the 1982</p>

<p style="text-align: right;">Page 33</p> <p>1 deadline, three more were needed for the amendment to 2 become part of the Constitution. Missouri never 3 ratified. We are now working to make it the 36th state 4 to ratify and will ask Congress to set aside the deadline 5 as they did in 1979 for the 27th Amendment. 6 Senator John Ashcroft's nomination as U.S. 7 Attorney General is of great concern to us. As 8 Missouri's Attorney General, he did the NOW case and 9 we've heard about that several times. Clearly then 10 Mr. Ashcroft does not believe that women and men should 11 be treated equally under the law. 12 When three more states ratify the ERA, it will 13 go back to the federal level for certification, which is 14 where he comes in. If the Attorney General opposes 15 equality, he will do everything in his power to block the 16 amendment from becoming a part of the Constitution. We, 17 therefore, obviously strongly oppose John Ashcroft for 18 Attorney General. 19 MRS. FREEMAN: The next witness is Greg Jung, 20 Missouri National Education Association, and he will be 21 followed by Mary Wertsch of the Missourians Against 22 Handgun Violence. 23 MR. JUNG: Good afternoon. Thank you. My name 24 is Greg Jung, I'm an elementary teacher from the Ritenour 25 School District, and I represent the Missouri National</p>	<p style="text-align: right;">Page 35</p> <p>1 urges the U.S. Senate not to confirm John Ashcroft as the 2 next Attorney General of the United States. Thank you. 3 MRS. FREEMAN: Mary Wertsch and Nick Wertsch. 4 MR. WERTSCH: Hello, my name is Nick Wertsch, 5 and I'm 14 years old and attending Brittany Woods Middle 6 School in University City, and I am representing the 7 Missouri Against Handgun Violence Youth Group. 8 John Ashcroft, former Governor and Senator of 9 Missouri, is in my opinion a pretty bad choice for the 10 crucial job of Attorney General. His abysmal record of 11 gun control presents enough evidence to make it clear 12 that this is not the man you want to be the top law 13 enforcer of the nation. 14 Mr. Ashcroft received roughly \$400,000 from the 15 NRA for his last campaign. The NRA has this man in their 16 pocket, and the NRA does not support gun control. In 17 accordance with NRA views, Mr. Ashcroft has opposed the 18 ban on assault weapons, supported a proposition for 19 concealed handguns, and fought to undermine gun control 20 laws that we already have. 21 A group of kids, including me, held a forum on 22 October 4th, 2000, to allow politicians running for 23 office to state their views on the gun control issue. 24 Senator Ashcroft sent us a letter with several false 25 statements about his record. For example, he said that</p>
<p style="text-align: right;">Page 34</p> <p>1 Education Association. We represent over 30,000 teachers 2 and other education employees across the state. 3 Missouri National Education Association has 4 serious concerns about Senator Ashcroft's commitment to 5 education, children, and civil rights, through issues 6 that are at utmost concern to our members. On the 7 policies we work on in support, his voting record has 8 been an appalling 20 percent this last legislative 9 session, and even lower in previous sessions. 10 Senator Ashcroft voted against hate crimes 11 legislation, class size reduction, and school 12 modernization. While in the U.S. Senate, as when he was 13 Governor, he supported spending tax dollars on religious 14 organizations without requiring them to comply with civil 15 rights and employment laws. 16 As the nation's top law enforcement officer, 17 the Attorney General has the duty of enforcing our 18 nation's civil rights laws. Senator Ashcroft has shown 19 through his words and his votes that he has frequently 20 opposed civil rights. The costly federal court control 21 over public schools in St. Louis and Kansas City has not 22 moved one inch closer to resolution during the 16 years 23 that John Ashcroft was Attorney General and Governor of 24 the State of Missouri. 25 The Missouri National Education Association</p>	<p style="text-align: right;">Page 36</p> <p>1 he had supported background checks, when every time he 2 had voted on it he had tried to weaken the current law, 3 such as cut down on the number of days for the background 4 check. Since all criminal records are not computerized, 5 this can allow some criminals or mentally ill individuals 6 to escape detection. He also said he had worked to keep 7 guns out of the hands of children, but he did not mention 8 that he authored an amendment to a Senate bill that in 9 effect allows a kid to own an assault weapon if he or she 10 has parental permission. 11 There is ample evidence that Mr. Ashcroft will 12 most likely make many decisions in favor of the NRA, 13 after all, what are they paying him for? Or will look 14 the other way when they want him to. 15 I sincerely hope this man is denied the 16 opportunity to run the Justice Department, since his 17 decisions cannot be anything but bias against gun 18 control. 19 Mr. Ashcroft will also be recommending 20 individuals who are sure to share his views to the 21 federal bench and to the Supreme Court. This will have 22 heavy effects for as much as the next 50 years. My 23 generation may have to deal with the judges recommended 24 by Mr. Ashcroft for the better part of our lifetime, so I 25 am hoping that they are not biased against gun control.</p>

<p style="text-align: right;">Page 37</p> <p>1 Judges can either help the progression of our society, or 2 they can be a lead weight holding us back. I'm afraid 3 Mr. Ashcroft will choose the latter. 4 MRS. FREEMAN: Mary Wertsch. 5 MS. WERTSCH: Thank you for the opportunity to 6 be here. I would like to thank the Women's International 7 League for Peace and Freedom for coming up with this 8 wonderful idea to give us the grassroots level. 9 My name is Mary Wertsch, and I'm speaking today 10 on behalf of Missourians Against Handgun Violence, of 11 which I am executive director. 12 We Missourians Against Handgun Violence did not 13 expect to be philosophically in tune with any George W. 14 Bush appointee for Attorney General. But our opposition 15 to this nomination is based not on philosophical 16 difference per se, but on our strong conviction that John 17 Ashcroft will not be able or inclined to ride above his 18 extremist ideology in the discharge of his duties. This 19 in our view represents a clear and present danger to 20 public safety. George W. Bush could not have made a 21 worse choice. We have two points to make. 22 First, John Ashcroft is so allied with the 23 National Rifle Association that he would have a conflict 24 of interest with his duties as Attorney General. As my 25 son just mentioned, he's received more than \$400,000 from</p>	<p style="text-align: right;">Page 39</p> <p>1 the U.S. Supreme Court, losing at every level and wasting 2 thousands of taxpayer dollars. His actions were 3 ideologically driven and intended to harm the National 4 Organization for Women by running up its legal bills. He 5 didn't mind using his office and taxpayer money to do it. 6 John Ashcroft should be rejected for the office 7 of Attorney General on the grounds he has demonstrated a 8 lack of restraint in his -- in the conduct of his 9 offices, and a lack of regard for gun laws protecting 10 public safety. Thank you. 11 MRS. FREEMAN: The next witness is Reverend Ed 12 Heininger of the Interfaith Alliance of Greater 13 St. Louis, who will be followed by Murray Underwood, 14 Missouri Coalition Against Censorship. 15 REVEREND HEININGER: Good afternoon. Those of 16 us who are sitting out there appreciate you folks who 17 have to sit up here and listen to all of our comments. 18 My name is Ed Heininger, I'm a minister of the United 19 Church of Christ, and I'm the President of the Board of 20 the Interfaith Alliance in Greater St. Louis. 21 Last year during the primary and general 22 elections, the Interfaith Alliance nationally, and our 23 local Interfaith Alliance, endeavored to get the 24 candidates to sign a pledge, framework of civility, 25 promising to be civil and respectful in their various</p>
<p style="text-align: right;">Page 38</p> <p>1 the NRA in campaign contributions, more than any other 2 congressional candidate in the last election. He has 3 voted the NRA position 13 out of 13 times on gun issues 4 in the Senate. He made radio commercials for the NRA 5 advocating conceal carry law in Missouri, which our 6 citizens fortunately defeated. 7 The duty of the Attorney General is to uphold 8 and enforce current law. The National Rifle Association 9 is a special interest group dedicated to undermining 10 current gun law. The American people should not be asked 11 to entrust the fox of guarding the chicken coop. 12 Second, although John Ashcroft claims he will 13 not allow his personal beliefs to interfere with the 14 conduct of his office, his record in Missouri speaks 15 otherwise. I agree with the example which has already 16 been given of his actions against the National 17 Organization for Women, when they called a boycott for 18 Missouri because the legislature had failed to ratify the 19 Equal Rights Amendment. It's a terrific example of abuse 20 of office. 21 John Ashcroft initiated the lawsuit against the 22 National Organization for Women, despite heavy criticism 23 that the suit was specious and that NOW's action was 24 constitutionally protected. He pushed his lawsuit 25 through every level of the federal courts, right up to</p>	<p style="text-align: right;">Page 40</p> <p>1 campaign practices. John Ashcroft was one of the first 2 Missouri candidates to sign this pledge. It was also 3 signed by Mel Carnahan. It was my observation that 4 Mr. Ashcroft kept that pledge to be civil, and this was 5 especially so at the time of the tragic Governor's death. 6 The other day the office of George Bush 7 released a text of Mr. Ashcroft's speech at the Bob Jones 8 University. After reading it, my first impression was 9 that this was a preacher talking. Beautiful wording. 10 Listen to it, quote, when you have no king but Caesar, 11 you release Barabas, criminality, destruction, thievery, 12 the lowest and the least. But when you have no king but 13 Jesus, you release the eternal, the highest, the best, 14 the virtue, the potential. 15 According to the text, Ashcroft did not say 16 which he chose. But it doesn't take long to figure that 17 out. And I'm glad that he has the religious freedom to 18 do so. Because we live in a democracy where the 19 difficulties of our own history have led our leaders to 20 establish a constitutional guarantee of freedom of 21 religion. This has been designated as a line between 22 church and state, and it is that particular problem that 23 I'd like to focus on. 24 That line is blurred by the disagreements among 25 us. Mr. Ashcroft has supported organized prayer in</p>

