

For further information on this hearing, please contact Bruce Kasold at 224-3448.

AUTHORITY FOR COMMITTEE TO MEET

SUBCOMMITTEE ON SOCIAL SECURITY AND FAMILY POLICY

Mr. HATFIELD. Mr. President, the Finance Committee requests unanimous consent for the Subcommittee on Social Security and Family Policy to hold a hearing on Social Security and future retirees on Monday, March 11, 1996, beginning at 10 a.m. in room SD-215.

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

ADDITIONAL STATEMENTS

WHY THE "LEAST DANGEROUS" BRANCH IS ALSO THE BEST

• Mr. SIMON. Mr. President, I confess, I am not a regular reader of *Legal Times*, though my staff is, and they call articles to my attention.

But a longtime friend, Gene Callahan, sent me the first of a series of monthly columns that will be written by our former House colleague, Abner Mikva, who has also served on the Circuit Court of Appeals in Washington, DC and served as Counsel to the President.

His perspective should be of interest.

Judging by his first column, which I ask to be printed in the *RECORD*, it should be viewed by many more people than those who read the *Legal Times*, with all due respect to that readership.

His first column speaks with pride about the Federal judiciary but also has some suggestions for improvement there, suggestions that, in part, involve the legislative branch of Government.

I urge my colleagues to read Abner Mikva's first column.

The text of the column follows:

[From the *Legal Times*, Feb. 5, 1996]

WHY THE "LEAST DANGEROUS" BRANCH IS ALSO THE BEST

(By Abner J. Mikva)

Early last month, while the two political branches of government yielded to the elements and closed down for the blizzard, the Supreme Court of the United States was doing business as usual. It may have looked like a hot-dog trick to some, but Chief Justice William Rehnquist was making a point worth making: While the rest of government is perceived as sick and wanting, the judiciary, like the Energizer bunny, keeps on going.

Now that I am a disinterested observer (except for my pension, which as far as I know has no contingencies based on behavior), I find that the federal judiciary works amazingly well.

It always has been the least dangerous branch, but for a good period of its history that was because the federal judiciary did not have many demands upon it. This is no longer true. In almost every session of Congress, some new tasks are put to the federal courts. Everything from voting rights to car-

jacking is now considered appropriate for federal court jurisdiction.

At the same time, while the total judicial appropriation is still a small blip in the federal budget, it has been increasing exponentially. As with other rapaid growth, inevitably some money is not spent wisely.

The biggest single extravagance is Congress-driven: Should we have a federal courthouse at every crossroads in America? If the federal courts have selective and limited jurisdiction, should not the parties and their lawyers be required to come to the population centers of the country to litigate? But I remember from my days in Congress that it was a feather in the cap of a member if he or she could deliver a new courthouse (and a new judge) to some small town in the state.

Meanwhile, the U.S. Courts of Appeals allow their judges to live wherever they want to within the circuit, providing chambers, equipment, and staff just to service those judges who would rather live in a bucolic place than in the big city to which the appellate court should limit its activities. (When I raised both these matters as a member of the U.S. Judicial Conference, I was met with the icy resistance of incumbent judges who like things the way they are.)

Even accounting for these blemishes (and others that I don't recount here), the federal courts are the most efficient institutions in our government. They perform their designated functions admirably. The appellate process provides a self-corrective device that fixes most of the mistakes and excesses of the lower courts. The judges really do preserve, protect, and defend the Constitution of the United States. And the reasons are pretty obvious.

First and foremost, there is the careful selection method employed to choose federal judges. There was a saying when I went to law school that the A students became law professors, the B and C students made a lot of money as practitioners, and the D students became judges. But that was never applicable to federal judges, and certainly is not true today. The large number of academicians who become federal judges indicates that legal ability is an important prerequisite for appointment. (On the Supreme Court alone, there are three former full-time law professors: Justices Antonin Scalia, Ruth Bader Ginsburg, and Stephen Breyer.)

The whole process is the closet thing that we have to a meritocracy in government. While U.S. senators have a large voice in deciding who become district judges, the candidate is subject to merit review in the first instance by the local bar associations, the local press, and all the other gauntlets that a judicial aspirant has to traverse. After finishing that section of the obstacle course, the would-be judge has to pass a full field investigation by the Federal Bureau of Investigation and a thorough vetting by the American Bar Association. Then, and only then, is the name sent to the president with the recommendation that he nominate. If the president agrees, then, and only then, is the name sent up to the Senate for confirmation.

Appointments to the Courts of Appeals are even more difficult. While the senators may not have as much say in choosing the nominee, they weigh in heavier in the confirmation process. (I still have bumps on my head from my own confirmation battle, which took more than six months and aged me many times that period. I had the National Rifle Association—a formidable opponent—on my case.)

Many are the casualties who could describe how tortuous is the path. Some bad press, a few disgruntled colleagues or clients, an over-exuberant writing—any of these can de-

rail someone who would like to be a judge. Not all such derailments are fair or pretty, but they do provide a thorough preview of who is being appointed to the federal bench. The result is a bench both competent and clean.

There are exceptions, of course, but they are rare, compared to those of the other two branches of government. Indeed, one of the exceptions, Judge Alcee Hastings, was removed from the bench by Congress after his colleagues deemed his conduct inappropriate to judicial service. A jury had previously found him not guilty of criminal conduct in the matter, and the people of the sovereign state of Florida have since elected him to Congress.

There are other reasons why the judicial branch performs so well. The Judicial Conference, the governing body for the federal judiciary, is right for the task. Contrary to what Judge William Schwarzer wrote recently in *Legal Times* ("Governing the Federal Judiciary," Dec. 11, 1995, Page 24), the very fact that the judges in the conference do rotate, are not expert bureaucrats, and are not all from Washington, D.C., is a plus. I have had a close-up view of the workings of the other two branches, and neither has any systems as efficient as the 25 circuit and district judges who, along with the chief justice, make policy for the federal judiciary.

Another ingredient in the judicial success formula is the law clerks. The clerks, who come in for a year or two, are very bright, respectfully irreverent, and full of enthusiasm. Again, the rotation of clerks is a plus, and I worry that more and more judges are using career law clerks.

Senior status is another idea that works. The notion that a judge can semi-retire, still perform useful service, and open up a slot for a younger and more vigorous person is almost too good to be true.

That judges are as independent as they say they are is one of the most important reasons for the success of the judicial branch. This makes it all the more disturbing that some of my former colleagues, both on the bench and in Congress, think that Congress should exercise more vigorous oversight of the performance of judges. Sen. Charles Grassley (R-Iowa) wants judges to fill out time sheets so that he can decide whether they are working hard enough. Judge Laurence Silberman thinks that there are too many judges authorized on the D.C. Circuit, and testified to urge Congress not to fill an empty slot.

Given all the serious problems that other institutions of government have, both in their performance and in the way they are perceived, it is distressing that some would rather tinker with the judiciary. But then, there have always been those who would rather fix something that is not broken than do the serious lifting involved in real government reform.

RECOGNIZING THE IMPORTANCE OF INTERNATIONAL FAMILY PLANNING ON INTERNATIONAL WOMEN'S DAY

• Ms. SNOWE. Mr. President, today, I speak in honor of International Women's Day, which was last Friday, March 8, on an issue of tremendous importance to women and families around the world—U.S. funding for international family planning programs.

The United States has traditionally been a leader in international family planning assistance, and has had unrivaled influence worldwide in setting standards for these programs. An