The Uruguay round provides negotiated rules to remove unnecessary impediments that lead to disputes. This would not be adding a layer of bureaucracy to manage trade, but simply an informal discussion group to keep lines of communication open. As the final piece of the trade puzzle, the two governments could set up a deregulation working group. Deregulation is essential to opening Japan's market, but it also constitutes the greatest threat to Japan's bureaucracy, since it would weaken the bureaucracy's power over its domestic constituencies. The fact of the Hiraiwa Commission report demonstrates the size of the obstacle. What we must find is a way to empower Hosokawa to deregulate by giving him two arguments: The Americans want it, and it is good for Japan. We could do this by setting up a deregulation working group. Deregulation is an essential step towards open, logical, transparent, with ample scope for non-official input and maximum publicity. This satisfies the Americans want it criterion. The group could build on the Hiraiwa Commission's study regulation in both countries and come up with ideas that would benefit Japan. This satisfies the it's good for Japan criterion.

There would be no formal mechanism for implementing the Commission's recommendations. If these were binding, I doubt either bureaucracy, United States or Japanese, would agree to participate. However, assuming Hosokawa really is committed to deregulation, the Commission could give him a leg up on the bureaucrats.

Second, beyond trade, we need to look for high profile cooperative efforts in areas of strategic importance to us and the Japanese. The areas specified in the Framework Agreement—environment, technology, development of human resources, population, and AIDS—although important, do not go far enough. We must work together on such topics as human rights in China, North Korea proliferation, Russian reform, Middle East oil, and reform of the international economic system. In this way, we can build momentum in our relationship and establish the trust so vital to our strategic interests.

The United States has a major stake in the historic transformation underway in Japan. For half a century, the United States has borne the responsibility for making the international system work, for creating a benign international environment in which America and Americans can prosper. We should not shoulder that responsibility alone, but neither can we cast it off.

That responsibility now requires intelligent, sensitive, bilateral trade policy that works in synch with the ongoing transformation of Japan's economy and politics. Which ever results that conform to both our interests.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Mr. MATTHEWS). Without objection, it is so ordered.

NOMINATION OF CHIEF JUSTICE ROSEMARY BARKETT

Mr. HATCH. Mr. President, upon review of her judicial record and of her testimony before the Judiciary Committee, I have decided that I must oppose the nomination of Florida Chief Justice Rosemary Barkett to be a judge of the U.S. Court of Appeals for the Eleventh Circuit. I do so with regret because I like Chief Justice Barkett, and I consider her to be a fine person. But, I do so with the firm view that her record establishes that she will substitute her own policy views for the written law and take too soft an approach to criminal law enforcement.

In reaching this conclusion, I stress that no judicial nominee needs to agree with my reading of the law, or any other Senator's reading, in all or nearly all cases. But, there are just too many cases, across too wide a range of subjects, where I believe this nominee stepped well past the line of responsible judging. I and other Senators inquired about many of these cases at her hearing before the Judiciary Committee. Incidentally, I notified Chief Justice Barkett in advance that these cases that would be the subject of inquiry. I was not reassured by her testimony. Indeed, Chief Justice Barkett herself ultimately admitted that she overreached or was careless in a number of important opinions.

For example, in her dissent in University of Miami versus Echavez, Chief Justice Barkett voted to strike down statutory caps on noneconomic damages in medical malpractice cases. In addition to a variety of State law grounds, her dissent also relied upon the Federal equal protection clause. Without citing any Federal precedent, she asserted that "it is not too late to see how cutting is the most seriously injured medical malpractice victims for less than full recovery bears any rational relationship to the Legislature's stated goal of alleviating the financial crisis in the medical liability insurance industry. In fact, the rational relationship between the means and the goal is self-
evident and was clearly spelled out by the legislature. One might well disagree with caps on noneconomic damages as a policy matter. But, Chief Justice Justice Barkett’s opinions—writings to which I refer—countless evidences of some process grounds and her inclusion of the Federal due process clause was “careless”. Now, I can accept that, at occasion, a sitting judge may wish to phrase an opinion differently, in hindsight, or even believe that he or she got an opinion wrong. But tossing into her opinion the Federal equal protection clause and the Federal due process clause, on occasions where they very clearly do not belong, raises concerns that I do not find assuaged by testimony acknowledging this was erroneous. These two clauses are among the most powerful tools a judge can use, if so inclined, to legislate from the bench. In the case of the equal protection clause, virtually every law classifies people into at least two classes on some basis. Congress might enact limits on medical or product liability, which are subject to equal protection analysis as a component of the due process clause of the fifth amendment. States or Congress may seek to remove recipients from welfare rolls after a time limit of 2 years. A reliance on Federal equal protection in reviewing these laws would lead to their erroneous invalidation. In the case of the due process clause, there is a tendency by some judges and commentators to read almost anything into it. This is all the more troubling because the misuse of these two clauses is not subject to limiting principles of judges, but only to the whim of the judge. There will be many cases of first impression before the eleventh circuit. There will also be many times when precedents must be construed, and they may be construed broadly or narrowly. Most appellate decisions are not reviewed by the Supreme Court. These errors, then, are not merely technical or academic. My concern about the nominee’s approach to judging is heightened by other cases. For example, in a redistricting case (in which the Supreme Court of Florida versus Zrillic, the nominee again relied on the rational basis standard under the Federal equal protection clause—as well as on a variety of State law grounds—in striking down a statute. In her opinion, she took the remarkable position that “underinclusive or overinclusive classifications fail to meet even the minimal standards of the rational basis test.” This distortion of rational basis review into something akin to strict scrutiny clearly flies in the face of equal protection principles set forth in nearly 50 years of U.S. Supreme Court precedent. A reliance on reliance on the Federal equal protection clause in these two cases is all the more striking to me in light of her partial dissent in Foster versus State. There, in seeking to rely on a theory of statistical racial discrimination in a challenge to the death penalty, she expressly acknowledged that the Federal equal protection clause was unavailable to her in light of a Supreme Court decision, McCleskey versus Kemp, squarely rejecting her view under the U.S. Constitution. Accordingly, in her Foster opinion she only relied on the Florida equal protection clause. Yet, she did not recognize the error of relying on the Federal Constitution when she wrote her opinions in Echarte and Zrillic. Her failure to appreciate in these two opinions that Supreme Court precedent precludes such a position under the U.S. Constitution deeply troubles me. Supreme Court precedent governs lower courts not only when the claim presented is identical to that previously rejected by the Supreme Court but also when the basic doctrinal principles enunciated by the Supreme Court are applicable to a case. The failure to appreciate this opens the door to judicial activism—a door, I regret to say, I believe this nominee has repeatedly walked through. I also find Chief Justice Justice Barkett’s reliance on Federal substantive due process very troubling. In State versus Saiz, she wrote an opinion holding that a State law criminalizing the possession of embossing machines capable of counterfeiting credit cards “violated substantive due process under the Fourteenth Amendment to the United States Constitution.” Briefly, just say here, this expansive, substantive use of the due process clause is inapplicable under Supreme Court precedent. The nominee testified that she was really relying on State due process grounds and her inclusion of the Federal due process clause was “careless”. At her hearing, Justice Justice Barkett recognized that this opinion gave a clear appearance of partiality, as it expressed a preference for a party based on who the party was rather than the party’s merits. She later stated that she wished she had written her opinion differently. On an occasional lapse, I am willing to give the benefit of the doubt to a nominee. But there are just too many instances in Justice Justice Barkett’s judicial record—the principal basis for evaluating her nomination—of overreaching, and on very significant issues, to leave it uncorrected by elevating her to the eleventh circuit. There are many other cases that concern me. For example, in Stall versus State, Chief Justice Justice Barkett joined a dissent striking down a State obscenity statute on State law grounds. She also wrote separately in an opinion that, again, is sweeping and overbroad. There are several problems with this dissent. First, her statement that, “A basic legal problem with the criminalization of obscenity is that it cannot be defined” is flatly contradicted by the U.S. Supreme Court’s landmark opinion in Miller versus California (413 U.S. 15 (1973)), which Chief Justice Justice Barkett does not even acknowledge, much less discuss. Second, she sweepingly claims that an obscenity law such as the one in Florida violates “the substantive and due process clause. This is done by a subjective standard in our society”—not, I might add, a statement limited to state law principles, and, again, contradicted by the Miller decision. Third, Chief Justice Justice Barkett’s opinion mischaracterizes the Florida law in the case: That law does not turn on the “subjective” view of a handful of law enforcement people and jurors or judges, as she incorrectly suggests. The Florida law incorporates the standard set forth by the U.S. Supreme Court in Miller. The law bans materials that, judged by contemporary community standards, appeal to the prurient interest, that depict or describe, in a patently offensive way, specifically defined sexual conduct, and that lack serious literary, artistic, political, or scientific value. Thus, the role of jurors or judges under this law would not be to make their own “subjective definition” of what is obscene, but rather to discern and apply existing community standards. Incidentally, while I am pleased that she voted to uphold a Florida child pornography statute in a different case, I make two observations. First, this does not mitigate her sweeping views about the more general subject of obscenity. Second, contrary to her testimony, the child pornography statute is a different statute from the one she voted to strike down in Stall. I have all of these concerns, and have yet to reach the issue of criminal law enforcement generally and the issue of the death penalty. There is much to say about the last subject. With respect to criminal law issues aside from the death penalty, I believe that the nominee has too often erroneously come down on the side of lawbreakers and against police officers and law enforcement. She has exhibited an unduly restrictive view of the Fourth Amendment that would ham-
string the police, especially with regard to controlling drugs.