<p style="text-align: right;">Page 41</p> <p>1 public schools, although the Supreme Court says that it 2 violates the First Amendment. He has supported the use 3 of vouchers of tax funds for public schools to be used 4 for private and religious schools. He has advocated what 5 is called charitable choice programs of the federal 6 social service money used through religious institutions, 7 and these seem to me to be a terrible blurring of the 8 line between church and state. 9 MRS. FREEMAN: Time. Murray Underwood. 10 MR. UNDERWOOD: Good afternoon. I am Murray 11 Underwood, and I'm here as past president of the Missouri 12 Coalition Against Censorship. Our organization was 13 formed and our activities were focused on helping schools 14 defend themselves against the attacks of people who came 15 in, people from their religious right who would come into 16 the school and demand this book be taken out of the 17 library, that subject be taken out of the curriculum 18 because it offended their religious belief. 19 At a time when John Ashcroft was Governor of 20 Missouri, he took it upon himself to censor a play that 21 was being given in a high school in Missouri. And used 22 the power of his governorship to stop that because it 23 offended his personal, moral beliefs. I think this was 24 an abuse of his power as Governor, and I see no reason to 25 believe that he has learned better, and I therefore would</p>	<p style="text-align: right;">Page 43</p> <p>1 soft on crime, yet there was nothing in his record that 2 really indicated that in a statistical sense compared 3 with some of the other judges. 4 Also, he said that he had the support of a 5 police organization that issued a report on Judge White, 6 but the report itself was solicited by Senator Ashcroft. 7 If it is simply a matter of extreme law to pro-death 8 penalty ideology has been disproportionately imposed 9 against African-Americans and the poor of all races. If 10 we're going to have the judges that seek a promotion to a 11 higher judgeship being judge by a litmus test on how hard 12 on crime they can be by Senator Ashcroft's standards, 13 we're going to have American judges issuing much harsher 14 sentences, doing things they otherwise wouldn't do 15 because of their fear of never getting a promotion unless 16 they meet this standard of ordinance, which doesn't make 17 any sense. 18 The Attorney General has 100,000 employees, 19 10,000 attorneys. They can bring prosecution against 20 anybody they wish. They can organize SWAT teams of 21 attorneys, they can target individuals, target especially 22 labor leaders, civil rights leaders, and they can do 23 great damage, they can destroy people's careers just by 24 the prosecution, even if the person is ultimately found 25 not guilty.</p>
<p style="text-align: right;">Page 42</p> <p>1 object to his being Attorney General of the United 2 States, because I'm afraid we would see this same sort of 3 abuse of power. Thank you. 4 MRS. FREEMAN: I have a question for you. 5 MS. UCHITELLE: Would you, for the record, tell 6 us what that play was, please? Do you know? 7 MR. UNDERWOOD: I'm sorry, I don't remember the 8 name of the play or even the school, it was a town in 9 Central Missouri somewhere, and I don't remember, and I 10 haven't had time to look it up. 11 MS. UCHITELLE: Thank you. 12 MRS. FREEMAN: The next witnesses will be Bob 13 Reinhold, Americans for Democratic Action, will be 14 followed by Betty Takahashi. 15 MR. REINHOLD: John Ashcroft represents a 16 serious danger to the criminal justice system. My name 17 is Bob Reinhold, and I'm with the Americans for 18 Democratic Action. I was also asked to say something on 19 behalf of the Rationalist Society of St. Louis, but my 20 comments direct themselves primarily to the criminal 21 justice system. And I will explain how the opposition to 22 Ronnic White shows racism on the part of Senator 23 Ashcroft. 24 First of all, he did not have any rational 25 basis for opposing Judge White. He claimed that he was</p>	<p style="text-align: right;">Page 44</p> <p>1 The same is true of anybody that -- in any way 2 represents any distinct political organization. This is 3 the risk of John Ashcroft: being confirmed as the U.S. 4 Attorney General. Thank you. 5 MRS. FREEMAN: The next witness is Betty 6 Takahashi, who will be followed by Bob Williams of the 7 Coalition for Justice. 8 MS. TAKAHASHI: Hello, I'm Betty Takahashi, 9 representing the American Association of the University 10 of Women. I'd like to thank the panel for giving me the 11 opportunity to speak this afternoon. 12 The American Association of University Women, 13 I'm going to call it AUW to shorten the term, opposes the 14 nomination of Senator Ashcroft, because we feel that 15 nominees should be committed to equal justice for all. 16 For 120 years, AUW has stood for equal 17 opportunities in education, the workplace, and all 18 aspects of women's lives. Ashcroft's record does not 19 speak to these principles. AUW has 150,000 members, both 20 Democrats and Republicans, who are working together now 21 to educate people on Ashcroft's dismal record for women's 22 issues. And by the way, Ashcroft's records on AUW issues 23 is zero, and we're classified as a 501C4 nonprofit 24 organization, which allows us to lobby directly. We take 25 positions on federal nominees who have a major impact on</p>

<p style="text-align: right;">Page 45</p> <p>1 women's issues.</p> <p>2 Some of the issues that we were concerned about</p> <p>3 that helped us to make this decision, the Attorney</p> <p>4 General holds great discretion in enforcing civil rights</p> <p>5 laws. As a Senator, he voted for the elimination of the</p> <p>6 disadvantaged business enterprise program, which provides</p> <p>7 equal opportunity for women to compete for federal</p> <p>8 contracts and has opened doors for women entrepreneurs.</p> <p>9 He will therefore have the power not to enforce law which</p> <p>10 he does not agree.</p> <p>11 The women of this country have fought hard to</p> <p>12 enact laws to protect our right to choose freedom of</p> <p>13 access to clinic, which guarantees entrance of women to</p> <p>14 clinics without intimidation or threats of violence, is</p> <p>15 enforced by the Attorney General's Office. His</p> <p>16 opposition to legislation guaranteed the women's right to</p> <p>17 choose leads us to believe that he will ignore these.</p> <p>18 We cannot be silent as an organization on the</p> <p>19 nominee whose appointment with the key concerns. We are</p> <p>20 calling on Congress to reject the nomination. We deserve</p> <p>21 no less.</p> <p>22 MRS. FREEMAN: Next witness is Bob Williams of</p> <p>23 Coalition for Justice, who will be followed by Dr. Laura</p> <p>24 Frey, National Organization for Women, Greater St. Louis.</p> <p>25 MR. WILLIAMS: I'm glad to be here. It's a</p>	<p style="text-align: right;">Page 47</p> <p>1 I would dare say that Ashcroft, great</p> <p>2 ammunition, is not. He cannot be the president, but</p> <p>3 chances are he wants to become a federal judge up and</p> <p>4 down the line, if not Supreme Court judge, and this is</p> <p>5 just an opening test for what -- the challenge before us.</p> <p>6 The -- on November the 7th, the voting rights</p> <p>7 fraud brought out a number of issues to our attention</p> <p>8 that we more or less passed by. One, the homeless. At</p> <p>9 one time the homeless could vote. Now voting is based</p> <p>10 upon property. They say you do not have a mailing</p> <p>11 address, mailing address represents property. Years ago</p> <p>12 a person could make the X. This is not to belittle the</p> <p>13 illiteracy in our country, but it also brings out the</p> <p>14 issue of excluding people who should be included to vote.</p> <p>15 And once again, this is just the beginning.</p> <p>16 And we must prepare ourself for the great struggle that</p> <p>17 is ahead of us. We must be energized with this, and we</p> <p>18 must come back together again and again and again. Thank</p> <p>19 you.</p> <p>20 MRS. FREEMAN: The next witness is Laura Frey,</p> <p>21 who will be followed by Joyce Best.</p> <p>22 DR. FREY: Hi, I'm Dr. Laura Frey, representing</p> <p>23 National Organization for Women, and I'm the recent past</p> <p>24 board President of the Greater St. Louis Chapter. First</p> <p>25 of all, I want to thank the organizers for the forum, and</p>
<p style="text-align: right;">Page 46</p> <p>1 continuation of my involvement in the civil rights and</p> <p>2 human rights struggle in this country. As I stated</p> <p>3 before, my name is Bob Williams, I'm with the Coalition</p> <p>4 for Justice. I represent a class of people that has been</p> <p>5 in this country for over 400 years.</p> <p>6 The hearing for Ashcroft first struck me as</p> <p>7 illegal because the president, the elected or selected</p> <p>8 president has not been officially sworn in, so the issue</p> <p>9 of legality in my opinion comes up. What do these</p> <p>10 hearings mean.</p> <p>11 Basically these hearings mean to me, this is an</p> <p>12 insult to the People of Missouri and across this country</p> <p>13 with this administration to nominate a person of John</p> <p>14 Ashcroft's mentality. If we know his mentality, if we</p> <p>15 know his record, surely those who appointed him, who</p> <p>16 nominated him know the same.</p> <p>17 So why Ashcroft? What is his importance to us</p> <p>18 in Missouri and across the country? The most important</p> <p>19 thing in my opinion that Ashcroft represents, the</p> <p>20 interests of a particular class, the ruling class over</p> <p>21 the interest of working people and the working class.</p> <p>22 This is the thing that we must understand. That Ashcroft</p> <p>23 is a litmus test. If we can bring the worms out of the</p> <p>24 woodwork and force these worms onto the American people,</p> <p>25 you ain't seen nothing yet.</p>	<p style="text-align: right;">Page 48</p> <p>1 thank you for the opportunity to speak.</p> <p>2 Ashcroft's views are sufficiently extreme to</p> <p>3 disqualify him as Attorney General. Based on his record,</p> <p>4 the National Organization for Women has regretfully</p> <p>5 concluded that as U.S. Attorney General, John Ashcroft</p> <p>6 would seek to dismantle, rather than protect woman's</p> <p>7 rights, civil rights, civil liberties, and reproductive</p> <p>8 freedom. NOW's concerns center on the extremism of</p> <p>9 Senator Ashcroft's policy positions and on examples of</p> <p>10 his misuse of power and disingenuous distortions of fact</p> <p>11 to advance his political agenda and career.</p> <p>12 A few talking points I have, some you've heard</p> <p>13 already but are worth reiterating. John Ashcroft used</p> <p>14 his position as Attorney General of Missouri to try to</p> <p>15 advance his political agenda by denying NOW's</p> <p>16 constitutional right to call for a boycott of the state.</p> <p>17 John Ashcroft's opposition to reproductive rights is so</p> <p>18 extreme he has urged a ban, not only on abortion even on</p> <p>19 cases of rape and incest, but also on some of the most</p> <p>20 effective forms of birth control.</p> <p>21 John Ashcroft has opposed hate crimes. John</p> <p>22 Ashcroft has opposed affirmative action. John Ashcroft</p> <p>23 opposed, in a 1997 video, was Phyllis Schlafly's Eagle</p> <p>24 Forum that portrayed the feminist movement,</p> <p>25 multiculturalism, reproductive rights, gay rights, and</p>

<p style="text-align: right;">Page 49</p> <p>1 environmental concerns, global cooperation, and even 2 chemical weapons treaties as part of a secret conspiracy 3 to promote a socialist One World Government and New World 4 Order. The video is entitled, "Global Governance: The 5 Quiet War Against American Independence." 6 Ashcroft opposed Roe v. Wade, and as recently 7 as October of 1999, voted against an amendment restating 8 the principles of Roe, saying it was constitutional. He 9 voted against this. 10 Ashcroft opposed legislation guaranteeing that 11 clinic violators pay their fines. He voted against an 12 amendment that would have prevented these perpetrators of 13 violence or harassment at reproductive health care 14 clinics from filing for bankruptcy. 15 The John Birch Society has called him more 16 conservative than Jesse Helms. Clearly not an individual 17 that can be a public servant who supports the public 18 majority and serves the public majority first. 19 I want to give you just a few more details 20 about the lawsuit against NOW that he filed. He filed 21 this, it was put down by the trial court. He went to a 22 three panel hearing, it was voted down. He then wanted 23 to take it before all of the judges of the hearing, they 24 said no. And then he tried to go to the Supreme Court 25 and they said no.</p>	<p style="text-align: right;">Page 51</p> <p>1 his actions against civil liberties and civil rights. 2 The principle of separation of church and state 3 is a serious concern. It affects many areas, such as 4 prayer in the public schools, or posting the Ten 5 Commandments, or displaying religious symbols. School 6 vouchers also pose a threat to religious liberty and to 7 the public schools. Ashcroft does not appear to 8 recognize the constitutional boundaries between church 9 and state. 10 Many of these and other objections to 11 Ashcroft's appointment have been detailed and documented 12 in the media, in the hearings before the Judicial 13 Committee, and those speaking today. His record is very 14 disturbing. 15 We feel it would be difficult if not impossible 16 for John Ashcroft to uphold and defend laws with which he 17 vehemently disagrees. He should not be confirmed as 18 Attorney General of the United States. 19 MRS. FREEMAN: The next witness, Reverend 20 Michael Vosler, will be followed by Christine Busch of 21 Missouri State Workers Union, CWA. 22 REVEREND VOSLER: I am Michael Vosler, a pastor 23 at United Church of Christ. I speak as a religious -- as 24 a person committed to the work of interfacing my thinking 25 about God, with my thinking about the world and how it</p>
<p style="text-align: right;">Page 50</p> <p>1 This is truly a radical man whose litmus test 2 of his record does not qualify him to be Attorney 3 General. 4 MS. BEST: I'm Joyce Best, and I represent the 5 Ethical Action Committee of the St. Louis Ethical 6 Society, and we're concerned about the nomination of John 7 Ashcroft for the Office of Attorney General of the United 8 States. We think there is a conflict between his record, 9 his beliefs, and the responsibilities and duties of the 10 top law enforcement position. 11 Ashcroft has opposed social issues such as 12 school desegregation, contraception, workplace 13 discrimination, protection for homosexuals, solar energy, 14 death penalty reform, government support of the Arts, 15 campaign finance reform, and the nuclear test ban treaty. 16 People at the grassroots level are distressed 17 with the Ashcroft record and thoughts of what he might do 18 as Attorney General. The People of Missouri express 19 their knowledge of Ashcroft and his actions in our state 20 and the Senate by not electing him. We are troubled by 21 the ideas of such a moral extremist. The radical right 22 and their ideas have been rejected by most Americans. 23 But not by John Ashcroft. 24 The Attorney General can change the country in 25 significant ways, and we would suffer the consequences of</p>	<p style="text-align: right;">Page 52</p> <p>1 works and how it ought to work. That thinking, its 2 questions and conclusions delineates my theology. So 3 does Mr. Ashcroft consider himself religious, and so does 4 John Ashcroft exercise his right to do theology. 5 As a person living in the world, shaped by my 6 parents and my community, and by people who exercise 7 great influence upon me, I also came to understand that I 8 have an ideology, a framework of oughts to put against 9 the realities of the world that, in fact, serve my/our 10 interests. Out of my ideology, I frame a view of 11 government and government's role in society. Out of 12 ideology, I frame a perspective on sexuality and what is 13 and what is not appropriate as expressions of sexuality. 14 My theology always changing, tells me what I 15 think God thinks or at least describes what I think God 16 does and would have me do. My ideology is that set of 17 beliefs, usually inherited very deep within myself, that 18 has me telling God how things ought to be because it is 19 in my interest that they be so, or telling my neighbors 20 how things ought to be while covering it with a blanket 21 of dust. 22 My theology understands that I don't understand 23 God. My ideology is proud and certain and dangerous. My 24 concern is that every publicly religious person as John 25 Ashcroft is, has to be clear about the ideology they</p>

