

debate in a thoughtful way. What about the future of our children? What about our kids? What kind of jobs and opportunities will we have in the future? How do we address the issue of collapsing values in our country? Those are the central challenges I think we face in our country today.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, my understanding, I say to my colleagues, is that I have 10 minutes in morning business. I will not exceed that. I will be very brief.

The PRESIDING OFFICER. That is correct.

NATIONAL DOMESTIC VIOLENCE HOTLINE

Mr. WELLSTONE. Mr. President, for the past 2 weeks I have tried to come to the floor every day, whenever my colleagues would generously allow me a few minutes, to announce the realization of another component of our initiative to prevent violence against women, which the Senator from Utah has been a very, very strong leader in, the national domestic violence hotline. The hotline, which officially opened on February 24, signifies the realization of the key provision of the Violence Against Women Act, passed by the Congress as part of the 1994 crime bill.

The toll free number—I have tried to announce this on the floor over the last several weeks—is 1-800-799-SAFE. This will provide immediate crisis assistance and counseling and local shelter referrals to women across the country, 24 hours a day. There is also a TDD number for the hearing impaired, and that number is 1-800-787-3224.

Today, on the last day of the 2-week period in which I promised to highlight the hotline, I want to take the opportunity to stress how much work still has to be done to fight domestic abuse in our country. On Tuesday of this week, the chief prosecutor in Alexandria, VA, John Kloch, called for tougher strategies against domestic violence in response to a murder of a local schoolteacher, Karen Mitsoff, who was killed early Monday of this week by an ex-boyfriend who had been stalking her.

Miss Mitsoff's former boyfriend, Mr. Senet, reportedly broke into her apartment on March 10 and threatened to kill her and himself. Senet was charged with burglary and then released on a \$2,500 bond in a routine hearing.

This past Monday, 1 week after his arrest, he apparently broke into Miss Mitsoff's apartment and fatally shot her before killing himself. Commonwealth Attorney Kloch was quoted as saying:

This case shows that there are holes in the system. Somehow we failed to stop this. This case clearly illustrates that in many instances, potential threats to women are not addressed with enough urgency.

Let me explain just how urgent these threats to the safety of women and children are.

Every 12 seconds, a woman is beaten by a husband, boyfriend, or partner in the United States of America—every 12 seconds;

Over 4,000 women are killed every year by their abuser;

Every 6 minutes in our country, a woman is forcibly raped;

Severe repeated violence occurs in 1 out of every 14 marriages, with an average of 35 incidents before it is reported;

Roughly 1 million women are victims of domestic violence each year, and battering may be the most common cause of injury to women, more common than auto accidents, muggings, or rapes by a stranger.

According to the FBI, Mr. President, one out of every two women in America will be beaten at least once in the course of an intimate relationship. Let me repeat that. According to the FBI, one out of every two women in America will be beaten at least once in the course of an intimate relationship.

It is estimated that the new hotline, that we have shown and brought out to the floor of the Senate as often as we could over the last 2 weeks, will receive close to 10,000 calls a day.

The first day I came to the floor to talk about the hotline, I shared a story told to me by my wife, Sheila, while she was speaking in southern Minnesota 2 days before the hotline opened. I would like to tell the story again of a courageous woman in danger whose story illustrates how crucial the existence of a national domestic violence hotline will be in saving the lives of women and children in danger.

This woman had been living in New York with her abusive husband and a 5-month-old child. Her husband had moved to New York following their marriage, and he kept his wife and child very isolated there. The husband was very controlling and made it impossible for his wife to socialize, to make friends, or have a job. He checked on her all the time to make sure that she was at home with her baby.

In addition to beating her routinely and savagely, he took out a life insurance policy on her, so she lived in constant fear of being killed.

This woman told my wife, Sheila, that every time she opened the apartment door, she was sure someone would be on the other side with a shotgun.

Her husband had a one-time, out-of-town business deal. He left in the afternoon and planned on returning the following morning. After he left, she decided that it was her only chance to get away. Panicked and pressed for time, she called a local hotline number but found it was disconnected. She was devastated. She called the Legal Aid Society in New York City and was initially told that they could not help her.

