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## Senate

(Legislative day of Wednesday, February 7, 1996)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

### PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Let us pray:

My door was opened wide  
Then I looked around  
If any lack of service might be found,  
And sensed God at my side!  
He entered, by what secret stair,  
I know not, knowing only He was there.

Lord, You always have a secret stair. You come in ways we least expect. You are Lord of circumstances, people, and possibilities we would never imagine. When problems mount and we wonder how we are going to make it, then You give us a thought that turns out to be the key to unlock the solution to some difficulty. We stumble on an answer to a problem and we discover You had guided us at the fork in the road. You give us friends to help us. But the greatest evidence of Your intervention comes inside us. Suddenly in a spiritual dry spell, the wells of strength begin to fill up again. We are aware of fresh courage to replace our fear. We are gripped by a new perspective: the only thing that matters is that we belong to You and that You are in charge. Your secret stair has led to our hearts. You have not given up on us. You have plans for us. You will use everything that happens for Your glory and our growth, and a life full of surprises.

We thank You for the officers who give us security and protection. Today we affirm Officer Matthew Lutomski as he retires. We pray this in our Lord's name. Amen.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

### SCHEDULE

Mr. LOTT. Mr. President, today, there will be a period for morning business until the hour of 1 p.m. with the time equally divided between both sides of the aisle. No rollcall votes will occur during today's session. However, the Senate may consider any legislative items that may be cleared for action. As a reminder to all Senators, the next rollcall vote will occur at 2:15 on Tuesday, February 27. That vote will be on the motion to invoke cloture on the D.C. appropriations conference report.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Utah.

### FEDERAL JUDGE APPOINTMENTS

Mr. HATCH. Mr. President, as you know, I do not take the floor very often unless I consider it very important.

One of the most lasting legacies of a President are the Federal judges he appoints for life. These judges are every bit as much a part of the Federal anti-crime effort as FBI and DEA agents and prosecutors.

Mr. President, the American people are going to face stark choices on a range of issues in November. One of those choices will be whether we resume the appointment of hard-nosed Federal judges who are tougher on crime than we can expect from the incumbent.

President Clinton talks about cops on the beat. Yet, he appoints some judges who are too willing to put criminals back on the street.

Let me tell the American people about Timothy Sherman of Maryland.

He was convicted in Maryland State court for the brutal shotgun murders of his mother and step-father. The murder occurred in the middle of the night when Timothy Sherman, who was 17 at the time, was at home. There was no indication of forced entry. Indeed, the home had an alarm system. The 12-gauge shotgun used in the murder belonged to the Shermans. Timothy Sherman's fingerprints were on the shotgun's trigger mechanism. A box holding five 12-gauge shotgun shells was found under his mattress, with two of the shells missing. The police found two matching expended shells that experts concluded were fired from the shotgun. Police found the murder weapon in the branches of a large tree, where the younger Sherman had hidden objects before, and which is located between his own house and the house of his grandparents to which he ran to report the killings.

Sherman's conviction was upheld by Maryland courts and the U.S. Supreme Court denied certiorari. Sherman then sought to have his conviction overturned through a habeas corpus petition. Why? Because a trial juror had visited the crime scene, particularly the tree where the murder weapon was found. This was indeed improper. But criminal defendants are guaranteed a fair trial, not a perfect one. The trial judge found that the error was harmless and not prejudicial. The Federal district judge, William M. Nickerson, who heard the habeas claim, also found the error to be harmless, thereby upholding the conviction in a well reasoned opinion. Judge Nickerson is a Republican-appointed judge, appointed by President Bush. The prisoner appealed the denial of the writ of habeas corpus to the fourth circuit. A Carter judge, Francis Murnaghan, and a Clinton district court judge sitting by designation, James Beaty, reversed the

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



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