<p style="text-align: right;">Page 53</p> <p>1 bring to their theology and ideology that needs just as 2 much self-conscience and their theology. They need 3 to be conscience to the extent their theology shapes 4 their ideology, which would be a good thing, and the 5 extent to which their ideology actually shapes their 6 ideology, not a good thing. 7 Not being conscience of the difference between 8 ideology and theology, one follows in the trap of 9 theology simply being an expression of one's ideology. 10 An example of this is when one's supposed theology about 11 America is seen, in fact, to be an ideological 12 superpatriotism. The key to the difference is that my 13 ideology usually advances me and my group, whereas a good 14 theology generally challenges me and my group, and points 15 to the well-being of my whole and my neighbor. 16 I believe John Ashcroft does little discerning 17 of the difference between his inherited ideology and 18 shaped ideology, as he expresses his theology. That 19 would be okay if he weren't such a public figure, and if 20 he weren't now nominated to be Attorney General. He is, 21 in short, an un-self-critical ideologue, who is 22 predictably conservative, who works to have the law 23 reflect his ideology. 24 John Ashcroft ought to be the head of something 25 that shares his ideology. Something that is politically</p>	<p style="text-align: right;">Page 55</p> <p>1 Services Workers in the State of Missouri. As State 2 workers we have a unique understanding of our former 3 Governor Ashcroft's commitment to justice. We believe 4 that it's critical that the Senate consider his record as 5 Governor of our state as they vote on his nomination for 6 Attorney General. 7 His record as Governor does not reflect a sense 8 of justice for both workers and of the people we serve; 9 family, children, elderly, all residents of the U.S. 10 State workers, including Children's Services Workers in 11 Missouri, worked for low wages for years under Ashcroft. 12 I worked for DFS in Missouri for many years and 13 experienced the aftershocks of Governor Ashcroft's 14 refusal to recommend any pay raises for state workers for 15 three years. There was no cost of living adjustment for 16 workers, no consideration given to the impact inflation 17 on workers. Furthermore, we even have workers today who 18 qualify for public assistance. In order to improve 19 services for abused and neglected children, we must have 20 wages that support professional staff. This is 21 embarrassing. When we do not, not only do workers 22 suffer, but families suffer. John Ashcroft's record 23 shows that he is willing to put workers, families, and 24 the general public at risk. His record shows a lack of 25 concern or understanding about the simplest of justice</p>
<p style="text-align: right;">Page 54</p> <p>1 and culturally and theologically conservative, something 2 that totes guns and favors all the good guys doing so. 3 Something that is comfortably white-European male 4 dominated, something that believes women are incapable of 5 making responsible choices, even in conversation with 6 their physician; something that believes that the only 7 good and legitimate sex is heterosexual sex within the 8 confines of marriage between a man and a woman; something 9 that believes the only good criminals are dead criminals 10 once they've been given a chance or two, and the State is 11 the proper authority for making them dead; something that 12 believes the well-served interests of business will 13 benefit automatically the interests of all people; 14 something that believes all of this is true because God 15 says so. 16 Conversely, John Ashcroft will say to this 17 nation and its freedoms, does not need to be Attorney 18 General of the United States. 19 MS. BUNCE: Good evening, ladies and gentlemen. 20 Hello, my name is Chris Busch. Not the same as our 21 President-Fleet Bush spelling, okay. So I don't want to 22 be related to him. 23 I'm speaking on behalf of Judith Gregory, 24 President of the Missouri State Workers Union, which 25 represents approximately 8,000 Department of Social</p>	<p style="text-align: right;">Page 56</p> <p>1 issues. John Ashcroft must not be confirmed as Attorney 2 General. Thank you. 3 Judge Ronnie White was quoted as saying, I 4 believe the question for the Senate is whether these 5 misrepresentatives, Ashcroft's attack on White's record, 6 are consistent with the fair play and justice you all 7 would require of the United States Attorney General. I 8 would like to ask the Senate to consider the question of 9 where former Governor Ashcroft sets his priorities and 10 how he defines justice. Thank you very much. 11 MS. GRANICH: Good evening. My name is Laura 12 Granich, I'm the Steering Committee Chair for St. Louis 13 Area Jobs with Justice, a coalition of labor unions and 14 religious and community organizations, committed to 15 fighting together for workers' rights and economic 16 justice in the St. Louis Community. 17 John Ashcroft's nomination for U.S. Attorney 18 General touches every member of Jobs with Justice in one 19 way or another. For his horrible record on civil rights 20 and women's rights issues alone, we stand in opposition 21 to his nomination. 22 Our sisters and brothers from other 23 organizations testifying today are doing an excellent job 24 on describing Ashcroft's record on these issues. The 25 U.S. Attorney General is also responsible for the</p>

<p style="text-align: right;">Page 57</p> <p>1 enforcement of workers' protection in the United States. 2 Tonight I would like to very briefly review Ashcroft's 3 record of consistent opposition to basic worker 4 protections. 5 I would like to thank the research department 6 of the national AFL-CIO for their assistance in compiling 7 this record. As United States Senator, Mr. Ashcroft led 8 the fight to gut overtime pay protections. He sponsored 9 unsuccessful legislation that would replace a 40-hour 10 workweek with 80 hours over two weeks for computing 11 overtime eligibility. In addition, the bill would have 12 allowed employers to substitute comp time for overtime 13 pay. Ashcroft has also supported so-called paycheck 14 protection proposals and the TEAM Act, which could 15 legitimize company unions. He also voted against 16 prevailing wage protections on taxpayer-funded federal 17 construction projects. 18 As Governor of Missouri, Ashcroft vetoed two 19 bills establishing a state minimum wage, and finally 20 signed a third only after it became obvious that the 21 legislature would override it. In 1990, Ashcroft vetoed 22 a maternity leave law, which would have provided women 23 eight weeks of unpaid leave after the birth of a child or 24 adoption of a baby. Ashcroft justified that veto by 25 asserting that approval of the law would put a state at a</p>	<p style="text-align: right;">Page 59</p> <p>1 Ashcroft as Attorney General a few weeks ago. It's bad 2 enough that we are stuck with George W. Bush, but it's 3 even worse that we might be stuck with John Ashcroft. 4 Our rights as American citizens were taken away 5 when George W. Bush was elected president. We did not 6 elect him as president. But the Supreme Court Justices 7 selected him. I totally disagree, and so do my 8 counterparts on this election of George W. Bush by the 9 Supreme Court, and we feel it is not constitutional for 10 what they did. 11 But now John Ashcroft. John Ashcroft is a 12 bigot. He's a horrible man. Just last year he received 13 an honorable degree at Bob Jones University. Bob Jones 14 University is anti-Catholic and the Southern Baptist 15 magazine praises Robert Lee and Jefferson Davis. 16 Jefferson Davis and Robert Lee divided this country, how 17 can our Attorney General, who is supposed to unite the 18 country, support men that divided our country? 19 And my feeling, I feel that John Ashcroft is in 20 the same ranks as Jerry Falwell and Pat Robertson, who 21 both are going to go to hell. John Ashcroft -- John 22 Ashcroft does not support gay and lesbian rights, African 23 American rights, or anybody else who does not believe in 24 Jesus Christ or in the way he feels. 25 The Constitution clearly shows that there is a</p>
<p style="text-align: right;">Page 58</p> <p>1 competitive disadvantage with its neighbors. 2 Ashcroft vetoed a 1989 workers' compensation 3 bill, which would have raised the minimum benefit from 4 \$40 to \$100 weekly. Duke McVey, former President of the 5 Missouri AFL-CIO, decried the surprise veto: To speak 6 from the pulpit about God and goodness and then bushwhack 7 the workers is morally bankrupt, he said. 8 Given the stealth nature of the veto, the 9 bill's original sponsors declined to draft another 10 without guidance from the Governor, and none was 11 forthcoming. 12 In short, throughout his career as a Senator 13 and as Governor, Ashcroft has shown little compassion to 14 America's working families, sometimes acting 15 single-handedly to block hard-won protections for them. 16 There is little reason to believe that as chief law 17 enforcement officer of the United States, Ashcroft would 18 show any greater commitment to the rights and interests 19 of all workers and their families. 20 MRS. FREEMAN: The next witness is Max Fine, 21 Young Democrats of Parkway School. Who will be followed 22 by Angad Nagra. 23 MR. FINE: Hi, my name's Max Fine, and I 24 represent the Young Democratic Club of Parkway Central 25 High School. President-Elect Bush nominated John</p>	<p style="text-align: right;">Page 60</p> <p>1 separate issue between church and state. And John 2 Ashcroft must proceed through the Constitution because 3 the Constitution is what our country is based on. Thank 4 you very much. 5 MRS. FREEMAN: The next witness. 6 MS. NAGRA: My name is Angad Nagra, I'm a 7 member of two organizations, the Human Rights Council and 8 the Young Democrats. 9 MR. DOUGHERTY: Could I ask for the spelling of 10 your name? 11 MS. NAGRA: A-N-G-A-D, N-A-G-R-A. I'm here to 12 represent not only the Human Rights Council and the Young 13 Democrats, but most importantly, the People of the United 14 States. Now, first of all, under Ashcroft's proposal, 15 women who are the victims of rape and incest become 16 criminals when they seek to exercise their right of 17 choice. All victims of rape and incest automatically 18 become criminals. 19 Minorities, however, are the ultimate losers. 20 They are going to be forced to put up with blatant 21 violations of privacy on the basis of race and racial 22 profiling, but their right to life is also infringed. 23 The death penalty. Repeated studies have shown 24 that African Americans, Latinos, and Native Americans, 25 are executed disproportionately in relation to the crimes</p>