Out of sheer desperation, she persisted with Legal Aid and was finally

given a local agency phone number. Calling the local agency, the woman informed them she wanted to return to Minnesota. They were able to access a computer and put her in touch with a battered woman's shelter in Minnesota in her hometown. She and her baby were on a plane the next morning before her husband got home.

Mr. President, this woman was lucky; she was able to obtain the information she needed. But how much better it would be if that hotline had been up and running to give her the information immediately. Unfortunately, some women might not have the whole day to track down information. I think this shows how crucial a national network, like the hotline, will be for keeping women and children safe, literally saving their lives.

So today, I ask everyone listening to honor the memory of Karen Mitsoff of Alexandria, VA, as well as all the other women who lose their lives every year at the hands of a husband or a boyfriend or a partner.

I also ask you to honor all of the women who have been hurt at the hands of someone with whom they have had an intimate relationship. Chances are you already know one of those women—a coworker, a sister, a mother, a daughter, or a friend.

I commend innovations like the national domestic violence hotline. I want to support more creative solutions to stopping this family violence. I want all of us to do that, Democrats and Republicans alike. But most important, today I want to remember Karen Mitsoff who lost her life on Monday, and remind everyone that these efforts to stop this violence in our homes must be ongoing.

Mr. President, once again, at the end of this 2-week period, I want to one more time talk about the hotline number. The toll free number of the national domestic violence hotline is 1-800-799-SAFE and 1-800-787-3224 for the hearing impaired.

Everyone has the right to be safe in their own home. Share the number today, those of you who are watching, and maybe you will help someone make themselves safe.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Mr. COATS). Under the previous order, the Senator from Utah, Senator HATCH, is recognized to speak for up to 20 minutes.

JUDICIAL SELECTION

Mr. HATCH. Mr. President, I rise to address a subject that I have discussed several times in the past few weeks, and that is the issue of judicial selection. As I said in those speeches, differences in judicial philosophy can have real and profound consequences for the safety of Americans in their neighborhoods, homes, and workplaces. Sound judging is every bit as much a part of the Federal anticrime effort as FBI and DEA agents and prosecutors.

It does the Nation little good to put more cops on the beat if judges put the criminals back on the street. And, I might add, the President overstates the number of police that the Federal Government is helping put on the street.

I see that the President has attempted this week to respond to my speeches through his subordinates. One argument, made by his former White House counsel, maintains that it is really the home State Senators who appoint judges. This argument is just another example of the President attempting to hide from the consequences of his decisions. The last time that I looked in the Constitution, it stated that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges." Presidents may look to individual Senators to recommend good nominees in each State, but the Constitution itself makes clear that the choice of judges is the President's responsibility and the President's alone.

I do agree with one thing that Lloyd Cutler said in his Washington Post op-ed. It sometimes is difficult to predict what nominees will be like once they ascend to the Federal bench. While the executive branch, as Mr. Cutler said, has "an extensive vetting process," we in the Senate do not. For the most part, a President's nominees usually are confirmed by the Senate. When the people elect a President, they put into office with him his judicial philosophy and the judges he will appoint. But perhaps the Senate does need to spend more resources vetting nominees. Perhaps the Senate should interview each and every judicial nominee as a matter of routine, if Lloyd Cutler is right.

Another argument made by President Clinton's current White House counsel, Jack Quinn, is that there are soft-on-crime decisions by judges appointed by Presidents Reagan and Bush. As I said on Monday, I do not agree with every decision by a Republican-appointed judge or disagree with every decision by a Democrat-appointed judge. Moreover, we all know that prosecutors and police sometimes go over the line, and that it is the job of state and federal judges to correct those mistakes. Unfortunately, sometimes those decisions will benefit criminals that we all know to be guilty.

But what we are talking about here are not a few isolated cases or incidents. We are talking about track records: about the fact that judges appointed by Democrat Presidents, and President Clinton in particular, generally will be softer-on-crime and will be more likely to follow an activist judicial philosophy than judges appointed by Republican Presidents. Just as President Johnson appointed Judge J. Skelly Wright to the D.C. Circuit, a notorious judicial activist, and President Carter appointed, among many others, Judge Stephan Reinhardt of the ninth circuit, a judge who is so activist

that the Supreme Court regularly overturns his decisions, so has President Clinton appointed judges such as Judges Baer and Beaty, Judges Michael and Calabresi, and Judges Sarokin and Barkett, whom I will discuss today.