[See, e.g., Bostick v. State, 554 So. 2d 1153 (Fla. 1989); rev'd, 111 S. Ct. 2362 (1991); on remand, 583 So. 2d 494 (Fla. 1990); State v. Riley, 511 So. 2d 362 (Fla. 1987); rev'd, 488 U.S. 445 (1989), on remand, 549 So. 2d 673 (Fla. 1989); Cross v. State, 560 So. 2d 235 (Fla. 1990); Supreme Court of Florida, Dec. 9, 1993.]

For example, in Bostick, a case involving cocaine trafficking, Justice Barkett adopted an across-the-board, per se ban on passenger searches on interstate buses even though Supreme Court precedent clearly called for an analysis of a search's legality based on all of the particular circumstances of the search. The U.S. Supreme Court reversed her.

The U.S. Supreme Court also reversed her in the Riley case, where her misapplication of precedent would have led to dismissal of charges against criminals growing marijuana. In yet another drug case, the Court criticized her overbroad reading of precedent.

In her dissent in a case called Cross, Justice Barkett refused to credit the testimony of police officers that they had seen cocaine packaged in the same peculiar way on hundreds of occasions in their combined 20 years of law enforcement. In so doing, she ignored Florida precedent cited by the majority that provided that the observation of an experienced policeman of circumstances associated with drugs could provide probable cause for an arrest.

In another dissent, she ignored settled principles enunciated in U.S. Supreme Court precedent in finding that someone who was growing marijuana in his backyard had his fourth amendment rights violated when police, acting on a tip, looked over a 6-foot fence, spotted the marijuana plants and then obtained a search warrant. Rather than inquiring whether the defendant had an expectation of privacy that was objectively reasonable, Chief Justice Barkett simply displayed her personal opinion, unconcerned with what could be considered as overly intrusive law enforcement.

Justice Barkett has also written opinions striking down narrowly drawn laws that ban lottering for the purpose of prostitution and drug dealing. These opinions are badly flawed and misapply precedent. Moreover, they seriously disable communities from preventing harmful crime.

In my view, there are too many other instances where she unjustifiably construed criminal statutes in favor of criminals.

[See, e.g., State v. Bivona, 493 So. 2d 469 (Fla. DCA 1986); rev'd, 496 So. 2d 130 (Fla. 1986); Gugman v. State, 616 So. 2d 17 (Fla. 1993).]

With regard to the death penalty, I appreciate that the nominee has voted to uphold the death penalty a number of times. I would expect as much in a State with a lawful death penalty and, unfortunately, a great deal of violent crime. But as I stated at Justice Barkett's hearing, a proper inquiry into a nominee's judicial outlook on the death penalty is not engendered merely by noting that she concurred in, or merely stated that she concurred in, the death penalty in a number of cases, where even the most activist of judges cannot avoid its imposition. If a nominee exhibits a clear tendency to strain constitutional law for unconvincing escapes from the imposition of the death penalty in cases where that penalty is appropriate, then that raises concerns in my mind about the nominee's fidelity to the law, no matter how many times the nominee may have upheld the death penalty in other cases. From my review of her record, I have concluded that Justice Barkett clearly exhibits such a tendency.

Let me further note at this point that one of Justice Barkett's dissenting opinions would render the death penalty virtually unenforceable, unless imposed on the basis of racial quotas. Her particular ruling, in a case where the State, had it been the law of Florida in 1987, had become a principal weapon in the anti-death penalty movement's arsenal.

Overall, I believe that Justice Barkett, in reviewing death sentences, views aggravating circumstances too narrowly; construes mitigating circumstances too broadly; creates unjustified categorical exclusions from death penalty eligibility; subjects the death penalty to racial statistical analysis that would paralyze its implementation; and creates procedural anomolies.

Let me mention just two of the many cases that concern me. Dougan versus State is a 1992 Florida Supreme Court case.

Dougan was the leader of a group that called itself the Black Liberation Army and that, according to the trial judge, had as its "apparent sole purpose *** to indiscriminately kill white people and thus start a revolution and a race war." One evening in 1974, he and four other members of his group, armed with a pistol and a knife, went in search of victims. They picked up a white hitchhiker, Steven Orlando, drove him to an isolated trash dump, stabbed him repeatedly, and threw him to the ground. As Orlando writhed in pain and begged for his life, Dougan put his foot on Orlando's head and shot him twice—once in the chest and once in the ear—killing him instantly. Subsequent to the murder, Dougan made several tape recordings bragging about the murder, and mailed them to the victim's mother as well as to the media. The following excerpt from one of the tapes aptly illustrates the content:

"He was stabbed in the back. In the chest and the stomach, ah, it was beautiful. You should have seen it. Ah, I enjoyed every minute of it. I loved watching the blood gush from his veins."

The Florida Supreme Court upheld the death penalty for Dougan. Justice Barkett and another Justice joined a remarkable and very disturbing dissent by Justice McDonald in which she seemed to reduce the death penalty to life imprisonment, with eligibility for parole in 25 years.

I rarely fault a nominee about an opinion the nominee has joined rather than written. And I do not hold a nominee to every word or phrase in an opinion he or she joins. There is an outlook which pervades this dissenting opinion, however, which is so striking and disturbing that I believe it is important to consider it in evaluating this nomination. This is especially so in light of the fact that in many other cases Justice Barkett has written separately, or when her other opinion had not suited her.

Normally, I would summarize this dissent, but I do not want anyone listening to this nomination to do that for me. Accordingly, I am going to read the following excerpt from it:

"This case is not simply a homicide case, it is also a social awareness case. Wrongly, but rightly in the eyes of Dougan, this killing was part of a social movement. He was effectuated to focus attention on a chronic and pervasive illness of racial discrimination and of hurt, sorrow, and rejection. Throughout Dougan's life his resentment to bias and prejudice festered. His impatience for change, for understanding, for reconciliation matured to taking the illegal and brutal action of murder. His frustrations, his anger, and his obsession of injustice..."

"[Dougan's] emotions were parallel to that of a spouse disenchanted with marriage, full of discord and disharmony which, because of frustration or rejection, leads to an attempt to undermine and upend a marriage involving husbands and wives or lovers, yet the emotion of that hate-love circumstance is somewhat akin to those which existed in this case."