<p style="text-align: right;">Page 61</p> <p>1 that they commit. The same studies have also shown that 2 members of minority groups are more likely to be not only 3 convicted of the crime, but also sentenced to die rather 4 than their counterparts. 5 Now, in his own words, Mr. Ashcroft represents 6 babies that have a right to life. Mr. Ashcroft, with all 7 due respect, take off that white-hooded cap and explain 8 to me why our innocent minority men on death row do not 9 have the same right to life that these babies have. 10 And not only is Mr. Ashcroft extreme on 11 religious grounds, but he is also supported by 12 religiously conservative groups such as the Christian 13 Coalition. Now, not only do these groups favor such 14 extreme measures such as the stoppings of the teaching of 15 Darwin evolution in schools, but they also favor banning 16 abortion in all circumstances and favor censorship off 17 the Internet. 18 Now, let me ask Mr. Ashcroft, once again, when 19 he advocates such an extreme form of women in government, 20 how he can possibly favor censorship off the Internet and 21 off press based on moral grounds. And for these reasons 22 I urge all our citizens standing before me today to say 23 no to Ashcroft. I urge them to take whatever measures 24 possible to ensure that this man is not confirmed as our 25 Attorney General. Thank you.</p>	<p style="text-align: right;">Page 63</p> <p>1 that Bill Clinton made, John Ashcroft made every effort 2 to block, he blocked many, he slowed down many, which 3 left a huge dirt of judges, national judges, quite a lot 4 of vacancies, and if he is confirmed as Attorney General, 5 I think that Bush and Ashcroft will take this opportunity 6 to fill a lot of judgeships with very conservative judges 7 to further their conservative agenda, and as the young 8 man from the Youth Against Handgun Violence said, this is 9 going to affect us for many years to come if this 10 happens. 11 I believe there has been plenty of good reasons 12 brought up during the hearings for John Ashcroft not to 13 be nominated, and I still hear on the news the Democrats 14 are starting to concede he probably will win the 15 nomination. If that happens, it will seriously undermine 16 my confidence in the Congress, as well as the wish of 17 President-Elect Bush. Thank you. 18 MRS. FREEMAN: Next witness is Kenneth Jones, 19 who will be followed by Nathalie Pettus, Missouri NARAL. 20 MR. JONIS: Good evening. Prior to the 21 national elections, the Board of Aldermen passed a 22 resolution condemning John Ashcroft's racist actions by 23 speaking at the university, as well as Jefferson Davis. 24 I sponsored that resolution because of the concern about 25 the growing support for hate groups in this country.</p>
<p style="text-align: right;">Page 62</p> <p>1 MRS. FREEMAN: The next witnesses, Karen 2 Jackson, who will be followed by Kenneth Jones, 22nd 3 Board Alderman, City of St. Louis. 4 MS. JACKSON: Hi, I'm Karen Jackson. I'm just 5 here as a private citizen, I didn't really do my homework 6 and prepare a written speech, I just have my own thoughts 7 and fears and scribbled notes tonight, and three minutes 8 I have, right? 9 I have a lot of the same fears as everyone else 10 that has spoken about, the fear that women's rights will 11 be compromised, fear that gun control or the lack thereof 12 will be compromised. Fear of the back sliding of civil 13 rights. 14 But when the election was going on, one of my 15 main fears about George Bush being elected was the 16 Supreme Court nominations that he could make. Things 17 that could change things for a number of years. When 18 Ashcroft was voted down, a friend of mine said we may 19 have shot ourselves in the foot. He may be nominated for 20 the Supreme Court. I thought that was pretty awful, but 21 when I heard he was nominated as Attorney General, I 22 thought that was pretty worse. 23 And then after hearing a story on NPR about how 24 during his tenure as Senator he systematically blocked 25 every nomination that he could, every judicial nomination</p>	<p style="text-align: right;">Page 64</p> <p>1 As you know, Jefferson Davis committed treason 2 against the United States. The contradiction that what 3 Ashcroft says and his posture is that he praises those 4 who commit treason against America. And this treason was 5 violent in that people were murdered and the horrors of 6 slavery were being protected by Jefferson Davis, and I 7 think he's sending a message to the hate groups in this 8 country. 9 The militia, the skin heads, and others also 10 have anti-government attitudes, as well as anti-black, 11 anti-semitic, and against all who are not like him. And 12 so I think if someone like that -- it frightens me that 13 someone of John Ashcroft's philosophy and the philosophy 14 of supporting violence to carry out the agenda, and I'm 15 talking about these hate groups that I think we will be 16 in big trouble if he becomes Attorney General. 17 And no matter what happens in the United States 18 with respect to the Senate, with respect to his 19 nomination, the coalition that won the presidency and 20 was -- and the wishings of that coalition that won the 21 election, and had George Bush appointed by five blacks, 22 might prevail, and we must continue to struggle to make 23 sure that these right-wing persons who support hate 24 groups, support racism and the rights of this country are 25 no longer in power.</p>

<p style="text-align: right;">Page 65</p> <p>1 MS. FREEMAN: Next witness, Nathalie Pettus, 2 will be followed by Claralyn Price-Bollinger. 3 MS. PETTUS: My name is Nathalie Pettus, I'm 4 President of the Board of Missouri NARAL. We are 5 gathered here today to discuss the nomination of John 6 Ashcroft as the Attorney General of the United States. 7 As the country's chief legal officer and lawyer for the 8 President, the Attorney General has enormous power and 9 influence over the existence and protection of women's 10 reproductive freedom. 11 The Attorney General is responsible for 12 enforcing and protecting women's reproductive rights. 13 They will need to enforce FACE, the Freedom of Access to 14 Clinic Entrances Act. This law ensures that women are 15 free to exercise their right to make their own 16 reproductive decision. The Attorney General also helps 17 select and review nominees for the federal bench. Not 18 only does this include Supreme Court Justices, but also 19 lower court justices. These justices will be the very 20 people that rule on issues pertaining to reproductive 21 freedom, and indeed, Roe v. Wade remains the law of the 22 land. 23 Through the office of Solicitor General, the 24 Attorney General represents the United States before the 25 Supreme Court. They are in a position to advocate on</p>	<p style="text-align: right;">Page 67</p> <p>1 amendment to the United States Constitution to ban 2 abortion even in cases of rape and incest. The amendment 3 would have also outlawed several of the most common 4 contraceptive methods. 5 He co-sponsored legislation to criminalize safe 6 abortion procedures used prior to fetal viability and 7 more. 8 The record that Ashcroft has built for himself 9 in the State of Missouri clearly shows that he is too 10 extreme for the important position of Attorney General of 11 the United States. President-Elect Bush has told the 12 American people that he wants to bring the American 13 people together. The nomination of John Ashcroft as 14 Attorney General belies that statement. 15 For these reasons, Missouri NARAL, National 16 NARAL, oppose John Ashcroft's nomination for Attorney 17 General of the United States. 18 MRS. FREEMAN: The next is Claralyn 19 Price-Bollinger, will be followed by Dorothy C. Poor. 20 MS. PRICE-BOLLINGER: Thank you. I'm Claralyn 21 Price-Bollinger, the coordinator for the Sierra Club's 22 Eastern Group, and it's no surprise to all of you, I 23 suspect that John Ashcroft is not very good on the 24 environment either. 25 Former Senator John Ashcroft has an extreme</p>
<p style="text-align: right;">Page 66</p> <p>1 behalf of or in opposition to the right of women to 2 reproductive freedom and choice. The AG also reviews 3 proposed legislation and gives advice on whether 4 particular proposals violate the Constitution as 5 interpreted by the Supreme Court. Thus far, since the 6 Roe v. Wade decision, the Supreme Court has held that 7 women have the right to choose abortion and this right 8 cannot be unreasonably burdened. In other words, the 9 Attorney General of the United States is charged with 10 upholding the law of the land. 11 President-Elect Bush has nominated John 12 Ashcroft to be our Attorney General. Those of us in the 13 pro-choice community know what a disaster this 14 appointment would be for women of the United States. We 15 know that the past is an indicator of the future, and in 16 Missouri, Mr. Ashcroft has an unremitting record of 17 opposing women's reproductive rights. During his six 18 years in the United States Senate, Ashcroft cast 43 votes 19 on abortion and reproductive rights. Of that number, 42 20 were anti-choice votes. Examples of those votes are as 21 follows: 22 Ashcroft voted in favor of overturning Roe v. 23 Wade and denying a constitutional right to safe and legal 24 abortion services. 25 He co-sponsored a resolution calling for an</p>	<p style="text-align: right;">Page 68</p> <p>1 anti-environmental record, and as Attorney General, he 2 could allow utilities, big oil, and others, to ignore 3 environment laws. He is a partisan, divisive choice for 4 a job that should be neither, and should not be 5 confirmed. Ashcroft has opposed mainstream environmental 6 laws that protect children, workers, and communities' 7 health from industrial pollution. 8 This Sierra Club opposes the appointment of 9 John Ashcroft as Attorney General. Ashcroft has an 10 exceedingly poor environmental voting record, and he is 11 openly hostile to most environmental laws. Ashcroft has 12 voted against additional funding for environmental 13 programs including the Clean Water Action Plan and toxic 14 waste cleanups at Superfund sites. He also voted for a 15 bill to roll back clean water protections to prevent the 16 EPA from enforcing arsenic standards for drinking water, 17 and to allow mining companies to dump cyanide and other 18 mining waste on large areas of public lands next to 19 mining sites. 20 Ashcroft also opposes campaign finance reform. 21 He voted against the McCain-Feingold bill for a complete 22 ban on soft money contributions to political parties, 23 which would have closed a loophole that allows mining, 24 timber, and other interests to gain influence by 25 contributing huge amounts of unregulated sums of money to</p>

<p style="text-align: right;">Page 69</p> <p>1 political parties. 2 Ashcroft has opposed the environment on 3 numerous occasions. Here's a sample of his efforts to 4 undermine clean water. He voted to allow chemical 5 manufacturers to avoid reporting some of their toxic 6 pollution under the existing community right-to-know 7 laws. He supported an attack on National Monuments by 8 voting for Senator Don Nickels' amendment to undermine 9 the President's authority to protect spectacular American 10 landscapes by prohibiting the designation of any new 11 National Monuments unless authorized by Congress. 12 Ashcroft has voted to open up, on numerous 13 occasions, the Arctic National Wildlife Refuge to oil 14 drilling. And he has opposed in every step, any 15 provisions to close a \$1.2 billion loophole from the 16 Arctic National Wildlife Refuge. 17 Of particular concern to Missourians was 18 Ashcroft's attempt to browbeat the Secretary of the 19 Interior and the Secretary of Agriculture into 20 rubberstamping mining permits for the Doe Run Company. 21 The mining company was trying to get approval to conduct 22 mining activities in the watersheds of the Current, 23 Jack's Fork and Eleven Point Rivers, and the Interior and 24 Agriculture departments were following legally required 25 procedures and processing the permits. Ashcroft wanted</p>	<p style="text-align: right;">Page 71</p> <p>1 will be followed by Bud Deraps, of the World Community 2 Center. 3 MS. POOR: I'm Dorothy C. Poor, Co-President of 4 the St. Louis Branch of the Women's International League 5 for Peace and Freedom. WILPF for short. 6 We believe John Ashcroft holds extremist views 7 so far right that he would have a divisive, destructive 8 influence on the laws of our country as U.S. Attorney 9 General. He is unfit for that position and should not be 10 confirmed. 11 During his 16 years as Missouri Attorney 12 General and Governor, John Ashcroft showed unremitting 13 hostility to women's rights, and used every opportunity 14 in the courts, on the campaign trail, and in public 15 forums, to get around Roe vs. Wade, and deny or limit 16 reproductive choice to women, whether overburdened 17 mothers with too many children, desperate 14-year-old 18 girls, or victims of rape or incest. Thanks to Ashcroft 19 and his ilk, women are still fighting to feel secure and 20 protected by Roe vs. Wade. 21 WILPF is against the death penalty and 22 concerned for racial justice. We believe all people 23 accused of crime deserve fair trials and humane treatment 24 in prison. Ashcroft's embrace of the death penalty and 25 use of the quote, soft on crime, unquote, labor, seems</p>
<p style="text-align: right;">Page 70</p> <p>1 these processes short-circuited. 2 He also has voted on numerous times to allow 3 70,000 tons of nuclear waste to be shipped to Yucca 4 Mountain in Nevada. And it should be no surprise to 5 anyone, all of these stances that Ashcroft has taken has 6 been backed up by monetary contributions, \$380,000 from 7 Dirty Air businesses and \$630,000 from dirty PACs, 8 including companies such as BP Amoco, Exxon, and 9 Monsanto. 10 And for all these reasons, and many more, I 11 encourage all of you here today to contact your 12 legislators to oppose John Ashcroft, because we cannot 13 allow him to be our Attorney General for the United 14 States. Thank you. 15 MRS. FREEMAN: One of the panelists has a 16 question for the witness. 17 MS. UCHITELLE: Do you happen to have by any 18 chance the numbers of his votes? How many times, just 19 for the record, before we go? 20 MS. PRICE-BOLLINGER: I don't have that stuff 21 with me, but I could get it. 22 MS. UCHITELLE: can you get it to me tonight? 23 If you could e-mail it to me? 24 MS. PRICE-BOLLINGER: Sure, no problem. 25 MRS. FREEMAN: The witness, Dorothy C. Poor,</p>	<p style="text-align: right;">Page 72</p> <p>1 characteristic of uncompromising harshness and zeal for 2 punishment. Worrisome traits for an Attorney General. 3 His negative approach to handgun control, his 4 rejection of gay rights and affirmative action, support 5 of school vouchers, and organized prayer in public 6 schools, are antithetical to the principles we stand for. 7 An extremist such as Ashcroft would do untold damage in 8 the post he seeks. 9 At odds with the piety he professes are the 10 distortions and demagoguery he displayed in leading 11 opposition to Bill Linn Lee as head of the Civil Rights 12 Decision, and Ronnie White as a federal judge. Yet he 13 asks us to judge him by a different standard, to lay 14 aside his flawed record and trust, just trust him to 15 reform and vigorously enforce all those laws he has spent 16 years repudiating. 17 Being Attorney General of Missouri didn't stop 18 Ashcroft from trying to overturn or undermine those laws 19 he didn't like. Why should we expect him to behave so 20 differently as U.S. Attorney General? Consider the 21 opportunity he would have to recommend federal judges and 22 Supreme Court Justices as ideological and hard nosed as 23 himself. No litmus test for abortion? We dare not put 24 him to the test. 25 Our country deserves better than a nominee</p>