The President seems to think that it is wrong to evaluate the decisions of these judges. "The point is that it is unfair to evaluate any judge on the basis of any single case," writes his counsel in the Wall Street Journal. I disagree. It is only by reading the opinions of these judges that we can make a determination of the kinds of men and women that President Clinton has chosen to send to the Federal bench. Let me also be clear that it is not the result of an individual case that is the problem. The problem with these Clinton judges is the way they reach their decisions—their willingness, perhaps even eagerness, to stretch the law, to expand criminal rights at the expense of the community, to seize on petty technicalities to release defendants, to find new constitutional rights where there were none before. Many of these judges are activists who simply cannot understand that their role as is to interpret the law, not to make it.

But the President's approach—that once a judge is on the bench, and you cannot read his or her opinions—is a convenient one. It is the only way that he can explain his decision to appoint Judge H. Lee Sarokin to the U.S. Court of Appeals for the Third Circuit and Judge Rosemary Barkett to the U.S. Court of Appeals for the Eleventh Circuit. These were judges with crystal-clear track records of being liberal, soft-on-crime activists, when President Clinton appointed them. These two judges, who sit on the second most powerful courts in the land, have displayed an undue and excessive sympathy for the criminals who are destroying our society and who are all too willing to impose their own moral beliefs onto the law and onto our communities.

I led the fight to oppose the confirmation of these two judges because their judicial records indicated that they would be activists who would legislate from the bench. Senators from both sides of the aisle joined me in that fight. I regret to conclude that we have been proven right in our predictions of their activism on the Federal bench.

Let us look at what Judge Sarokin has been up to since President Clinton chose to elevate him in 1994. The Senate confirmed his nomination 63-35—a pretty large vote against him—on October 4, 1994. I think that it is safe to say that no Republican President would have nominated a judge like Judge Sarokin, and that if the Republicans had control of the Senate in 1994, Judge Sarokin would never have been confirmed.

Let me tell the American people about the cases of William Henry Flamer and Billie Bailey, which were heard by the third circuit late last year. Delaware versus Flamer; Dela-

ware versus Bailey. This was a case involving two multiple murders in which Judge Sarokin voted to overturn a jury's imposition of the death penalty.

In the Flamer case, on a snowy February 7, 1979, at 8:00 a.m. in the morning, Arthur Smith, the 35-year old son of Alberta and Byard Smith, walked across the street to his parents' house in Delaware. He found them sprawled on the living room floor obviously murdered in cold blood. Both parents died of multiple stab wounds in the head and neck. The medical examiner counted 79 wounds on Mr. Smith's body and 66 wounds on Mrs. Smith's body.

Their car was stolen, a television was missing, chairs were overturned, bags of frozen food were strewn about, and Mr. Smith's pockets were turned inside out. The son—can you imagine what it must be like for a son to discover such violence to his parents in their own home—called the police.

Eyewitnesses indicated that William Henry Flamer, whose mother was Mrs. Smith's half-sister, might be the killer. Police went to his family's residence and found the missing television, frozen food similar to that strewn about the Smiths' home, and a bayonet with dried blood stains on the blade. When police arrested Flamer, they found blood on his fingernails and coat and fresh scratches on his neck and chest.

After he had been read his Miranda rights numerous times and after his arraignment, Flamer confessed. He told police that he and another man brought a knife, the bayonet, and a shotgun, and that he had told Mrs. Smith, his aunt, that his grandmother had experienced a stroke and was missing in order to gain entrance to the Smiths' home.

In early 1980, a jury convicted Flamer of two charges of intentionally causing the death of another person and two charges of felony murder. A jury then sentenced Flamer to death because of several aggravating sentencing factors, such as Flamer's prior criminal record, the age of his two victims, the frailty of his aunt Mrs. Smith, and his exploitation of his aunt and uncle's trust in order to gain entrance to their home.

Flamer had the opportunity to challenge both his conviction and his sentence on direct appeal. The Delaware Supreme Court rejected his appeal and the U.S. Supreme Court denied certiorari in his case twice. Flamer filed for post-conviction relief in State court, but his petitions were denied. Nevertheless, Flamer filed a habeas petition in Federal district court alleging a number of trial errors. Judge Joseph Farman of the U.S. District Court for the District of Delaware, who was appointed by President Reagan in 1985, dismissed the petition. Flamer appealed to the Third Circuit Court of Appeals.