"Such a sentence reduction should aid in an understanding and at least a partial reconciliation of the wounds arising from discordant racial relations that have permeated our society. To a large extent, it was this disease of racial bias and discrimination that infected an otherwise honorable person and contributed to the perpetuation of the most horrible of crimes. An approval of the death penalty would be another rather than heal those wounds still affecting a large segment of our society."

"This opinion reeks of a moral relativism and excuse-making that I find shocking and unacceptable. As much as I personally like Chief Justice Barkett, I find it disturbing that President Clinton would nominate someone to a judgeship who applied these views to judicial decisions."
In the October 11, 1992, Sunshine magazine, the following reactions to this Douglas dissent are quoted:

"How can they compare a cold-blooded, premeditated, vicious crime that a non-violent, non-racist individual committed by racial hate and equate that to the emotional circumstances in domestic murders?" asks prosecutor Chuck Morton, himself a black man, after rereading the Douglas case.

Add Tallahassee prosecutor Ray Markesy:

"To say that this white victim was a sacrificial lamb and call it a social awareness case--that's scary.

The Douglas majority had this to say in response to the dissent that Justice Barkett joined:

We disagree with the dissent that this pitiless murder should be equated with the emotional circumstances often existent in homicides among spouses. While Douglas may have deluded himself into thinking murder justified, there are certain rules by which every civilized society must live. One of these rules must be that no one may take the life of another indiscriminately, regardless of what that person may perceive as a justification.

Our views must be neutral and objective. This Court recently upheld the death penalty in the indiscriminate killing of two blacks by a white defendant. The circumstances of this case were far more extreme. To hold that death is disproportionate here would lead to the conclusion that the person who put the bomb in the airplane that exploded over Lockerbie, Scotland, or any other terrorist killer should not be sentenced to death if the crimes were motivated by deep-seated philosophical or religious justifications.

Let me explain why the general attitude and outlook adopted by Justice Barkett in that dissent concern me so much. The approach taken in that dissent is certainly applicable to others besides Douglas, including criminals of all races. Let me note that we have many cases in our country of racially motivated, disgusting, violent crimes against racial minorities. I do not view the perpetrators of such violence as worthy of a less severe punishment on account of their backgrounds or personal histories either.

If a person of any race, ethnic background, or social class committing violent or other crimes comes to believe that the judicial system views past mistreatment or discrimination against them as mitigating the seriousness of the crimes they commit or the penalties they face, I believe you undermine the principle of neutral justice and seriously reduce the deterrent value of the law. You create, frankly, an environment or atmosphere of permissiveness if those kinds of reasons can be used to justify lesser sentences. And I am not only talking about murder cases, such as the recent Colin Ferguson case on a Long Island commuter train. I mean other crimes as well, as assault, robbery, carjackings.

Before Senator cast their votes on this nominee, they should read the opinions in this Douglas case, along with any other opinions they deem relevant. Mr. President, I ask unanimous consent that a copy of the Douglas case be included in the RECORD following my remarks.

The PRESIDING OFFICER Without objection, it is so ordered. (See exhibit 1.)

Mr. HATCH. In another case, LeCroy v. State [533 So.2d 750 (Fla. 1988)], the Florida Supreme Court, by a vote of six to one, affirmed a death sentence for two brutal first-degree murders by LeCroy, who was 17 years old and 10 months old when he committed the murders. The court noted, among other things that the sentencing judge gave great weight to LeCroy's youth but found him mentally and emotionally mature. It also noted that Florida statutes clearly provided for some decades that 17-year-olds charged with capital crimes should be punished as adults. Construing U.S. Supreme Court precedent, it ruled that there was no constitutional bar to the imposition of the death penalty on those who were 17 at the time of the capital offense.

In her lone dissent, Justice Barkett concluded that there is an eighth amendment precedent to the contrary, is tremendously significant for what it says about a nominee's legal outlook in a very important area of law. And it gives rise to doubts about whether the nominee will properly apply that Supreme Court precedent, especially in light of other opinions that give cause for the same concern in other contexts. A record of search and seizure opinions, improperly hamstringing the police in significant ways—especially in the war on drugs—has an importance beyond the mere number of these cases. An opinion, like her partial dissent in Foster, that would paralyze enforcement of the death penalty counts more than scores of routine death penalty cases. Joiner in an opinion like the Douglas dissent speaks volumes about a nominee's outlook on crime and personal responsibility.

I could go on and on, but this leads me to my third point:

The concerns about this nominee arise not only from much of what I have said, but from the nomination as a whole. The concept of treating them as adults when they commit such crimes, then the substitution of a judge's personal views for the legislature's enactment is wrong. Not surprisingly, the U.S. Supreme Court later confirmed that it was the majority in LeCroy, rather than Justice Barkett, who had correctly read the Constitution. (See Stanford versus Kentucky.)

I have many other concerns about this nominee. For example, her openness to pervasive quotas—and many other opinions of hers that trouble me. These concerns are outlined in some detail in three memoranda on Justice Barkett's cases that I would like to attach to my remarks. Mr. President, I request unanimous consent that these three memoranda be included in the RECORD following my remarks.

The PRESIDING OFFICER Without objection, it is so ordered. (See exhibit 2.)

Mr. HATCH. Some may claim that those of us who have concerns over this nomination have focused on a relatively small number of cases and that this is not an appropriate way to evaluate the nominee. I have a three-part response to this concern.

First, I believe that the sheer number of cases of any appellate court are, frankly, routine, and I would expect that virtually all judges would rule unobjectionably in most cases before them.

Second, and more importantly, if a small number of cases gives rise to large concerns, it is appropriate to base a vote on those cases. For example, the flagrant misuse of the Federal equal protection clause, and the Federal court process clause may have occurred in just a handful of cases. But these two constitutional provisions are far too powerful, far too open to picking and choosing among democratically enacted statutes based on the policy preferences of a judge, for me to be much comforted by unobjectionable decisions in numerous other, routine cases. A single dissent that would sweepingly invalidate obsession laws, notwithstanding clear U.S. Supreme Court precedent to the contrary, is tremendously significant for what it says about a nominee's legal outlook in a very important area of law. And it gives rise to doubts about whether the nominee will properly apply that Supreme Court precedent, especially in light of other opinions that give cause for the same concern in other contexts. A record of search and seizure opinions, improperly hamstringing the police in significant ways—especially in the war on drugs—has an importance beyond the mere number of these cases. An opinion, like her partial dissent in Foster, that would paralyze enforcement of the death penalty counts more than scores of routine death penalty cases. Joiner in an opinion like the Douglas dissent speaks volumes about a nominee's outlook on crime and personal responsibility.

I urged my colleagues to review the cases and the hearing testimony for themselves. I believe they will reach the same conclusion.

EXHIBIT 1

[Supreme Court of Florida, Jan. 2, 1992, preserving D.C.

JACOB JOHN DOUGAN, APPELLANT, VERSUS
STATE OF FLORIDA, APPELLEE, NO. 7756

Defendant was convicted in the Circuit Court, Duval County, R. Hudson Olliff, J., of homicide. Defendant and appellate counsel, The JACOB JOHN DOUGAN, APPELLANT, VERSUS
STATE OF FLORIDA, APPELLEE, NO. 7756

Defendant was convicted in the Circuit Court, Duval County, R. Hudson Olliff, J., of homicide. Defendant and appellate counsel, The Circuit Court, 363 So.2d 1266, affirmed, and later, 362 So.2d 677 vacated sentence and remanded for resentencing. On remand, defendant was
aggravating factors sufficient to warrant imposition of death penalty had been established, and that murder was heinous, atrocious and cruel, and that they might be seen and/or heard in the community, and to the media. (Per Curiam opinion of three Justices with one Justice concurring in the result.) West's F.S.A. §921.141(2).