<p style="text-align: right;">Page 73</p> <p>1 whose record is at odds with the Constitution he promises 2 to uphold. We strongly recommend the Senate vote against 3 his confirmation. 4 MR. DERAPS: I'm Bud Deraps, President of the 5 St. Louis World Community Center. 6 In my opposition to John Ashcroft's nomination 7 as U.S. Attorney General, I'll focus on his close 8 connections to white supremacist groups. Already much 9 has been written, spoken of his 1998 interview with the 10 Southern Partisan magazine, which caters to so-called 11 neo-Confederates and white-nationalists, where Ashcroft 12 praised their defense of Southern patriots like Lee, 13 Jackson and Davis, in their right to retain slavery. 14 The Southern Partisan also sells T-shirts 15 celebrating the assassination of President Lincoln, that 16 has a likeness of Lincoln with the slogan, Sic Semper 17 Tyrannis. Thus always to tyrants, that John Wilkes Booth 18 shouted as he shot the president. 19 In 1990, the magazine touted Ku Klux Klan 20 leader David Duke as a populist spokesperson for the 21 recapturing of the American ideal. 22 At Bob Jones University, notorious for its 23 bigotry, Ashcroft was given an honorary degree in 1999 24 when he delivered the commencement address. In the 25 1980's, that school gave up its claim to tax-exempt</p>	<p style="text-align: right;">Page 75</p> <p>1 1999 bill that came on the heels of the grisly murders 2 of James Byrd and Matthew Shepard. 3 In 2000, he voted against the Hate Crimes 4 Prevention Act, which would have amended federal law to 5 recognize hate crimes based on sexual orientation, gender 6 and disability, as well as expanded federal jurisdiction 7 over these and other hate crimes already covered under 8 law. 9 He's always vigorously opposed any form of 10 affirmative action as well as other anti-discrimination 11 programs. The St. Louis Post-Dispatch said, Mr. Ashcroft 12 has built a career of opposing school desegregation in 13 St. Louis and opposing African Americans from public 14 office. With the kind of company he keeps, he has no 15 place of enforcing the laws of our land. 16 MS. EPSTUN: I'm Hedy Epstein with Women's 17 International League for Peace and Freedom, and I agree 18 with everything that's been said so far, but I'm here to 19 read a statement that was sent to me by e-mail from Carol 20 Harrell, who lives in Fredonia, Kansas, and she asked me 21 to read this into the record. 22 I'm writing to urge you to oppose 23 President-Elect George Bush's nomination of John Ashcroft 24 as the nation's next Attorney General. I'm presently 25 employed as a Farm Loan Technician with the USDA, Farm</p>
<p style="text-align: right;">Page 74</p> <p>1 status rather than change its segregationist ways. 2 Closer to home, a white nationalist 3 organization supporting Mr. Ashcroft is the St. Louis 4 based Council of Conservative Citizens, CofCC. The CofCC 5 is the reincarnation of the White Citizens Council of the 6 old strictly segregated south, and has become one of the 7 largest white nationalist groups in the nation. Much of 8 its membership overlaps with the Ku Klux Klan. 9 The CofCC supports the Ashcroft nomination, 10 hoping that Ashcroft will release an imprisoned white 11 supremacist, dentist Dr. Charles Sell, charged with 12 crimes that include conspiracy to murder an FBI agent and 13 a federal witness. 14 While serving as a member of the Senate 15 Judiciary Committee, Mr. Ashcroft made several inquiries 16 to the Justice Department on behalf of the dentist. 17 During his term in the Senate, John Ashcroft 18 consistently opposed legislation aimed at curbing 19 intolerance. 20 In 1999, he effectively killed the Hate Crimes 21 Prevention Act by sitting on it in the subcommittee. And 22 after the bill was referred to committee on Judiciary, it 23 was sent to the subcommittee on Constitution, Federalism 24 and Property, which Senator Ashcroft chaired. The bill 25 died. There was no further action taken. That ended the</p>	<p style="text-align: right;">Page 76</p> <p>1 Service Agency in Fredonia, Kansas. My federal career 2 began July 13, 1970, with employment in USDA, Farmers 3 Home Administration. 4 As a union activist, I hereby voice my concern 5 regarding the appointment of John Ashcroft as Attorney 6 General. Mr. Ashcroft has a history of promotion and 7 persuasion of political matters based solely on his 8 personal beliefs. As a public servant, any appointed 9 individual should strive to fully and equitably represent 10 the needs of the majority. 11 I'm a member of the Roman Catholic Church and 12 oppose abortion. However, I feel it is my individual 13 decision. I feel that personal decisions of this 14 magnitude must be made by the individual involved and 15 should not be censored or deprived by government at any 16 level. Mr. Ashcroft has publicly exhibited his 17 opposition to abortion rights. No person should be 18 deprived of their rights. This is a personal decision, 19 not one of government. 20 I am also the eldest of a family of four 21 children that were reared in an environment of alcoholism 22 with physical, emotional, and mental abuse. My mother 23 died at the early age of 59 because she had nowhere to 24 turn during that period of time. Still today, women 25 continue to be abused, battered, and held in that</p>

<p style="text-align: right;">Page 77</p> <p>1 situation. I have personally witnessed the lack of 2 compassion or action by our law enforcement and political 3 community, both of which are sworn to help all citizens. 4 It appears Mr. Ashcroft exhibits a history of neglect 5 toward the safety and well-being of women. 6 Further, I am struggling with my sexual 7 identity and lack the courage and conviction necessary to 8 achieve my personal and sincere desires. I've been 9 married 27 years, am the mother of two adult children, 10 one of which is openly gay, and live in a small, rural 11 community. I'm extremely aware on a daily basis of the 12 judgment, prejudice, and inequities of our government 13 leaders. Mr. Ashcroft has exhibited his opposition to 14 gay advocacy that would further prohibit individuals that 15 are struggling with the same situations I find myself in. 16 In a true democracy, equal treatment to all citizens must 17 be attained. 18 The economic future of our nation remains at 19 risk as I write this note. Our medical advances have 20 increased the longevity of U.S. citizens, thus creating 21 the challenge of dealing with our environment, more 22 people, more trash. As a charter member of the Wilson 23 County Conservation District Auxiliary in Kansas, I am 24 concerned about our ecological future if Mr. Ashcroft is 25 nominated to the office of Attorney General. We have</p>	<p style="text-align: right;">Page 79</p> <p>1 like a duck and you waddle like a duck, you must be a 2 duck. 3 MS. ROGERS: Good evening, Jamala Rogers. The 4 nomination of John Ashcroft as Attorney General needs to 5 be vigorously opposed by all freedom-loving citizens in 6 this country. Missourians, in particular, need to raise 7 their voices in resounding unison to expose the extremist 8 decisions by Ashcroft. The Organization for Black 9 Struggle joins with others today in St. Louis and across 10 the country to vehemently oppose the Ashcroft nomination. 11 Ashcroft's actions underscore our beliefs that 12 women should be barefoot and pregnant, that African 13 Americans were meant to be slaves or second class 14 citizens, and that gays are abominations of the human 15 race. All three of the constituent groups have no rights 16 that Ashcroft respects or protects. As for the women's 17 rights, Ashcroft opposed the Equal Rights Amendment, as 18 well as abortion, even in cases of rape or incest. 19 He is against affirmative action and 20 desegregation laws that would help ease the generations 21 of racism and discrimination experienced by U.S. citizens 22 of color. He has been an outspoken advocate for 23 criminalizing drug use, which disproportionately affects 24 the poor and people of color, while turning a blind eye 25 to the corporate suppliers of drugs.</p>
<p style="text-align: right;">Page 78</p> <p>1 only one earth, and we must take every precaution and 2 action to preserve our future. 3 I will just read the last sentence. The 4 contents of this note are entirely my personal opinions, 5 they do not represent the opinions of any volunteer 6 group, association, union activity, or employer of which 7 I am involved. Thank you. 8 MR. HICHTENBAUM: Thank you to the panel for 9 listening. And I want to ask just one question. John 10 Ashcroft says that he will follow the law. Now, one of 11 the things you have to base that on, it's not what he 12 says, but what he has done. In the State of Missouri, we 13 have the largest number of militias according to the 14 southern poverty law. We have a large number of 15 Christian identity movements that are not only racist, 16 but anti-semantic. 17 Now, when he was Attorney General, did he 18 investigate any of these groups? Did he do anything 19 about any of these groups? I don't think so. He has not 20 raised a finger to prosecute, investigate any of these 21 groups. They are not only violent, they are known for 22 having guns, and compound that is -- is protected by 23 themselves with guns, and for him to sit there and say 24 that he will obey the law is just plain nonsense. 25 You know, if you walk like a duck and you talk</p>	<p style="text-align: right;">Page 80</p> <p>1 He played the leading role in the federal bill 2 that criminalizes youth and sought to dismantle violence 3 prevention programs. Ashcroft voted against Missouri's 4 Voting Rights Act, fearful that it would greatly favor 5 St. Louis, which is too black and too democratic. He has 6 stated that homosexuality is a sin, making it virtually 7 impossible for him to view gays, lesbians, bisexuals and 8 transgenders as a protected class. 9 He stridently opposed the nomination of a gay 10 ambassador to Luxembourg. His Fundamentalist Christian 11 beliefs firmly validate that women, blacks and gays are 12 inherently inferior, and therefore, undeserving of equal 13 protection under the law. 14 It is Ashcroft's insidious attack on the 15 Honorable Ronnie White that illuminates his racist views 16 and magnifies his hypocrisy. Ashcroft has proudly 17 boasted of the number of African Americans he appointed 18 to the bench, and therefore implied that he couldn't be a 19 racist. Well, he is a racist of the worst pedigree 20 because he finds it offensive that a black man dared to 21 articulate opinions different from his. He has labeled 22 White a soft-on-crime judge, an activist judge. Yet, 23 Ashcroft has no shame in actively rubbing sheets with the 24 likes of Southern Partisan magazine, the Conservative 25 Political Action Conference or Bob Jones University.</p>