The third circuit consolidated Flamer's appeal with that of Billie Bailey, another multiple murderer convicted by the Delaware state courts.

Bailey had been assigned to a work release facility in Wilmington, but he

escaped and then proceeded to rob a package store at gunpoint. He received a ride to Lambertson's Corner, 1½ miles away from the store. Bailey then entered the farmhouse of Gilbert Lambertson, who was 80 years old, and of his wife, Clara Lambertson, who was 73. Bailey shot Mr. Lambertson twice in the chest with his pistol and once in the head with the Lambertsons' shotgun. He shot Mrs. Lambertson in the shoulder with the pistol and in the abdomen and neck with the shotgun. Both Lambertsons died. Bailey fled from the scene but was spotted by a police helicopter. He shot at the helicopter, but was apprehended.

Bailey was convicted of murder and was sentenced by a jury to death. The jury found that two factors—that the defendant's conduct had resulted in the deaths of two persons where the deaths were a probable consequence of the defendant's conduct; and that the murders were outrageous or wantonly vile, horrible, or inhuman—and they in turn supported the imposition of death. Bailey appealed, but the Delaware Supreme Court affirmed the conviction and the sentence, and the U.S. Supreme Court denied certiorari.

Like Flamer, Bailey filed a writ of habeas corpus in Federal district court, claiming that the jury had considered improper factors when imposing the death sentence. Judge Roderick McKelvie, a Bush appointee, denied the writ.

On appeal before the entire third circuit sitting en banc, Flamer and Bailey argued that the imposition of the death penalty was unconstitutional because the juries had considered an invalid factor: whether the murders were wantonly vile, horrible, or inhuman. It is true that the Supreme Court had held that such a factor is so vague as to be unconstitutional. But in the case of *Zant v. Stephens* in 1983, 462 U.S. 862 (1983), the Supreme Court also held that so long as the jury's capital sentence was also based on other, legitimate considerations, then the death penalty is not unconstitutional.

This, of course, was precisely the case with both Flamer and Bailey. In both situations, the juries had found that other factors, such as Flamer's commission of the murder in the course of a robbery, also justified the death penalty. As a result, a majority of the third circuit affirmed the convictions.

Let me add that no one challenged the finding that either Flamer or Bailey committed the horrendous murders. No one showed that either jury was biased or had reached the wrong result. Instead, the defendants were using the writ to raise technical objections in the hopes of delaying the rightful execution of the death penalty. It is abuses of the writ such as these that lead the American people to believe that something is wrong with our courts. It is abuses like these that lead the American people to demand habeas corpus reform.

The American people's belief would only be confirmed if they read the Flamer and Bailey case, because Judge Sarokin was in dissent. Judge Sarokin believed that the defendants had received an unfair trial, even though they had both had the opportunity to fully appeal all the way to the U.S. Supreme Court. He argued that the judge's instructions and interrogatories asking the jury what factors they relied upon in reaching their decision had "shifted the neutral balance contemplated under the statute and with it, the scales of justice as well."

According to Judge Sarokin, State judges cannot ask juries why they imposed the death penalty, even though judges do this to ensure that the juries were unbiased. In Judge Sarokin's mind, for judges to ask jurors this commonsense question renders the whole process unconstitutional.

The eighth amendment says only that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted."

Further, Judge Sarokin argued that allowing juries to consider the invalid vile, horrible, and inhuman factor—and who can doubt that these murders were utterly heinous—so infected the juries' considerations as to render them unconstitutional. He reached this conclusion despite the Supreme Court's clear holding in *Zant* that consideration of one invalid factor does not make the whole decision unconstitutional.

By a 10 to 4 vote, the majority on the court reached the right result, because the Constitution guarantees a fair trial, not a perfect one. Allowing defendants to win reversals on technicalities even when no one disputes that the defendant is guilty and deserves the death penalty would truly undermine the public's faith in our criminal justice system. As the Supreme Court has said many times, and as the majority recognized in Flamer, a harmless error does not render a trial unconstitutional, and there was no showing in this case that any error had influenced the jury's verdict or caused the defendant's any prejudice.