8. Homicide £357(3, 7, 11)

Aggravating factors sufficient to warrant imposition of death penalty had been established, and that murder was heinous, atrocious and cruel, and that they might be seen and/or heard in the community, and to the media. (Per Curiam opinion of three Justices with one Justice concurring in the result.)
March 22, 1994

CONGRESSIONAL RECORD—SENATE

5825

guage of the statute. During deliberations, however, the jury asked the court if it could recommend life imprisonment "in the event that its consideration of the aggravating circumstances exist to justify a death sentence and that sufficient mitigating circumstances do not exist." After conferring with the court, the court told the jury to answer each question on the recommendation form "as you deem appropriate from the law and the evidence." Dougan now argues that an aggravator cannot be statutorily included where life imprisonment is the only recommended sentence regardless of its findings as to aggravating and mitigating circumstances.

[2] A jury may, in its discretion, decide to grant a "jury pardon" in deciding a defendant's guilt. E.g., Amado v. State, 585 So. 2d 292 (Fla. 1991). On the other hand, "where discretion is afforded ... on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action." Gregy v. Georgia, 426 U.S. 153 (1976). It is clear that the United States Supreme Court, in Furman v. Georgia, 428 U.S. 770, 96 S.Ct. 1037, 48 L.Ed.2d 113 (1976), held that the penalty for murder should be imposed by a jury and that the penalty should not be imposed unless the jury finds the presence of aggravating circumstances. Stano v. State, 547 So. 2d 622 (Fla. 1989), cert. denied, 493 U.S. 1038, 110 S.Ct. 709, 108 L.Ed.2d 775 (1990).

The Court in Strickland v. Washington, 466 U.S. 668 (1984), stated that aggravating circumstances exist to justify a death sentence and that sufficient mitigating circumstances do not exist. In Death With Due Process, 126 S.W.2d 397, 405 (Tex. Civ. App. 1940), the court stated that if aggravating circumstances have been established, the defendant is entitled to a new trial. The trial court's holding three aggravators to have been established. After an aggravator has been established, the court must determine whether the aggravator has been established by clear and convincing evidence. Cf. Cruse v. State, 580 So. 2d 510 (Fla. 1991), cert. denied. Thus, we find no error in the trial court's decision to impose the death penalty.

[6] We also find no merit to Dougan's other arguments about the instructions on mitigating circumstances. His instruction on set out a clear and objective standard for nonarbitrarily. At the very least, nothing prevents the State from attempting to channel the jury's discretion.

[7] (D) states that the mitigating evidence related to four areas: 1) positive character traits; 2) contribution of racial oppression to the homicide; 3) potential for rehabilitation; and 4) inequality between his sentence and that sufficient mitigating circumstances exist to justify a death sentence. Whether a juror feels sympathy for a capital defendant is more likely to be outweighed by deep-seated philosophical or religious justifications. We have reviewed the other issues Dougan raises and find no reversible error. Therefore, we affirm the sentence of death. The record shows that, in the event of a new trial, the court will grant a jury. The evidence did not mitigate the penalty.

\[ \text{Dougan states that the mitigating evidence related to four areas: 1) positive character traits; 2) contribution of racial oppression to the homicide; 3) potential for rehabilitation; and 4) inequality between his sentence and that sufficient mitigating circumstances exist to justify a death sentence. Whether a juror feels sympathy for a capital defendant is more likely to be outweighed by deep-seated philosophical or religious justifications.} \]

We disagree with the dissent that this pitiess the offender should be equated with the emotional circumstances often exist in homicides among spouses. While Dougan may have concluded himself into thinking this murder was justified, there are certain rules by which every civilized society must live. One of these rules must be that no one may take the life of another indiscriminately, regardless of what that person may perceive as a justification.

Our review must be neutral and objective. This Court currently upheld the death penalty in the indiscriminate killing of two blacks by a white defendant. Ayay v. State, 380 So. 2d 510 (Fla. 1981); cert. denied. Thus, we find no error in the trial court's decision to impose the death penalty.

[8] We also find no merit to Dougan's other arguments about the instructions on mitigating circumstances. His instruction on nonarbitrarily. At the very least, nothing prevents the State from attempting to channel the jury's discretion.

[9] We also find no merit to Dougan's other arguments about the instructions on mitigating circumstances. His instruction on nonarbitrarily. At the very least, nothing prevents the State from attempting to channel the jury's discretion.
The public views these factors as a directed attempt to undermine the death sentence. Although as much white as black, a person did it. How the public views these factors depends to a large extent upon the social background. An intelligent person, whom he never knew, was black. After its sentencing order. His final viewpoint of Dougan, the death penalty is not war­

Footnotes at end of article.

Footnotes at end of article.
Supreme Court precedent, they instead stated that the validity of consent was to be determined from the totality of circumstances, and not the specific case at hand. By a 6 to 3 vote, the U.S. Supreme Court, in an opinion by Justice O'Connor, reversed Justice Barkett's ruling. Florida v. Bostick, 511 U.S. 459 (1994). The court rejected the plurality and the concurring opinion that the observation of Riley from a helicopter to what can be seen at 100 feet without the court of appeal (ultimately) reversed. By a vote of 5-2, the Florida Supreme Court held that probable cause existed for the arrest. The majority opinion cited the Florida precedent holding that the observation of an experienced policeman of circumstances associated with drugs could provide sufficient probable cause. Justice Barkett, dissenting, adopted the reasons stated by a dissenting judge, who opined that the taped package did not create probable cause. That opinion did not acknowledge, much less credit, the experience of the police officers that cocaine is often packaged in that unusual manner.

The majority opinion appears clearly correct, and Justice Barkett's dissent appears to reflect an unwarranted reluctance to rely upon probable cause that was determined by determining the quality of the evidence presented. The conclusion of a police officer that it was his experience that this was the way it was done, in my judgment with evidence, a sim-
ple conclusory statement does not comport with the requisite evidence.' (146:22-147:2)

The Florida Supreme Court, in an opinion essentially identical to that of the appellate court reversed. Sarantopoulos v. State, (Fla., Dec. 9, 1993)

Having received an anonymous tip that Sarantopoulos, a marijuana grower, had marijuana standing in his backyard, since it peered over a six-foot high wood fence and "hundreds of times," the police officers' testimony was based on a "marketing strategy" employed by Sarantopoulos in order to suppress, but the appellate court reversed. The Florida Supreme Court, by a 5-2 vote, held that the search was lawful. It reasoned that Sarantopoulos lacked a reasonable expectation of privacy in his backyard, since it was protected from view only from those who remained on the ground and who were unable to see over the six-foot fence. Justice Barkett, dissenting, stated, "I cannot believe that American citizens sitting on their porches or in their backyards are not constitutionally protected when government agents, acting only on an anonymous tip, climb on ladders or stretch on tiptoes to peer over privacy fences."

The core legal issue under U.S. Supreme Court precedent, as well as Florida law, concerns application of Florida's search-and-seizure provision—is whether Sarantopoulos had a reasonable expectation of privacy. Justice Barkett in her opinion that the police officers' testimony does not meaningfully address this issue, instead, it simply reflects a hostility towards what she regards as overly intrusive law enforcement. At her hearing, Justice Barkett said that the fact that the search was based on an anonymous tip was "a factor which I found very significant here." (141:20) But this factor is irrelevant to the question whether Sarantopoulos had a reasonable expectation of privacy in the first place; it comes into play only if he did. She also claimed that another element (was) whether or not the police were lawfully in the (neighbor's) yard, (141:20) an argument that has nothing to do with the prior question whether Sarantopoulos had a reasonable expectation of privacy.

State v. Wells, 529 So.2d 464 (Fla., 1989), aff'd (but criticized), 496 U.S. 1 (1990) Wells was stopped for speeding. When the officer smelled alcohol on his breath, he arrested Wells for DUI. The officer then noticed cash lying on the car's floorboard, and asked Wells to open the car's trunk. Wells agreed to do so, but neither he nor the officer was able to work the trunk's lock. The officer then informed Wells that the car would be impounded. Wells gave permission for the trunk to be forced open and examined. The car was then transported to a facility, and a locked suitcase was found in the trunk. The State charged by the prosecutor's office. As Justice Powell said in rejecting this standard in McCleskey, "McCleskey's claim, taken to its logical conclusion, throws into serious question the principles that underlie our entire constitutional system." McCleskey, 481 U.S. 465 (1988).