<p style="text-align: right;">Page 81</p> <p>1 He has touted the ilk of Confederate leaders 2 such as Robert E. Lee, Stonewall Jackson and Jefferson 3 Davis, all who fought desperately to preserve the system 4 of slavery. Ashcroft would have us believe that his 5 personal views and political relationships will not 6 impact his ability to be fair and to uphold the law. His 7 appointment of the State's first female to the Missouri 8 Supreme Court looked like a progressive movement until it 9 was uncovered that Ann Covington was a former staffer and 10 a campaign contributor.</p> <p>11 It is Ashcroft's fanatical opposition to 12 abortion that seems to be the motivating factor on 13 whether you get a thumbs up or down. Ask Drs. Henry 14 Foster and David Satcher, Clinton nominees for Surgeon 15 General. It has been reported that Ashcroft questioned 16 perspective judges on their abortion views before 17 appointing them to the bench.</p> <p>18 While Governor, he signed a law that led to the 19 Supreme Court decision that came one vote shy of 20 overturning Roe v. Wade waive. He refers to those who 21 support abortion rights as illegitimate progeny 22 responsible for the slaughter of 35 million innocents. 23 The thought of John Ashcroft being the chief 24 law enforcer of the nation is a frightening one. His 25 controlled, bias-neutral responses before the Judiciary</p>	<p style="text-align: right;">Page 83</p> <p>1 Today, thanks largely to the National Voter 2 Registration Act, commonly known as Motor-Voter, ACORN 3 has trained hundreds of members to conduct voter 4 registration rights in their neighborhoods. Last fall, 5 ACORN registered 7,200 new voters via post card 6 registration.</p> <p>7 But registering to vote was not always 8 accessible, especially if you lived in St. Louis City. 9 In the early 1980's, ACORN ran up against Governor 10 Ashcroft and fellow Republicans who aggressively fought 11 our efforts at reforms and maintained an apartheid like, 12 two separate systems for the largely white, largely 13 Republican St. Louis County, and the overwhelmingly 14 Democratic and increasingly African St. Louis City.</p> <p>15 Since 1981, the Board of Election Commissioners 16 in the city allowed only its own employees and deputies 17 to register voters. In the mid 1980's, ACORN challenged 18 in court the decision by the board to prevent citizens 19 groups from conducting voter registration drives. Jerry 20 Wamsor, an Ashcroft appointee and head of the election 21 commission, claimed that opening up the voter process in 22 the City of St. Louis would encourage fraud. For some 23 strange reason, this possibility of fraud did not exist 24 in St. Louis County. 25 ACORN members were unable to register others to</p>
<p style="text-align: right;">Page 82</p> <p>1 Committee are no way convincing. It only speaks to his 2 dishonesty and manipulation. Our beloved Dr. Martin 3 Luther King hoped that one day this country would live 4 out the true meaning of its creed. His dream is sure not 5 to ever materialize if John Ashcroft is confirmed.</p> <p>6 The Organization for Black Struggle proudly 7 goes on record as opposing the nomination of John 8 Ashcroft.</p> <p>9 MRS. FREEMAN: The witness, Gertha Smith, will 10 be followed by Ray Vance.</p> <p>11 MS. SMITH: My name is Gertha Smith, I'm a 12 member of the St. Louis Association of Community 13 Organizations for Reform, now better now as ACORN. 14 ACORN has been organized in Missouri since 15 1976. We have grown to a membership of over 10,000 16 families. 75 percent of our membership is in St. Louis 17 City, with most of the rest in St. Louis County. Our 18 membership is 85 percent African American. Our 19 Over the past 25 years, ACORN members have 20 organized on a wide variety of issues that affect our 21 members, from bank redlining to utility rates, from 22 living wage jobs to campaign finance reform. Another key 23 area of work for our members has been voter registration, 24 a fundamental element to participation in democratic 25 system of government.</p>	<p style="text-align: right;">Page 84</p> <p>1 vote in the city, while in the county, our ACORN members 2 became deputy registrars and registered thousands of new 3 voters. St. Louis County had over 1500 individuals, 4 deputized to register people to vote.</p> <p>5 John Ashcroft's record of partisan politics on 6 the issue is fundamental to our democracy as the right to 7 vote indicates that Mr. Ashcroft is unqualified to be 8 this country's Attorney General. Thank you very much.</p> <p>9 MRS. FREEMAN: The next witness, Ray Vance, 10 will be followed by Jeff Wunrow.</p> <p>11 THE WITNESS: My name's Ray Vance, and I really 12 came down here just to listen, and it's wonderful to see 13 so many caring people here. I just want to make a few 14 comments.</p> <p>15 I, as a citizen, am so tired of being talked 16 down to by our politicians, such as how many times the 17 votes were recounted in Florida. We all know they were 18 never recounted. And our politicians describing 19 Mr. Ashcroft as an honorable man. Ayatollah Khomeini is 20 an honorable man, I don't think we want him as our 21 Attorney General.</p> <p>22 I think that if our -- politicians want us to 23 understand why Mr. Ashcroft is there, bring Mr. Bush up 24 and ask him who recommended Mr. Ashcroft for Attorney 25 General. And I know that we will find out that it is Pat</p>

<p style="text-align: right;">Page 85</p> <p>1 Robertson and his 700 Club. Even if he wanted to do what 2 he says he will do, he's there for one reason, to do what 3 Pat Robertson wants done. 4 So I truly believe that an honorable man to our 5 politicians means that he is one of us. And for that 6 reason, I'm going to pray that this man will not be 7 confirmed. However, if he is, I think we have to hold 8 these people responsible. Thank you. 9 MRS. FREEMAN: The next witness, Jeff Wunrow, 10 will be followed by Tony Hill. 11 MR. WUNROW: Good evening. My name is Jeff 12 Wunrow, Executive Director of the Privacy Rights 13 Education Project, and I'm here to speak briefly to 14 questions about Ashcroft's record. 15 On Ashcroft's record, most of that record is in 16 U.S. Congress. There weren't a whole lot of questions 17 from Missouri when he was Governor and Attorney General. 18 The -- he has proven in his several years in Congress he 19 has had a zero track record with human rights campaign, a 20 National Lobbying Organization. He has opposed the 21 employment nondiscrimination act, which would provide 22 protections of discrimination based on sexual 23 orientation. He has opposed the hate crimes prevention, 24 which would extend hate crimes protections to people 25 based on their sexual orientation, their gender, and</p>	<p style="text-align: right;">Page 87</p> <p>1 Ashcroft is a step back. 2 For those reasons, we, on behalf of the Privacy 3 Rights Education Project and the lesbian, gay, we oppose 4 his nomination, thank you. 5 MRS. FREEMAN: The next witness, Tony Hill, 6 will be followed by Rick LaMonica, Alliance For 7 Democracy. 8 MR. HILL: Panel, I am Tony Hill, President of 9 the St. Louis Chapter, A. Philip Randolph. 10 My main purpose is to register voters, educate 11 voters, and take them to the poles to vote. I stand in 12 opposition to the appointment of Mr. Ashcroft as an 13 Attorney General for the President. I think he's totally 14 unsuitable for that position based on what I've seen in 15 action in the State of Missouri when he was Attorney 16 General. 17 He manipulated a panel in the Senate when the 18 nomination for Ronnie White came before them. He told 19 untruths about a man who is dedicated, and presented 20 himself in certainly a light that has gained him the 21 position that he holds today. His anti-action against 22 the affirmative program, he has certainly not done 23 anything favorable in that area of affirmative action. 24 He openly supports and certainly embraces 25 racist groups. He is not trying to keep that a secret.</p>
<p style="text-align: right;">Page 86</p> <p>1 their disability. 2 My concern about that goes to the point that 3 the hate crimes statistics regarding act in Congress does 4 include a sexual orientation, so we're counting crimes 5 against gays and lesbians, but we're not punishing them 6 more severely. Police officers are under resourced, 7 overworked, and I'm afraid that if the Attorney General 8 is not demanding that this reporting be happening, that 9 those numbers are not going to be collected, and we will 10 not have an attorney to point out the amount of violence 11 there is against gays and lesbians. 12 As was mentioned before, he and Jesse Helms 13 were alone in opposing the ambassador to Luxembourg 14 because he is openly gay, and I'm afraid also for some 15 setbacks we have seen under the Janet Reno tenure. While 16 she has been in office, the policies have been 17 interpreted and broadened to allow people to claim 18 persecution based on the sexual orientation in their 19 country, and have been granted refugee status based on 20 the sexual orientation. 21 Janet Reno has also intervened on cases where 22 students have been persecuted and harassed by their 23 fellow classmates because of their sexual orientation, 24 and she has intervened there. These are steps forward, 25 and we believe very strongly that we believe John</p>	<p style="text-align: right;">Page 88</p> <p>1 I think some of the information we've seen in him, 2 accepting honors from the Bob Jones University and 3 certainly other radical groups, militias run rampant in 4 the State of Missouri. 5 I think one of the speakers brought out how 6 many militias we have, and these are not ones you 7 probably want to endorse. If he doesn't support them, he 8 certainly does nothing when he was Attorney General to 9 challenge those groups. 10 If his appointment, should it occur, would be a 11 setback in the political gains that we've acquired. He 12 is not the man for that group. Certainly, if this is in 13 any way a decision by our president of good decision 14 making shame on him. 15 Mr. Ashcroft is not the man for that job. 16 MRS. FREEMAN: The next witness, Rick LaMonica, 17 will be followed by Denise Lieberman, Metro St. Louis 18 Women's Political Caucus. 19 MR. LAMONICA: Hello. My name's Rick LaMonica, 20 I'm chair of the St. Louis Alliance for Democracy. 21 These comments are my own, if it was by the 22 national office it would be better because most of our 23 leaders are very good journalists and editors. 24 Friends, members of the panel, Senators Bond 25 and Carnahan, citizens of Missouri. The Judiciary</p>

<p style="text-align: right;">Page 89</p> <p>1 Committee is now holding hearings on the nomination of 2 former Senator John Ashcroft, a right-wing Christian 3 fundamentalist ally of Pat Robertson and Jerry Falwell 4 and Bob Jones University, as U.S. Attorney General. 5 This would make him the nation's top lawyer, 6 director of our justice department, and key advisor to 7 the Supreme Court appointed Chief-in-chief Bush on 8 recommendations to federal judicial positions. Please 9 write, mail and call your senators urging them to oppose 10 this nomination. If your senators are Democrats, remind 11 them senators that Ashcroft's nomination was a reward to 12 the radical Christian right forces in the GOP for 13 campaigning so hard for Shrub, just as Norton was payback 14 to his corporate financial backers. 15 Democrats were not elected to Congress to go 16 along with this conservative agenda. Bush has no 17 mandate, lost the popular vote, is in the White House 18 only because the Supreme Court's Republican majority 19 appointed him instead of letting ballot counting proceed. 20 Ashcroft is extremely radical, coming from the 21 reactionary Bible Belt southwest corner of Missouri. 22 Senator Charles Schumer of New York, who served several 23 years in the Senate with Ashcroft said after he talked 24 with him last week, and I quote, it may be that the 25 philosophical and ideological beliefs are so deep that</p>	<p style="text-align: right;">Page 91</p> <p>1 oppose John Ashcroft's nomination for Attorney General 2 because he cannot be entrusted to uphold the ideals and 3 equality under the law. His extreme record on 4 reproductive rights is well known. He cannot be 5 entrusted to protect this fundamental freedom. 6 But Ashcroft opposes all forms of affirmative 7 action, which has had its greatest impact on women. He's 8 opposed a patient's Bill of Rights and vetoed legislation 9 to provide maternity leave to new mother. He vetoed 10 legislation to help victims of domestic abuse. John 11 Ashcroft opposed the Equal Rights Amendment. He also 12 opposed legislation in this state providing women receive 13 equal pay for equal work. This is not a man who 14 understands the meaning of equality under the law. 15 The job of Attorney General is to ensure that 16 those laws are enforced. I do not have confidence he 17 will do so. As Governor of our state, John Ashcroft had 18 an abysmal record on women. Just one of his 11 cabinet 19 members were women, one of the worst records in the 20 country, and a mere 12 of us 121 judicial appointments, 21 an appalling 10 percent were women. 22 The United States Attorney General plays a 23 critical role in the selection of judges. The justice 24 department is responsible for selecting, screening, and 25 recommending judicial nominees to federal courts</p>
<p style="text-align: right;">Page 90</p> <p>1 even if he believes he is enforcing the law he isn't. I 2 also believe that is true since John Ashcroft has over a 3 30-year political career opposing many of the laws he 4 would be obligated to enforce as head of the U.S. Justice 5 Department. 6 He opposes campaign finance reform, believes 7 they're unconstitutional. What would he do if the Bush 8 administration, which also opposes the McCain-Feingold 9 bill, when charged with defending it against likely court 10 suits? He opposes abortion rights. He opposes labor 11 rights, he opposed when he was Governor. 12 You are now hearing a barrage of Republican and 13 other conservative propaganda that he is moderate because 14 he had been elected to Missouri office in the past. We 15 know this is purely spin doctoring PR rehearsed sound 16 with media consultants. He won only because he uses 17 racism and outside votes, and because the Democrats have 18 been weak and heavily outspent in most statewide 19 elections. He's worked against civil, voter and labor 20 rights bills as Governor and Senator. 21 Clearly, Ashcroft should not be Attorney 22 General of the United States. Thank you. 23 MS. LIBBERMAN: The Metro St. Louis Women's 24 Political Caucus is a bipartisan organization dedicating 25 to promoting the equality of women in public life. We</p>	<p style="text-align: right;">Page 92</p> <p>1 throughout the country, as well as the United States 2 Supreme Court, with tremendous impact on the judiciary 3 for years to come. Given his record, I don't believe 4 that John Ashcroft will look to reducing 5 under-representation of women in these roles. 6 Even worse, John Ashcroft as Attorney General 7 of this state sued the National Organization for Women 8 for boycotting Missouri when our state would not ratify 9 the ERA. Not only does his position on the ERA show his 10 disrespect for the equality of women, but his action to 11 stop the organization's boycott demonstrates a shocking 12 disregard for the right to petition and assemble freedom 13 of speech under the First Amendment. 14 Even more, it shows that John Ashcroft is 15 willing to use his position to further his political 16 agenda. If John Ashcroft was willing to abuse the 17 position of Attorney General in Missouri to pursue legal 18 action that goes against some of the most fundamental 19 protections of our Constitution, how can we count on him 20 to do any different as Attorney General of our country? 21 The Attorney General interprets civil rights 22 laws, decides whether to prosecute violations of these 23 laws, and directs the activities of the Solicitor General 24 in determining matters to be brought before the United 25 States Supreme Court. More than any other cabinet</p>