If one needed any more confirmation that Judge Sarokin was wrong, one need only look to the epilogue of the Flamer and Bailey story. Both defendants appealed directly to the U.S. Supreme Court again. The Court refused to grant certiorari in either the Bailey or the Flamer cases, and the Court refused to stay their executions. Both men were executed in late January 1996. Certainly the U.S. Supreme Court thought little of Judge Sarokin's dissent. Unlike Judge Sarokin, the Justices of the Supreme Court thought enough was enough and that it was time to allow the State of Delaware to operate its own criminal justice system.

But Judge Sarokin was willing to overturn the considered judgments of the juries, of the Delaware Supreme Court, of the U.S. Supreme Court, of

two Federal district court judges, and of the majority of his colleagues, because the jury did not think about the death penalty the way he wanted them to, and because the judge asked the jury a question. Judge Sarokin believes that Federal judges have a roving mandate to interfere in the operation of the State criminal justice system, just because he found a technicality that no one showed had any influence on the outcome of the trial.

Judge Sarokin suffers from the same problem that Judges Beaty and Baer do—an inability to understand their role as judges. They have not been appointed as Federal judges to legislate from their benches or to act as philosopher-kings. If Judge Sarokin does not like the way that Delaware has chosen to operate its criminal justice system, then he should be running for Governor of the State—but the last place he should be imposing his policy views is from the Federal bench.

Of course, as I said earlier, judicial activism of this sort is not restricted solely to judges appointed by Democratic Presidents. In the Flamer case, Judge Timothy Lewis, who was appointed in the waning days of the Bush administration, also argued that the capital sentences should be overturned. Judge Lewis agreed with Judge Sarokin that the consideration of the invalid factor had an injurious effect on the defendant, even though no such influence on the verdict was shown, and that the judge's interrogatories prejudiced the jury. Judge Lewis also questioned why, quoting Justice Blackmun, "We should no longer tinker with the machinery of death." He called the Nation's system of capital punishment cluttered and confusing and ultimately questioned whether it comported with fundamental principles of liberty and due process.

While one Reagan judge, Judge Carol Mansmann, also joined Judge Lewis, it should be noted that the rest of the Reagan-Bush appointees, joined by one Carter judge, correctly upheld the imposition of the death penalty. The two judges appointed by President Clinton—Judges Sarokin and McKee—did not. I believe that Judges Lewis and Mansmann were wrong, just as Judge Sarokin was wrong. But I believe that their mistake is not representative of a pattern and practice of activism, as it is on the part of Judge Sarokin.

If there can be any more doubt about the activist character of Judge Sarokin, one can find proof in his other opinions. Although I do not have the time to discuss other decisions in detail, I would just note the case of *United States v. Baird* [63 F.3d 1213 (CA3 1995)].

In Baird, Judge Sarokin, dissenting, argued that administrative forfeiture of drug proceeds preclude criminals from being prosecuted under the double jeopardy clause. That case involved the seizure of a criminal's drug factory, drug stockpiles, and ill-gotten drug proceeds, in the amount of \$2,582. The

Drug Enforcement Administration carried out an administrative forfeiture of the drug proceeds.

Following the DEA's administrative forfeiture, Baird was then indicted for a variety of Federal drug and drug-related crimes. For Judge Sarokin, the administrative forfeiture was enough to opine that if Baird, the drug-producer, had owned the money, then the first proceeding was enough to bar the Government from prosecuting him for the drug crimes.

Judge Sarokin relied on a Supreme Court case, *Austin versus United States*, that did not even apply to the double jeopardy context. Judge Sarokin showed a willingness to stretch Supreme Court precedent beyond its proper bounds and to read the double jeopardy clause expansively at the expense of law enforcement, and to the benefit of illegal drugmakers and dealers. Incidentally, Baird never even claimed ownership of the money, making Judge Sarokin's result all the more strange.

In Judge Sarokin's strange universe, if the Government convicts a criminal of drug selling, it cannot require the criminal to forfeit the money made through his illegal activity; but if the Government first tries to forfeit the proceeds, then it cannot prosecute the drug seller. Again, Judge Sarokin has shown a willingness to interpret the Constitution expansively to defeat society's legitimate interest in combating crime and maintaining public health and safety.