Justice Barkett's proposed standard would effectively impose rigid judicial oversight of prosecutorial decisionmaking. (STATUTORY CONSTRUCTION State v. Bivona, 460 So.2d 499 (Fla. DCA 1984), rev'd, 496 So.2d 130 (Fla. 1986).

Bivona was arrested for shoplifting in California in June 1986. He was also charged by information with a previous bank robbery in Florida. On Florida's request, the State of California held him in jail pending his extradition to Florida, which was approved in August 1985. In January 1986, Bivona filed a motion claiming that the state had failed to bring him within a reasonable time under Florida law. Bivona's motion counted from the time he was first arrested in California, not from the time he was returned to Florida. The trial court denied the motion and dismissed the charges against him. Judge Barkett then on the district court of appeals, wrote the opinion for a divided Florida Supreme Court in Bivona v. State, 534 So.2d 1110 (Fla. 1988).

The State relied on a section of the law in question, Rule 3.191(b)(1), that read: "A person who has been arrested in Florida in a jail or correctional institution outside the juris-
March 22, 1994

CONGRESSIONAL RECORD—SENATE

JURISPRUDENCE

This Part will present cases that illustrate various of the means employed by Justice Barnett to vote against the death penalty. These include: (A) construing aggravators excessively narrowly; (B) construing mitigating circumstances broadly; and (C) construing the Florida law governing death penalty proceedings to result in death sentences in cases involving very broad interpretations of the aggravators and mitigating circumstances.

The case summaries in this memorandum are not intended to discourage the reader from reviewing the opinions themselves. Indeed, we encourage such review. In addition, the transcript of Justice Barnett’s arguments presented in the oral argument in the first case discussed in a separate memorandum (Bivona v. State) is available for review in the minority office of the Senate Judiciary Committee.

FOOTNOTES

1 The case summaries in this memorandum are not intended to discourage the reader from reviewing the opinions themselves. Indeed, we encourage such review. In addition, the transcript of Justice Barnett’s arguments presented in the oral argument in the first case discussed in a separate memorandum (Bivona v. State) is available for review in the minority office of the Senate Judiciary Committee.

2 The passage in fuller context reads: “The intrusions upon privacy rights caused by the Broward County police is too great for a democracy to sustain. Without doubt the inherently intrusive nature of drug courier activity presents difficult law enforcement problems. Roving patrols, random sweeps, and arbitrary searches or seizures would go far to conform his conduct to the requirements of our law, rather than to obtain evidence of guilt. Yet we are not a state that subscribes to methods. Yet we are not a state that subscribes to意味着。”

JUDICIAL APPOINTMENTS: Part II examines a broad array of cases that illustrate how Justice Barnett applies these laws. Part II analyzes the cases in which Justice Barnett has participated in the death penalty. Justice Barnett fails to demonstrate that any mitigating evidence is also to be weighed.

The capital sentencing proceeding has two stages. In the first stage, the jury renders an advisory sentence based on whether sufficient aggravators exist and on whether the mitigators outweigh the aggravators. Fla. Stat. §921.141(4). In the second stage, the trial judge makes the same determinations. Id. §921.141(3). But under Florida case law, Feder v. State, 322 So.2d 908 (Fla. 1975), a jury’s recommendation of a life sentence is to be given great weight and can be overturned by the trial judge only if no reasonable person could conclude that death was not warranted.


Once death-sentenced murderers have lost their direct appeal, they may pursue postconviction relief under state law (as well as federal postconviction relief in the federal courts). Two basic avenues may be pursued. First, a convicted capital murderer may file a motion for postconviction relief in the trial court under Florida Rule of Criminal Procedure 3.850. Denial of this motion is then reviewable by the Florida Supreme Court. Second, a convicted capital murderer may file an original action in the Florida Supreme Court for a writ of habeas corpus under Article V, section 9(b)(9) of the Florida Constitution.

IL JUSTICE BARKETT’S DEATH PENALTY REVIEW

(b) the capital crime was especially heinous, atrocious, or cruel;

(i) the capital crime was a homicide and was committed by a person who was premeditated, deliberate, and calculated, and premeditated manner without any pretense of moral or legal justification;

(ii) the victim was a law enforcement officer in the performance of his official duties;

(iii) the victim was an elected or appointed public official engaged in the performance of his official duties, and

(iv) the purpose of the victim’s official capacity was to prevent the commission of another capital felony or of a felony involving use or threat of violence;

(v) the crime was committed for pecunary gain;

(vi) the crime was committed to disrupt or hinder the lawful exercise of any government function;

(vii) the crime was committed to strike down provisions that would be effectively repealed.

JURISPRUDENCE

This Part will present cases that illustrate various of the means employed by Justice Barnett to vote against the death penalty. These include: (A) construing aggravators excessively narrowly; (B) construing mitigating circumstances broadly; and (C) construing the Florida law governing death penalty proceedings to result in death sentences in cases involving very broad interpretations of the aggravators and mitigating circumstances.
ment; (E) developing procedural anomalies; and (F) failing to provide any reason at all.

A Construing Aggravators Exceedingly Narrowly

When aggravators are given artificially narrow constructions, those who would face death are entitled, in St. Mark's terms, to more than a prayer. Justice Barkett's opinions illustrate a tendency to read the aggravators far too narrowly. For example:

Cruse v. State, 588 So.2d 983 (Fla. 1991).

Cruse loaded an assault rifle, a shotgun, a pistol, and 180 rounds of ammunition into his car and began driving to a shopping center. On the way, he shot the fireman at a 14-year-old boy who was playing basketball and then at the boy's parents and brother. At the shopping center, he shot and killed two shoppers who were leaving a grocery store and wounded a third. He then shot at various other customers, killing one and wounding another.

When Cruse heard sirens approaching, he got back in his car and drove across the street to another shopping center. When Officer Ronald Grogan approached in his police car, Cruse turned, inserted a new clip into his rifle, and fired eight times into the car, killing Officer Grogan.

Officer Gerald Johnson then entered the parking lot and exited his car. Cruse shot at Officer Johnson. When he wounded him, Cruse then headed into the parking lot, searching for the wounded officer. When he found him, he shot Officer Johnson several more times, killing him. As a rescue team attempted to move Officer Grogan's car out of Cruse's line of fire, Cruse fired several shots at them and told them to "get away from the cop." I want the cop to die, he then said.

Cruse then entered a store and began firing at people trying to escape. He killed one more and wounded many others. He then found two women hiding in the women's restroom and held one as a hostage for several hours. In all, Cruse killed six people and wounded 10 others.

Cruse was found guilty of, among other things, six counts of first-degree murder. The jury recommended death on all six counts. The trial court imposed the death penalty for the murders of Officers Grogan and Johnson.

By a vote of 6 to 1, the Florida Supreme Court affirmed the convictions and the death sentences. In her lone dissent, Justice Barkett voted to reverse the convictions. In addition, she noted that the death sentence was in any event inappropriate for Cruse.

The basis upon which Justice Barkett would have reversed the convictions was that her position that it is not pertinent under Brady whether evidence is merely cumulative with the principle that evidence is material for purposes of Brady only if there is a reasonable probability that disclosure of the evidence would have led to a different result at trial. Merely cumulative evidence is by definition not material. So it appears that the basis upon which the court reversed Cruse's convictions is clearly invalid.

As the majority pointed out, the consensus of the experts who testified was that Cruse's delusions related to a fear that others were trying to turn him into a homosexual, not a genuine claim to any physical harm. It therefore appears that Justice Barkett's finding of a pretense of moral or legal justification, there was insufficient evidence of heightened preméditation in the murder of the two police officers.