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1 position, it is the duty of the Attorney General to
 2 uphold the promise of equal protection of the laws. John
 3 Ashcroft has made clear that he cannot do that. He
 4 should not be confirmed.
 5 MS. WRIGHT: Good evening. My name is Rebecca
 6 Wright, I'm a board member of the Missouri Coalition for
 7 the Environment.
 8 President-Elect George Bush has named John
 9 Ashcroft as his choice for U.S. Attorney General.
 10 Ashcroft is telling us he will defend the law of the
 11 land. However, Ashcroft's voting records give us no
 12 confidence in his promises. He has consistently voted to
 13 weaken laws protecting the environment.
 14 As Missouri's Attorney General in 1984, John
 15 Ashcroft subverted the intent of Proposition D placed on
 16 the ballot by thousands of hard-working volunteers. The
 17 initiative was intended to allow citizens to vote on
 18 whether electric ratepayers should have to pay increased
 19 rates for the huge cost overruns for the Callaway nuclear
 20 power plant construction. Ashcroft rewrote the ballot
 21 summary to read: Allows Union Electric to raise rates
 22 under certain conditions, deceiving voters into voting
 23 against their best interests.
 24 As Senator, John Ashcroft has voted repeatedly
 25 on behalf of the nuclear industry. Of particular concern

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1 to Missourians, Ashcroft voted for the development of a
 2 surface parking lot at Yucca Mountain as an interim
 3 storage facility for high level radioactive waste from
 4 nuclear power plants nationwide. Fortunately President
 5 Clinton vetoed the legislation. If the legislation
 6 passes, a shipment of high level radioactive waste would
 7 come through St. Louis on Interstate 70 or 44, or the
 8 Union Pacific Railroad, now is just two blocks from here,
 9 every other day for the next 30 years.
 10 Ashcroft has one of the Senate's worst
 11 environmental voting records. The nonpartisan League of
 12 Conservation Voters gave him a rating of zero in five of
 13 his six years in the Senate. He introduced legislation
 14 to undercut efforts to limit emissions of manmade
 15 greenhouse gases. He favored lead mining near the Ozark
 16 National Scenic Riverways and drilling the Arctic
 17 National Wildlife Refuge. He supported legislation to
 18 weaken clean water protections and opposed funding for
 19 enforcement of federal clean air and water laws.
 20 He has accepted hundreds of thousands of
 21 dollars of campaign contributions from major polluters.
 22 Environmental laws exist to protect the resources such as
 23 clean air and clean water, which sustain life on earth,
 24 and are necessary for the health and well-being of human
 25 life.

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1 The Attorney General is the nation's top law
 2 enforcement officer and is entrusted with defending and
 3 enforcing federal laws that protect the environment. In
 4 addition, the attorney plays a major role in deciding
 5 what kind of judges will preside over our nation's
 6 federal courts. John Ashcroft cannot be trusted to
 7 protect the environment. John Ashcroft must not be
 8 confirmed as the U.S. Attorney General. Thank you.
 9 MRS. FREEMAN: The next witness, Jeanette
 10 Oxford, will be followed by Jonnie Warner, Eastern
 11 Missouri Coalition Against the Death Penalty.
 12 MS. MOTT OXFORD: Good evening. My name is
 13 Jeanette Mott Oxford, I'm here to testify against the
 14 nomination of John Ashcroft as Attorney General on behalf
 15 of Reform Organization of Welfare, which many much you
 16 know as ROWEL. Angela H. Fowlor (phonetic spelling), who
 17 is the current interim director of ROWEL, asked me to
 18 testify because I had a personal experience.
 19 As director of 1991 until May of this year, or
 20 May of 2000, of seeing John Ashcroft in action as
 21 Governor and as a Senator on welfare issues. His records
 22 on those issues leave us to wonder if people with low
 23 incomes will have equal coverage or equal protection
 24 under the law.
 25 Let me cover a couple of the things he did on

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1 sole welfare policy as Governor and Senator. Both as
 2 Governor and Senator he has supported something called a
 3 Family Cap, or a Child Exclusion Law. If a woman on
 4 welfare has an additional child, the welfare check will
 5 not go up. I think this raises an issue of consistency,
 6 because John Ashcroft makes no issue about his, no homes
 7 about pro-choice, and the U.S. Catholic Bishops are
 8 against it because they're worried it might cause
 9 abortions. He has some inconsistencies.
 10 He also seems to not have much regard for
 11 minimum wage laws in that he was a supporter of work
 12 fair. Work fair makes a woman work in exchange for her
 13 welfare check in Missouri. A family of three, from 1990
 14 to the present, receives \$292 a month to live on. If you
 15 work in exchange for that check, it's far below minimum
 16 wage. So that doesn't show much concern for minimum wage
 17 laws.
 18 In Springfield, Missouri, we discovered a woman
 19 who lost her job as a cook at a school because of not
 20 enough money in the educational system, who went to apply
 21 for welfare and was sent back to the school to work for
 22 the welfare check. He also wanted to give persons who
 23 move into the state a lower welfare benefit because he
 24 was sure that people were moving into Missouri to get our
 25 high benefit of \$292 a month.

<p style="text-align: right;">Page 97</p> <p>1 We stand on the border of baseball bats. The 2 Mississippians and Alabamians who were coming into 3 Missouri because they do have a lower one in Mississippi, 4 but hardly anyone had a lower one than ours. The U.S. 5 Supreme Court ruled that it's unconstitutional because it 6 keeps poor from having the same right to move around. 7 That's deplorable that John Ashcroft would ignore the 8 right to move. 9 So for all of those reasons I think that John 10 Ashcroft has ignored the law and ought to be barred from 11 being our Attorney General. 12 I have some written testimony I have turned in 13 because there's many reasons to oppose him. 14 MR. WARNER: My name is Jonnie Warner, I'm a 15 member of the -- 16 MRS. FREEMAN: Would you just hold off a 17 minute? I wanted to be sure that all of the witnesses 18 know that we are expecting you to leave your written 19 statement so that it can be transmitted. 20 There's another announcement that I want to 21 make, and I have to make that. I was asked to make that, 22 I'm sorry I didn't get it earlier, because the committee 23 that sponsored this hearing would welcome your donation 24 from your organization to help defray the costs. There 25 is a can in the registration area, and I said I wish I</p>	<p style="text-align: right;">Page 99</p> <p>1 minutes. 2 MR. MOYE: Good evening. Almost didn't make 3 it, but I'm glad to be here. I have a brief statement. 4 On behalf of the St. Louis Chapter of the 5 Coalition of Trade Unionists, I'm here to express our 6 strong opposition to the nomination of former Senator 7 John Ashcroft to the position of Attorney General of the 8 United States. 9 Mr. Ashcroft has a proven record of 10 divisiveness in addressing many of the crucial civil, 11 labor, human and voting rights concerns of our 12 communities, while serving as Attorney General and 13 Governor of the State of Missouri, and in our nation's 14 Senate. 15 Mr. Ashcroft's vigorously worked to eliminate 16 equal opportunity laws, worked to defeat well qualified 17 judicial and administration nominees of color, voted 18 against much needed hate crime protection legislation, 19 accepted an honorary degree from a college that racially 20 segregates its students and defended civil war era 21 Confederate leaders, complaining that their cause and 22 conviction are unfairly depicted. 23 Mr. Ashcroft receive the grade of F on the 24 NAACP's legislative report cards on the bread and butter 25 civil rights priorities for the last three consecutive</p>
<p style="text-align: right;">Page 98</p> <p>1 had this announcement because this has been a very 2 exciting opportunity for our many citizens, and I'm sure 3 that some of the people that left already would have 4 participated if they had known about this. I should have 5 made that announcement earlier. 6 Now you may proceed with your testimony. 7 MR. WARNER: My name is Jonnie M. Warner, and I 8 represent the Eastern Coalition Against the Death 9 Penalty. In 1995, my brother died on death row in the 10 State of Missouri as an innocent person. Today we have a 11 president-elect who has said he doesn't believe an 12 innocent person has ever been put to death. 13 This president-elect ranked very highly on the 14 number of people being executed from his state. This 15 person has chosen John Ashcroft as the next Attorney 16 General. We feel John Ashcroft must not be confirmed. 17 He believe in the death penalty and he's an extremist. 18 If he is elected, many more people throughout the United 19 States will be executed unjustly. 20 Therefore, we're saying Mr. Ashcroft must not 21 be confirmed. 22 MRS. FREEMAN: I'm being handed a -- I said 23 earlier that that was the last witness, but it seems that 24 that's not true. Witness number 46, Lew Moye, President 25 of the Coalition of Black Trade Unionists. Three</p>	<p style="text-align: right;">Page 100</p> <p>1 Congress. In the 106th Congress, Mr. Ashcroft voted 2 correctly only 3 out of 15 times, with the exact same 3 civil rights score that right-wing extremist Senator 4 Strom Thurmond. 5 In our own State of Missouri, over 90 percent 6 of the African American voters rejected John Ashcroft for 7 reelection to the U.S. Senate by voting for the deceased 8 candidate Mel Carnahan, rather than accepting his 9 right-wing extremist view. The position of the U.S. 10 Attorney must instill trust and confidence in the 11 well-tempered balance of the rule-of-law for all 12 Americans. 13 Thank you for allowing me to be here. 14 MRS. FREEMAN: M we have two more witnesses. 15 Marilyn Probe, followed by Bill Ramsey, Human Rights 16 Action Service. 17 MS. PROBE: I'm Mary Probe, and Older Women's 18 League is one of the organizations I represent. I'm just 19 very much against John Ashcroft being approved as 20 Attorney General. 21 I think for one thing, as I've been listening, 22 even after he was directed to enforce the voluntary 23 desegregation, and for the State to contribute money, he 24 still fought it. And in his speech, he seems to deny 25 that the State had anything to do with the deseg -- with</p>