Judge Sarokin, who I understand will soon be taking senior status, is perhaps second only to Judge Barkett in his continuation of an activist, soft-on-crime approach upon reaching the Federal bench. In 1994, by a vote of 61 to 37, the Senate confirmed Judge Barkett—a nominee that no Republican would have appointed to the Federal bench. I opposed her nomination because, time and again, Judge Barkett as a member of the Florida Supreme Court erroneously had favored lawbreakers and criminals over the interests of the police and of the community to enforce the law. The full record of my concerns is set forth in the March 22, 1994, CONGRESSIONAL RECORD. As I declared there, there were just too many cases, across too wide a range of subjects, where Judge Barkett had stepped beyond the line of responsible judging.

In particular, I warned that Judge Barkett should not be confirmed because of her unduly restrictive view of the fourth amendment that would hamstring the police, especially with regard to controlling drugs. I highlighted the case of *Bostick versus State*, a case involving cocaine trafficking, in which Judge Barkett adopted an across-the-board per se ban on bus passenger searches, even though Supreme Court precedent clearly called for an analysis of the search based on the particular circumstances present. The Supreme Court of the United States had to grant certiorari and reverse Judge Barkett's soft on crime decision.

I am sorry to say that Judge Barkett's misunderstanding of search and seizure law has only continued. Only now, thanks to President Clinton, her opinions apply to all prosecutions brought in Georgia and in Alabama as well as in Florida. Her ongoing willingness to raise groundless fourth amendment arguments to prevent our Nation from combating the damage that drugs are causing our society is evident in two recent opinions, *Merrett versus Moore* [Feb. 26, 1996], in which Judge Barkett dissented from denial of en banc review, and in *Chandler versus Miller*, [73 F.3d 1543 (CA11 1996)], in which Judge Barkett again dissented.

In *Merrett*, Florida law enforcement officials and the Florida Highway Patrol set up roadblocks on four Florida highways for the chief purpose of locating illegal drugs. On two successive days from 4 p.m. to 10 p.m., Florida police briefly stopped vehicles, checked for obvious safety defects, and examined drivers' licenses and vehicle registrations. While this examination was undertaken, the police used dogs to sniff the outside of each car for illegal drugs. If a dog alerted to the presence of drugs, the car was pulled out of line. As Judge Edmonson, a Reagan appointee, noted for the majority, these searches were minimal and the entire encounter between police and the motorist lasted only a few minutes. Police also moved traffic through without stopping cars when long backups developed.

Of the 2,100 vehicles that passed through the checkpoints and of the 1,300 vehicles stopped, there were few long delays, one car overheated, one minor accident occurred, the dogs scratched a few cars, and one person was bitten by a dog. Judge Edmonson, joined by Judge Birch, a Bush appointee, and Judge Hill, a senior judge appointed by President Ford, properly held that the roadblocks were reasonable under the fourth amendment's search and seizure clause. The intrusion of the search was minimal and was far outweighed by the State's interest in enforcing its traffic laws and in preventing the flow of drugs into our Nation. Indeed, recognizing these facts, the Supreme Court has approved reasonable roadblock searches before for the purpose of checking sobriety, [see *Michigan Department of State Police v. Sitz* [496 U.S. 444 (1990)], and for border patrols [see *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976)].

But the persuasive reasoning of Judge Edmonson and his colleagues, the decisions of the Supreme Court, and the need to stem the flow of destructive drugs into our society were not enough for Judge Barkett. Judge Barkett voted to grant review of the decision before the entire eleventh circuit, and she wrote a dissent joined by Judges Kravitch and Hatchett, both Carter appointees, when she lost. Fortunately, the six Reagan-Bush appointees, the one Ford appointee, and one Carter appointee voted to keep Judge Edmonson's ruling in place.

Continuing her unduly restrictive view of the fourth amendment's appli-

cation to drug searches, Judge Barkett declared:

In my view, permitting law enforcement to stop every vehicle at a roadblock based on the mere possibility that one or more of the vehicles passing through will contain illegal drugs—evidence of a crime completely unrelated to highway safety—is * * * intolerable and unreasonable.