Analysis: Justice Barkett's dissent appears riddled with flaws:
1. Her position that it is not pertinent under Brady whether evidence is merely cumulative with the principle that evidence is material for purposes of Brady only if there is a reasonable probability that disclosure of the evidence would have led to a different result at trial. Merely cumulative evidence is by definition not material. So it appears that the basis upon which the court reversed Cruse's convictions is clearly invalid.
2. As the majority pointed out, the consensus of the experts who testified was that Cruse's delusions related to a fear that others were trying to turn him into a homosexual, not a genuine claim to any physical harm. It therefore appears that Justice Barkett's finding of a pretense of moral or legal justification, there was insufficient evidence of heightened preméditation in the murder of the two police officers.
3. What additional facts would be needed to persuade Justice Barkett that Cruse had heightened preméditation? The evidence of heightened preméditation was clear: With respect to the murder of Officer Grogan, the evidence shows that when Officer Grogan approached in his police car, Cruse turned, inserted a new clip into his rifle, and fired eight times into the car, killing Officer Grogan. In addition, as a rescue team attempted to move Officer Grogan's car out of Cruse's line of fire, Cruse fired several shots at them and told them to "get away from the cop." I want the cop to die, he then said.

When Porter returned to town in October 1989, Williams refused to see him. Porter theatrically stalked his victim for two days. Justice Barkett characterized the murder as "loving's quarrel or domestic dispute," held that the aggravators were to be upheld, the death sentence escaped it. Many of Justice Barkett's characterization of the murder as arising from "lover's quarrel or domestic dispute" appears inaccurate and beside the point.

Hodges v. State, 595 So.2d 929 (Fla. 1992).

On the morning that Hodges was scheduled for a hearing on a charge of indecent exposure, the 20-year-old clerk who had complained of the indecent exposure was found shot to death next to her car in her store's parking lot. Hodges was convicted and sentenced to death. By a 6-1 vote, the Florida Supreme Court affirmed the death sentence.

By a vote of 5 to 2, the Florida Supreme Court affirmed the death sentence. Barkett, dissenting (with Kogan), opined that in "almost every other case where a death sentence arose from a lover's quarrel or domestic dispute," the court had reversed the death sentence, and that the heightened preméditation aggravator had therefore not been met. She also concluded that Porter's heightened preméditation rendered the death sentence disproportionate.

Analysis: The evidence of heightened preméditation was clear; indeed, Porter basically stalked his victim for two days. Justice Barkett's characterization of the murder as arising from "lover's quarrel or domestic dispute" appears inaccurate and beside the point.


A driver of a rental car was shot to death in Miami when he stopped to ask directions. McKinney, another driver of the same car, shot at him, wounding him in the leg. When Porter returned to town in October 1989, Williams refused to see him. Porter theatrically stalked his victim for two days. Justice Barkett characterized the murder as "loving's quarrel or domestic dispute," held that the aggravators were to be upheld, the death sentence escaped it. Many of Justice Barkett's characterization of the murder as arising from "lover's quarrel or domestic dispute" appears inaccurate and beside the point.

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March 22, 1994

CONGRESSIONAL RECORD—SENATE 5831

cepta," Providence v. State, 337 So.2d 783 (Fla. 1976), which would certainly appear to be the case in Hodges. Justice Barkett’s dissent such reasoning would provide an adequate basis for her conclusion.

The White House briefing materials bra­

zenly and falsely describe Justice Barkett’s dissent as a last resort in the face of an exclu­

sive example of Justice Barkett’s strict adherence to established Florida and U.S. death pen­

alty law. I dissent.

B. Constraining terrorists too expansively

In many cases, Justice Barkett appears to give undue weight to alleged mitigating evi­

dence or to rely on such evidence to contend that the death penalty is somehow dis­

proportionate to the crime. She appears too ready to adopt the view that society, or raci­

sm, or deprivation, mitigates responsibility for the horrific crime that the defendant has

committed.

Dougan v. State, 596 So.2d 1 (Fla. 1992)—

Dougan was the leader of a group that called itself the Black Liberation Army and that, according to the trial judge, had as its “unique and provocative purpose to indiscrimi­

nately kill white people and thus start a revolu­

tion and a race war.” He conceived a plan for his group to kill a “devil,” i.e., “any white person whom under the circumstances and therefore sentenced Dougan to death.

The Florida Supreme Court affirmed the death sentence. The plurality rejected a slew of arguments, even though in the mind of Dougan there was a pretense of moral justification for his acts.” 596 So.2d, at 6 (emphasis in italics).

5. Understandably, in the eyes of the vio­

lent and the agitators who have and do continue to inve­

tigate against itself, the Black Liberation Army, Dougan is perceived as a hero. But, as the majority observes, “the aggravating factors clearly outweigh the mitigating; in the eyes of the defendant, his friends, and most people in the community the aggravating circumstances of Dougan, the death penalty is not warranted and is disproportionate to the majority of hate slayings, at least where the victim is black and the perpetrator is white. Even though we are aware of and sensitive to these contrasting emotions, our review must be neutral and objective.” 596 So.2d, at 7 (emphasis in italics).

6. In comparing what kind of person Dougan is with other murderers in the scores of death cases that we have reviewed, I note that few of the killers approached having the social awareness and a race

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committed.
Hayes was convicted of first-degree murder. Mitigating evidence at the penalty phase included a negligent upbringing, a borderline intelligence, and that he had been consuming drugs and alcohol heavily for three years. During the hearing and the trial, finding that the aggravators—(1) "cold, calculated, and premeditated" and (2) for pecuniary gain and in the course of an armed robbery—clearly outweighed the mitigating evidence, sentenced Hayes to death.

The Florida Supreme Court, by a 5-2 vote, affirmed the death sentence. Justice Barkett, dissenting with Kogan, would have found that the mitigating evidence "renders the imposition of the death punishment disproportionate in this case."

Hudson v. State, 538 So.2d 829 (Fla. 1989)—

Two months after breaking up with his girlfriend, Hudson, armed with a knife, broke into her home during the night. The former girlfriend, having received threats from him, was spending the night elsewhere. But her roommate was at home. When she began screaming at him to leave, Hudson stabbed her to death, put her body in the trunk of her car, drove her to a drainage ditch in a tomato field. Hudson was convicted and sentenced to death.

By a 6 to 1 vote, the Florida Supreme Court affirmed the death sentence. Justice Barkett, dissenting from the sentence, relied on the trial court’s finding that Hudson was a "psychotic killer" who was "burlarizing [his] home" in support of her view that the death penalty was disproportionate to the offense.

About a year after breaking into a home that he believes to be occupied should expect to encounter an occupant. It is odd that this would somehow be mitigating.

King v. State, 514 So.2d 324 (Fla. 1987)——

While an inmate at a work-release correctional facility, King killed an elderly woman and robbed and burned her home. He was convicted of first-degree murder and was sentenced to death. The conviction and death sentence were affirmed on direct appeal, and his state postconviction petition was denied. On federal habeas, he obtained resentencing, but was again sentenced to death.

By a 5-3 vote, the Florida Supreme Court affirmed the death sentence. Justice Barkett (with Kogan) opined that a capital defendant must be permitted to offer at trial evidence of his state postconviction petition was denied.

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By a 5-3 vote, the Florida Supreme Court affirmed the death sentence. Justice Barkett (with Kogan) opined that a capital defendant must be permitted to offer at trial evidence of his state postconviction petition was denied.

During the penalty phase, the jury was permitted to consider evidence of mitigating circumstances submitted after her hearing, Justice Barkett stated that "there was no express evidence that the Florida Legislature had considered the question" of executing minors under 17. However, she also stated that the Legislature had not sufficiently expressed its intent to execute juveniles to satisfy Eighth Amendment rights.

This response is unsatisfactory in at least two respects: (1) It fails to acknowledge, much less rebut, the majority’s detailed demonstration that the Florida Legislature did, in fact, make it clear that the legislature had not consciously decided that juveniles charged with capital crimes will be handled as adults who are entitled to little if any mitigating factors. (2) Justice Barkett’s written response gives the mis impression that her dissent rests on the ground that the legislature was not sufficiently clear, in fact, her dissent is in no way so limited.