<p style="text-align: right;">Page 101</p> <p>1 the segregated policy which was established by the 2 courts, and he refused to follow the court's order and 3 fought it. That does not lead me to believe that he 4 could enforce the law regardless of race and support 5 the equal rights of the constitution. 6 Secondly, on Roe vs. Wade, I think he's made it 7 very clear that he believes that Jesus is king and God, 8 and not just for him but for all the people, and I don't 9 believe that he can separate his own philosophy from that 10 of his Christian, you know, religion. I have no 11 objection to people believing in Jesus Christ as their 12 Saviour, my only objection is to separate that 13 distinguishes him from, let's say somebody like our 14 former president, John F. Kennedy, who was elected as the 15 president, who went out of his way to speak to the 16 Protestants, ministerial alliance, and explain though he 17 was a Catholic, he believed in the strict separation of 18 church and state. 19 And this belief is very important because I 20 think it's his religious views that make him believe that 21 women should not have the right to abortion, even in 22 cases of rape, and he will have the authority to 23 influence the president to overturn some of President 24 Clinton's executive orders. He can rescind those orders. 25 I just don't think that he has a philosophy</p>	<p style="text-align: right;">Page 103</p> <p>1 What constitutes a civil rights violation? 2 That's a decision the Attorney General will have to make 3 day in and day out. What constitutes a reasonable fear 4 of persecution on the behalf of a refugee seeking asylum 5 in this country? When will the death penalty be solved? 6 Who will be hired to be U.S. attorneys all over the 7 country over the next four years? Hopefully only the 8 next four years. Those are the discretionary decisions 9 that John Ashcroft is allowed under the law. 10 And given what I have heard this evening about 11 his past performance on those issues, if I were a person 12 in this country seeking protection of my civil rights, I 13 would be fearful. If I were a refugee seeking asylum in 14 this country, I would be fearful. If I were someone 15 accused of a capital crime, I would have every reason to 16 fear that the prosecutor in charge of my federal case was 17 going to seek the death penalty. 18 I have faced the U.S. attorney here in 19 St. Louis and have been sent to prison because of 20 prosecutor discretion to use their power to revoke a 21 probation that was put forth, a probation condition by a 22 judge who was appointed by a Republican and used his 23 discretion to set up an unprecedented probation 24 condition. I know the effects that a prosecutor can 25 have, and we should not have John Ashcroft as the lead</p>
<p style="text-align: right;">Page 102</p> <p>1 that he can separate and support the items such as 2 pro-choice and supporting the laws, the equal rights of 3 all the people, without his own bias entering in. I 4 think the record shows that he would not serve the United 5 States of America, but would only serve his very 6 conservative coalition, so I just want to add my voice to 7 that testimony. Thank you. 8 MR. RAMSEY: Well, it's been a long evening. 9 I'm Bill Ramsey, and I coordinate the Human Rights Action 10 Service, which is a network of over 400 people. And over 11 the last five years I have facilitated those people 12 writing scores of letters to John Ashcroft on human 13 rights issues, either asking him to take positions in the 14 Senate, which would create better observance of human 15 rights in this country and around the world, or asking 16 him to take initiative with other members of Congress to 17 protect human rights. Again, here or around the world. 18 And aren't necessarily legislative initiatives. 19 I wish that I could report to you that John 20 Ashcroft had responded positively to one of those scores 21 of letters. But he has not. And much has been made of 22 the fact of whether John Ashcroft will follow the law or 23 not. I'm not as fearful to the answer of that question 24 as I am to how will John Ashcroft exercise the discretion 25 that is allowed an Attorney General under the law.</p>	<p style="text-align: right;">Page 104</p> <p>1 prosecutor in this country. Thank you. 2 MRS. FREEMAN: The absolute last witness. 3 Dr. Blount. 4 DR. BLOUNT: Dr. Lou Blount, Jr., M.D., 5 Organization of NAACP, the Black United Fund. Let me say 6 that I just walked in. I was a little late at the 7 office, but I didn't want this to pass without actually 8 saying what so many of you already have said. 9 I've been in this town a long time, and being 10 one of the elderly, it's the same thing over and over. I 11 think for our children, I think that we need to make a 12 stand because if we don't then we're lost. John Ashcroft 13 has shown over and over his insensitivity to minorities, 14 particularly black. You don't -- you don't have to have 15 a Senate judiciary hearing to see this if you lived in 16 St. Louis and you have followed his course. 17 On one hand he talks a very good talk, but the 18 actions, whether it's women's rights, whether or not this 19 abortion issue, the deseg. I mean, he has unfailingly and 20 without -- and with great moved toward changing all the 21 strides that the African Americans have made, and of 22 course, you know, it's just not what's happened with 23 the -- with the blacks in this country, but others. 24 I mean, the whole idea of any gun control. 25 Women's rights, abortion, pro-life. I mean, it's a</p>

<p style="text-align: right;">Page 105</p> <p>1 multiplicity of things that takes this man far to the 2 right of Senaic. To be conservative is one thing, but to 3 be in particular, as far as blacks is concerncd, and our 4 race, I just had to speak. 5 Thank you for seeing me and allowing me to be 6 the last speaker. Thank you. 7 MRS. FREEMAN: We have heard 49 witnesses. We 8 have two of the distinguished panelists left, and I would 9 like to have each one of them give some closing remarks 10 before we adjourn this hearing. 11 MS. UCHIETTE: I simply want to thank 12 everybody for making their comments. I think it was 13 democracy at its very best. I was honored to be here. I 14 think people did their research, they spoke from their 15 heart, but they also spoke from the facts. 16 It is our role to synopsize this information in 17 a page or so getting people into the record. I will 18 certainly do my very best to summarize what was said here 19 with as many quotes as possible to give the perspective 20 you have represented here tonight. 21 Each and every one of you I want to thank you, 22 you were wonderful. 23 MS. DAYS: Thank you to the Women's 24 International League for Peace and Freedom, and the other 25 organizations that came together. I think this was a</p>	<p style="text-align: right;">Page 107</p> <p>1 I again want to thank the panelists. I want to 2 thank the organizations, who just two weeks ago decided 3 on this idea. It was great. A great opportunity for the 4 People of Missouri to say what they think about the 5 nomination of the proposed consent or confirmation for a 6 person to be the great, great, great, the U.S. Attorney. 7 It is a powerful position, and it can be a dangerous 8 position. We -- you have made yourself heard, and I want 9 to thank you, the organization, and say this hearing is 10 adjourned. 11 (The hearing was concluded.) 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 106</p> <p>1 fantastic idea. Many people wanted to express their 2 sentiment about this confirmation, and of course, were 3 unable to do so because we couldn't get to D.C., but I 4 think this is a wonderful way to have our voices heard 5 and so the many organizations that came together for 6 these through hours, or however many hours it was, to 7 just have your say on record, and I think that's 8 incredibly responsible of you to do that, to step up to 9 the plate and say this is what I want to say. 10 So I appreciate you hanging out here until the 11 very, very end. Thank you for allowing me to be one of 12 your panelists. I certainly appreciate that and we'll 13 hope with all the best we can -- that we will block this 14 nomination. Thank you. 15 MRS. FREEMAN: Thank you. I will repeat what I 16 said. First of all, you know we don't advise and 17 consent. That responsibility is for the U.S. Senate. 18 What has happened here today is very important. One of 19 the things that must happen, all of the testimony that 20 was received here, the transcript and the materials will 21 have to go immediately to Washington to the Judiciary 22 Committee to be included in the record with the hope that 23 the Senate, the entire U.S. Senate, will recognize the 24 significance and the value of what happened here in 25 St. Louis this afternoon.</p>	<p style="text-align: right;">Page 108</p> <p>1 CERTIFICATE 2 I, Jennifer A. Dunn, Registered Professional 3 Reporter and Certified Court Reporter, certify that I was 4 the Official Court Reporter present on January 18, 2001, 5 and I reported all the proceedings had in the matter of 6 the John Ashcroft Nomination Hearing, held at the Sheet 7 Metal Workers Union Hall, 301 South Ewing, in the City of 8 St. Louis, State of Missouri. 9 I further certify that the foregoing pages 10 contain a true and accurate reproduction of the 11 proceedings transcribed and the cost of preparing this 12 transcript is as follows: 13 14 108 pages original @ \$5.00 per page \$540.00 15 108 pages copy @ \$1.00 per page \$108.00 16 TOTAL \$648.00 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;"><i>Jennifer A. Dunn</i> JENNIFER A. DUNN RPR, CCR #485</p>

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January 10, 2001

The Honorable Trent Lott
Minority Leader
United States Senate
Washington, DC 20515

The Honorable Orrin G. Hatch
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20515

The Honorable Thomas A. Daschle
Majority Leader
United States Senate
Washington, DC 20515

The Honorable Patrick L. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20515

Dear Senators:

I am writing on behalf of the Youth Law Center to express our opposition to the nomination of Senator John D. Ashcroft (R-MO) for the position of Attorney General of the United States.

By way of background, the Youth Law Center is a national public interest law firm with offices in San Francisco and Washington, DC. For more than twenty years we have worked with judges and other juvenile court personnel, juvenile detention and corrections administrators, police and other law enforcement, state and federal legislators, other public officials, parents and community groups, and other advocates for children in virtually every state in the nation. Much of our work during that time has involved protecting children in adult jails, local detention facilities, and state correctional institutions from abusive and dangerous conditions of confinement.

First, we are concerned about Senator Ashcroft's commitment to support the basic protections for children in the Juvenile Justice and Delinquency Prevention Act (JJDPA). The JJDPA was passed by Congress in 1974 after extensive hearings on abuse of children in adult jails and other problems in the juvenile justice system. It provides funding to the states to support prevention, prosecution, intervention, and rehabilitation programs. Senator Ashcroft proposed amendments to the JJDPA that would have weakened protections for children incarcerated with adults in jails, and would have required states and the federal government to prosecute those as young as 14 years old as adults. He made these proposals in the face of numerous reports on the dangers from suicide and assault to children incarcerated in adult facilities, and extensive research demonstrating that prosecution of young people in adult criminal court is counterproductive, leading to increases in recidivism rather than decreases.

We are also concerned that Senator Ashcroft supported efforts to weaken provisions of the JJDPa that direct states to address disproportionate confinement of minority youth. Research over the past twenty years shows that race is a factor in decisions throughout the juvenile justice system, from arrest to incarceration. The most recent comprehensive report, by the National Council on Crime and Delinquency, reveals that youth of color receive more severe treatment than white youth at every stage of the system, even when charged with the same offenses. The JJDPa directs states to "address" this issue, without requiring release of juveniles or incarceration quotas or any other specific change of policy or practice. Nevertheless, Senator Ashcroft supported amendments to the JJDPa that would have gutted even this minimal provision by deleting any reference to "minority" or "race." Such a change would have minimized glaring inequities in the nation's juvenile justice system and hindered efforts to remedy the disparate treatment of minority youth. Senator Ashcroft's obstruction of Justice Ronnie White's nomination to be a federal judge, and his praise for the racially-divisive journal *Southern Partisan*, further our concerns over his willingness to remedy disparate treatment of youth of color in the juvenile justice system.

Finally, Senator Ashcroft's support for undercutting basic protections for youth in the justice system, as well as his opposition to basic civil rights laws (detailed in letters to you from many other organizations and groups), raise serious concerns about how he would handle the Justice Department's Civil Rights Division. One function of the Division is of particular importance to youth in the juvenile justice system. Through enforcement under the Civil Rights of Institutionalized Persons Act, the Civil Rights Division has played a critical role in protecting incarcerated youth from abuse and dangerous conditions in states around the country. Senator Ashcroft has stated that he believes the current juvenile justice system "hugs the juvenile terrorist." Accordingly, we have serious concerns whether, as Attorney General, he would support activities within the Department of Justice to effectively protect the civil rights of confined youth.

Based on these concerns, we strongly urge you to withhold support for Senator Ashcroft until a searching and thorough review of his records and positions on these important issues can be completed.

Thank you for your consideration. We look forward to working with the Judiciary Committee and individual Senators during this process.

Sincerely,



Mark I. Soler
President

MS/sm

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January 11, 2001

Senator Orrin Hatch
Chair
Senate Judiciary Committee
224 Dirksen Senate Office Building,
Washington, D.C. 20510

Re: Nomination of Senator John Ashcroft for United States Attorney General

Dear Senator Hatch:

I am writing to express my support for the nomination of Senator John Ashcroft to serve as Attorney General of the United States. Senator Ashcroft has a long and distinguished career in public office. He has served in political leadership roles at both the state and federal level and in both the executive and legislative branches. He has conducted his duties with the utmost degree of judgment, wisdom, probity, integrity, and compassion. He is a principled believer in the rule of law and the importance of the rule of law in sustaining a free society and constitutional democracy.

John Ashcroft will uphold the rule of law and to ensure that the laws are executed faithfully and in an even-handed manner. He will uphold the dignity and the independence of his office from political pressures. His breadth of experience and depth of character commend him to the Senate as an exemplary choice as Attorney General of the United States. He will make an outstanding Attorney General of the United States.

Sincerely,



Todd J. Zywicki