I would have thought that drug use would be a great threat to highway safety, and as I have noted, the Supreme Court has already held that sobriety checkpoints—alcohol is, after all, a drug—are constitutional.

Judge Barkett and her dissenting colleagues also should examine the text of the fourth amendment, which she never even quoted in her opinion. The fourth amendment states that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." Unlike the judges in the majority, Judge Barkett never asked whether the roadblock searches were reasonable. Instead, she sought vainly to say that using roadblocks to search for drugs was patently illegal. But most judges of the courts of appeals, most Justices of the Supreme Court, and, I think, most of the American people, would agree that the minimal search involved here—a stop for a few minutes combined with a sniff by a dog—is certainly reasonable, especially when balanced against the need to combat the influx of destructive drugs in our society.

Judge Barkett also continues to remain suspicious of the efforts of police to defend our communities against crime and against drugs. In *Merrett*, she declared that she believed that Florida's claim that the roadblock was also used to check for traffic violations was only a pretext for an illegal search for drugs. In Judge Barkett's mind, this raised the fundamental concern that officers will attempt to evade the requirements of the fourth amendment by using a traffic stop to detain someone for a purpose that would not lawfully support a detention.

I believe that our police officers are good people who are laying their lives on the line to protect our lives, our families, and our communities. Like Judge Baer, Judge Barkett sees our law enforcement officers as using any pretext they can to conduct illegal searches. I see them asking for a minimal amount of time to ensure that drugs are not being transported for distribution to our children and to our poor. Judges like Judge Barkett and Judge Baer are all too willing to place legal technicalities as obstacles before our law enforcement officers, who are only trying to take criminals off of the street.

Furthermore, as the majority in the original case noted, and as the Supreme Court has made clear before, roadblocks are often more restrictive of

fourth amendment values because they are random. They do not rely upon the discretion of the police officer to choose whom to stop and search—all are treated the same. Roadblocks, in the Supreme Court's words, avoid the standardless and unconstrained discretion present in individual stops. [*Delaware v. Prouse*, 440 U.S. 648, 661 (1979).]

I presume that Judge Barkett also would find fault with the metal detectors at airports and government buildings, or stops at the border, or customs searches, because even though they are all minimal intrusions into an individual's privacy, they subject everyone to a search without a warrant. Fortunately, Judge Barkett's feelings on this point conflict with Supreme Court precedent, and even though Judge Barkett seems to have always had trouble following the precedent of the Supreme Court, most other Federal judges do not, including the Republican-appointed judges on the eleventh circuit.

Merrett is not the only case in which Judge Barkett has been willing to place obstacles before our Nation's war on drugs, a war in which the administration has been AWOL—absent without leadership. In *Chandler versus Miller*, a January 1996 case, Judge Barkett again dissented in a case involving drugs and search and seizure. Georgia passed a statute requiring drug testing of political candidates and nominees for State offices. In cases such as *National Treasury Employees v. Von Raab* [489 U.S. 656 (1989)], *Skinner v. Railway Labor Executives' Association* [489 U.S. 602 (1989)], and last Term's *Vernonia School District v. Acton* [115 S.Ct. 2386 (1995)], the Supreme Court has declared that courts must balance the individual's privacy expectations against the Government's special interests in preventing drug use in that area.

In these cases, the Supreme Court has upheld drug testing of drug agents, of railway workers, and of high school athletes. For Judge Barkett, however, these were all narrow exceptions to a general rule in her own mind that no one should be subject to drug testing, including candidates for high public office. In her mind, controlling drug use among the highest public officials involves no immediate or direct threat to public safety, and that there is no showing that waiting to obtain a warrant based on individualized suspicion would cause any dire consequences. In Judge Barkett's words, "[t]here is nothing so special or immediate about the generalized governmental interests involved here to as to warrant suspension" of the warrant requirement.

But as the majority correctly held, the Government's interest in preventing drug use among its highest public officials is a powerful one. In the majority's words, the people of a State place their most valuable possessions, their liberty, their safety, the economic well-being, ultimate responsibility for law enforcement, in the hands of their elected and appointed of-

ficials, and the nature of high public office demands the highest levels of honesty, clear-sightedness, and clear-thinking. We permit drug testing of drug agents; we permit drug testing of railroad engineers; we even permit drug testing of high school athletes. Judge Barkett would have us believe that the damage that would be caused by drug use in these situations is far greater than that caused by drug use by legislators, by executive branch officials, and by judges. Judge Barkett's reasoning strikes me as unreasonable, and her efforts again appear designed to restrict the tools that our society can use to combat drug use, even in the face of contrary Supreme Court precedent.