Hall v. State, 614 So.2d 473 (Fla. 1993)—

In 1976, Hall and another man decided to steal a car to use in a robbery. They spotted a 7-month-pregnant woman in a grocery store, and one of the men held her summer dress up, apparently surprised by the victim during the theft. Foster was convicted of murder and sentenced to death in 1975.

On resentencing, the Florida Supreme Court affirmed Hall’s death sentence. The court’s decision was based on the trial judge’s conclusion that the mitigating evidence alleged by Hall either had not been established or were entitled to little weight. Justice Barkett, dissenting (with Kogan), did not agree that the mitigators had not been established. Instead, she would have found that Hall was mentally retarded and would have held that execution of the mentally retarded is cruel and unusual punishment under the Florida Constitution.

Analysis: (1) Justice Barkett relies on provisions of the Florida Constitution to reach anti-death penalty results well beyond what identical provisions of the federal Constitution have been construed to require. (2) Justice Barkett is often more ready than her colleagues to credit the defendant’s mitigating evidence.

D. Racial quotas

Foster v. State, No. 76,639 (Fla. Apr. 1, 1993)—

Foster, two young women, and another man, were accused of a robbery. Foster was one of the women was to make some money by having sex with Lanier. As Lanier, who was very drunk, was disrobed, Foster suddenly began hitting him and then held a knife to Lanier’s throat and sliced his neck. Foster and the women then dragged the still-breathing Lanier into the bushes and covered him with branches and leaves. Foster then took a knife and cut Lanier’s spine. Foster and the women then split the money found in Lanier’s wallet.

Foster was convicted of murder and sentenced to death in 1975. On resentencing, the trial court, finding three aggravating circumstances for murder and two aggravating circumstances for attempted murder, sentenced him to death. The trial court ruled in part that the trial record supported the trial judge’s conclusion that the mitigating evidence alleged by Hall either had not been established or were entitled to little weight. Justice Barkett, dissenting (with Kogan), did not agree that the mitigators had not been established. Instead, she would have found that Hall was mentally retarded and would have held that execution of the mentally retarded is cruel and unusual punishment under the Florida Constitution.

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March 22, 1994

CONGRESSIONAL RECORD—SENATE

5833

the death penalty than black-victim defend­
ants. (Able to be proven by step-by-step anal­
alysis. Laniier, evidently, was white; Foster, according to newspaper accounts, was also white.) Justice Barkett would have relied on the standard that sexism is a factor in the denial of proced­
ural Clauses to seek a result reached by the U.S. Supreme Court in McLee'sey v. Kemp, 481 U.S. 284 (1987). The Court ruled that a capital defendant claiming a violation of the federal Equal Protection Clause must show the existence of purposeful discrimina­tion to have an equal effect on him. According to Justice Barkett:

(1) The McLee'sey standard fails to address the problem of "unconscious discrimina­tion.

(2) "Statistical evidence" of discriminatory impact in capital sentencing that "cannot be traced to blatant or overt discrimina­tion" should not establish a violation of Flor­
da's Equal Protection Clause.

(3) This "statistical evidence" should be considered -exclude not only analy­sis of the disposition of first-degree murder cases, "but also other information that could suggest discrimination, such as the resources devoted to defending cases involving non-white victims or defendants or white victims of non-white defendants or white victims.

(4) The defendant should have the initial burden of proving that the statistical analysis suggests discrimination influenced the decision to seek the death penalty. "Such discrimina­tion conceivably could be based on the race of the victim or on the race of the defendant." Once the initial burden has been met, the burden then shifts to the State to show that the practices in question are not ra­
cially motivated.

Analysis: (1) Justice Barkett's proposed standard would paralyze implementation of the death penalty. (This point should be kept in mind in considering her supporters' claims about her death penalty record.) Under her standard, in every capital case involving either a non-white defendant or a white vic­tim, the capital defendant would be able to investigate the general practices of the state's attorney's office. A more burdensome in­quiry would be the imposition of the standard as Justice Powell pointed out in his opinion in McLee'sey, there is no reason why Justice Barkett's standard should be limited to cases with non-white defendants or white victims.

A white defendant should be able to try to show that racial discrimination against whites infected the State's decision. A Cathlic defendant could try to show that state attorneys told jokes about the priest and the rabbi, etc. A female defendant for a killer of a male victim could try to show that sexism pervades the prosecutor's office.

(3) There is also no reason why Justice Barkett's standard should be limited to death penalty cases; her theory would apply equally to robbery, rape, and all other crimes. In Justice Powell's words, "Justice Barkett's claim, taken to its logical con­
clusion, throws into serious question the principles that underlie our entire criminal justice system." McLee'sey, 481 U.S., at 314–
315.

At her hearing, Justice Barkett stated: "I have not suggested in this opinion or any­where else that statistics is the be-all and end-all, but I have suggested that perhaps statistics may be something that could be submitted to be included in an offer of proof on this question, but I clearly do not believe that some questions can be resolved only by use of statistical analysis." (197-198)

Justice Barkett has taken a number of po­
sitions that would create tremendous pro­ce­dural roadblocks in the way of the death penalty; she has taken other positions that give capital defendants special advantages. In the portrait that she has painted here, the doctrine of procedural bar enables courts to dispose of claims that were not timely raised at trial. In the case of Grossman, the property gre­

tered, Justice Barkett has frequently de­
clined to apply the law of procedural bar as uniformly as the court and has instead cre­
ated ad hoc exceptions. See, e.g., Bundy v. State, 558 So.2d 445 (Fla. 1990); Francis v. Dugger, 581 So.2d 583 (Fla. 1991); Foster v. State, 518 So.2d 501 (Fla. 1987); Johnson v. State, 536 So.2d 1009 (Fla. 1988); Jones v. State, 533 So.2d 200 (Fla. 1988).


Grossman, on probation following a prison sen­
tencing, where no specific oral findings were required that the sentence be reduced to life. The trial court made detailed oral findings, as required by an im­
mediate written findings required that a death sentence be converted to life.

Hambled v. Dugger, 546 So.2d 1099 (Fla. 1989).

Hambled pled guilty to first-degree murder and waived his right to have a jury consider the facts. The Florida Supreme Court, by a vote of 6-1, denied the petition. Justice Barkett, dis­
senting, opined that the court "that a defendant the right 'to waiver presentation of mitigating factors' cannot perform its re­
quid function of weighing the aggravating and mitigating factors.

Woods v. State, 531 So.2d 79 (Fla. 1988).

Justice Barkett opined that she would re­
quide a court to entertain any claim made by a condemned prisoner, no matter how dial­

tory the assertion of the claim: "a court must consider any point raised by a con­
demned prisoner by the death penalty should not be imposed."" Analysis: One of the problems in state ad­
ministration of the death penalty has been the State Supreme Court. The State Supreme Court 11th-hour filing of claims by death row inmates whose sentences have been vacated has been clearly upon the State to deny relief. At some reason­
able point, a State must be permitted to pre­
vent abuse of its criminal justice system.

Otherwise, a death row inmate could delay his execution forever simply by filing an­
other claim. Justice Barkett's dissent does not seem at all attentive to the legitimate interests of the State.

F. Providing no reason

In some 90 or so cases, Justice Barkett has provided no explanation—or at times only a conclusory statement—when she has refused simply to join the opinion of the court. In a number of these, the court was actually voted to grant relief. For example:

White v. State, 559 So.2d 1077 (Fla. 1990).

The court reversed a conviction for robbing a small grocery store and shooting to death a cus­
tomer. His conviction and death sentence were affirmed on appeal. In a petition for habeas corpus relief, White claimed, among other things, that his counsel had been ine­
ffective. The Florida Supreme Court, by a vote of 5 to 2, affirmed the denial of his peti­tion; in particular, the court addressed in de­
tail, and found meritless, White's claim of ineffective assistance of counsel.