Perhaps Judge Barkett's position on the fourth amendment in *Chandler* was a reasonable one. But no one can claim that her further statements in that case had any grounding in Federal constitutional or statutory law. Not only did Judge Barkett argue that the Georgia statute was an illegal search, she also argued that it was a violation of the candidates' first amendment rights.

I am not making this up.

If you don't believe me, Mr. President, listen to her own words. "This statute is neither neutral nor procedural, but, * * * attempts to ensure that only candidates with a certain point of view qualify for public office." Judge Barkett interprets the drug testing requirement as an attempt to "ban[] from positions of political power not only those candidates who might disagree with the current policy criminalizing drug use, but also those who challenge the intrusive governmental means to detect such use among its citizenry."

Such reasoning reeks of the very worst of the moral relativism that characterizes liberal judicial activism. Judge Barkett appears to believe that if one is in favor of drug legalization or against drug testing, why, one must be a drug user. In fact, Judge Barkett appears to believe that drug use is an ideology and that drug testing is, in her words, "a content-based restriction on free expression." If that is so, then does Judge Barkett believe that any effort to prevent drug use is an attempt to suppress the first amendment rights of drug users, and that drug use itself is a form of expression?

Mr. President, this is the 1990's, not the 1960's; America has not been transformed into a Woodstock from sea to shining sea. The first amendment does not protect illegal, harmful conduct, and it does not permit people to plan and encourage illegal conduct. Although this administration has been absent without leadership in the drug area, the American people and the Congress are not. We are determined to prevent drugs from ruining the lives of our young people, and the tolerant attitude of some of the Clinton administration's nominees, who equate drug use with protected first amendment expression, will not stand in our way.

Why is this so important? As a practical matter, the Senate gives each president deference in confirming judicial candidates. A Republican President would not nominate the same judges that a Democrat would, and vice versa. The President has been elected by the whole country and, while this President has been unable to put all of his choices on the bench, there are hundreds of judgeships to fill in order to keep the justice system functioning.

Indicia of judicial activism or a soft-on-crime outlook are not always present in a nominee's record. But, in the cases of Judge Sarokin and Barkett, there were crystal clear signs of their activist mindsets. Yet the President appointed these two judges and pushed hard successfully to get them through the Judiciary Committee and the Senate, despite opposition, largely on this side of the aisle.

We can now view the products of the President's choices. We do not just have two trial judges, Judges Baer and Beaty, who have trouble understanding the role of the Federal courts in law enforcement and in the war on crime. We now can see that President Clinton has sent liberal activists to the Federal appellate courts, where their decisions bind millions of Americans.

Judge Sarokin's opinions, if they garner a majority, are the law in Pennsylvania, New Jersey, and Delaware. Judge Barkett's opinions, if they garner a majority, are the law in Florida, Georgia, and Alabama. Criminals whom they would set free on technicalities can strike again, anywhere, anytime. This makes all Americans potential victims of these judges and their soft-on-crime outlook.

The general judicial philosophy of nominees to the Federal bench reflects the judicial philosophy of the person occupying the Oval Office. We, in Congress, have sought to restore and strengthen our Nation's war on crime and on drugs and to guarantee the safety of Americans in their streets, homes, and workplaces. For all of the President's tough-on-crime talk, his judicial nominations too often elevate the rights of the criminal above the rights of the law-abiding citizen, and undermine safety in our streets, in our homes, and in our workplaces.

THE PRESIDING OFFICER. Under the previous order the Chair now recognizes the Senator from North Carolina to speak for up to 10 minutes as in morning business.

Mr. FAIRCLOTH. Mr. President, I thank the Chair.

(The remarks of Mr. FAIRCLOTH pertaining to the submission of Senate Resolution 237 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

PRIVILEGE OF THE FLOOR

Mr. GLENN. Mr. President, I ask unanimous consent that Allegra Cangelosi and Patricia Cicero be permitted privileges of the floor while I introduce this legislation.