Justice Barkett's entire dissent reads as follows:

The White House has made available a list of justice Barkett's pro-death penalty votes

Justice Barkett, dissenting, asserted that her to dissent.

Engle and another man robbed 367 from a convenience store, took the female cashier from the store, and strangled and stabbed her to death. A four-inch laceration, likely caused by a fist, was found in the interior of the victim's vagina. The jury recommended life in case of mitigation. In Engle's statement, it simply cannot be said that no reasonable jury could have recommended a life sentence.

Swafford's statement that "I believe[d] that the evidence does not rise to the level of certainty that should support imposition of the death penalty." Likewise, if one starts running through the list chronologically, in three of the very first cases (Kennedy v. Louisiana, 495 So.2d 324 (Fla. 1986) (#625 on list), Adams v. Wainwright, 494 So.2d 1211 (Fla. 1986) (#624 on list), and Thomas v. Wainwright, 488 So.2d 574 (Fla. 1986) (#622 on list), Justice Barkett exists as the only one. Even in these cases, her dissent is not a total rejection of the death penalty but an expression of the belief that the death penalty is not a proper sentence for the crime committed.

"Let me say at the outset that I believe that judges should be judged by the quality of their legal reasoning and by their fidelity to the law. A careful examination of particular opinions is the best measure of these qualities. It is precisely such an examination that is called for in this list of cases.

Unfortunately, the White House's statistical analysis is not a mere compilation of cases. It is not a simple enumeration of cases but a detailed examination of each case, its facts, and its legal reasoning. The White House has provided a list of cases in which Justice Barkett has voted to impose the death penalty in cases where a majority of the U.S. Supreme Court has voted to vacate that sentence. But the White House fails to make clear a number of relevant matters. In none of these cases did the U.S. Supreme Court rule that the death sentence should not be imposed or that it was a death sentence. In the other seven cases, the Supreme Court used the procedural device known as a GVR — grant, vacate, and remand — to enable the state supreme court to consider the possible impact of an intervening U.S. Supreme Court decision. The Supreme Court liberally uses this GVR device, especially in death cases. A GVR, rather than an actual decision, would give the state supreme court the opportunity to consider the possibility that an intervening decision by the U.S. Supreme Court will affect its decision.
"In the one case that was decided on the merits, Justice Barkett voted to uphold the Florida equal protection clause, which the Florida Supreme Court had rejected as an invalid exercise of its constitutional power. In all other cases that were decided on the merits, she voted to uphold the Florida equal protection clause. In all cases as to which Justice Barkett has spoken, the Florida Supreme Court has upheld the equal protection clause, which the Florida legislature has enacted and the Florida legislature has enacted.

The U.S. Supreme Court's equal protection jurisprudence is well-settled: "this Court's cases are clear that, unless a classification infringes a fundamental right or comes within a suspect class, the legitimacy of that classification is determined by application of the rational basis test."

Justice Barkett's response illuminates the import of the rational basis test. Specifically, Justice Barkett's response suggests that the rational basis test is the appropriate framework for evaluating the constitutionality of the Florida equal protection clause.

Justice Barkett's response also provides a rationale for why she has consistently voted to uphold the Florida equal protection clause. For Justice Barkett, the rational basis test is the appropriate framework for evaluating the constitutionality of the Florida equal protection clause because it is a "clear and longstanding framework for evaluating the constitutionality of state laws and regulations."

Justice Barkett's response highlights the importance of the rational basis test in evaluating the constitutionality of state laws and regulations. The rational basis test is the appropriate framework for evaluating the constitutionality of the Florida equal protection clause because it is a clear and longstanding framework for evaluating the constitutionality of state laws and regulations.

Justice Barkett's response also highlights the importance of the rational basis test in evaluating the constitutionality of the Florida equal protection clause. The rational basis test is the appropriate framework for evaluating the constitutionality of the Florida equal protection clause because it is a clear and longstanding framework for evaluating the constitutionality of state laws and regulations.
broad to achieve the desired end. Such underinclusive or overinclusive classifications fail to meet even the minimal standard.

Her opinion proceeds to hold that the statute is underinclusive because it protects against the threat of unrestrained, and hence more intrusive, inroads on testators (that exerted by charities), and that it is overinclusive because it would render voidable many intentional bequests for purposes other than charitable. In her words; "[t]here is no rational distinction which the legislature purported to draw when the testator survives the execution of a will by five months and twenty-eight days, but not when the testator survives a few days longer."

Justice Barket's opinion cites no federal authority for the proposition that the rational basis test for the federal equal protection clause forbids both underinclusive and overinclusive classifications. Nor could she, for this proposition appears plainly incorrect.

Indeed, her use of the federal Equal Protection Clause simply because it "is to some extent underinclusive and overinclusive, and hence irrational," and as a basis for the Court's 4-3 decision, is extraordinary to conclude that a classification does not violate Equal Protection principles because it "is to some extent underinclusive and overinclusive, and hence irrational." As Justice Justice Barket stated in an opinion for the Court more than 40 years ago, "It is no requirement of equal protection that a statute, to be constitutional, must be the same in every instance or none at all." *Railway Express Agency v. New York*, 336 U.S. 106, 110 (1949). The Court restated this basic principle in the New York decision, and the legislative requirement must be allowed leeway to approach a perceived problem incrementally.

To do so, it may take one step at a time, addressing it after the legislature has long held a broad view of the problem which seems most acute to the legislative mind. The legislature may select one phase of one field and apply a remedy there, neglecting the others.* V.C.C. v. Beach Communications, 113 S. Ct., at 2102 (quoting *Williams v. Less Op- tical*, 398 U.S. 483 (1955)).

Justice Barket's ruling that the six-month period is irrational simply because it produces different results when the testator survives 5 months and 28 days versus 6 months and 28 days is misleading. The depth of the problem is not overstated. It is underinclusive because it could be voided against every time limit in the law. But in such matters, the legislature's decision deserves "leeway, somewhere." *Beach Communications*, 113 S. Ct., at 2102, and it does so, the restraining on judicial review have added force, "id. restraints ignored by Justice Barket in her opinion in this case.

Again, this case goes very far towards transforming rational-basis scrutiny into strict scrutiny. Indeed, if applied consistently, there are few laws that could survive the test that Justice Barket sets forth. (For example, a law that terminates welfare benefits after two years would be clearly susceptible to invalidation under Justice Barket's equal protection analysis.) Of equal concern is the fact that the test is not well defined and the legislative acts may be voided as a result. Instead, it must be understood that in a body of law there are going to be occasions when you are going to be challenged to a particular case, and in those cases, you can make a decision whether to void a statute, or not, based on the facts of the case. You can then ask whether the legislature's decision was an appropriate decision, and that is something that the courts might later rely on, but she is also, in effect, immunizing her ruling from the legislative law (which activist judges in other cases have relied on).

In her lone dissent, Justice Barket took the position that the Eighth Amendment compels the legislature to use a bright-line age of 18 which was under 18 at the time of his offense. In short, she took the view that the Constitution imposed a bright-line age minimum of 18 on all death penalty. The (U.S. Supreme Court subsequently rejected the position that she took.)

For present purposes, it is revealing to apply the methodology of her Shriner's opinion to the position that she took in *LeCroy*. Applying that Shriners methodology, one would say that a bright-line age minimum of 18 is both underinclusive and overinclusive. It is underinclusive because it fails to protect the legislature's interest in preventing the crime in question. It is overinclusive because it would extend the death penalty to include persons over 18 who (in the language of her DeLott dissent) "have not fully developed the ability to throw off that mental attitude which prevents them from becoming criminals." It is overinclusive because it does protect those under 18 who have in fact fully developed their deliberative faculties. Moreover, her Shriners methodology would appear to dictate the conclusion that the 18-year bright line is simply irrational, since it would exempt from the death penalty a heinous murderer who was 17 years, 11 months, and 28 days at the time of his offense, but would not exempt someone who was a few days older. In short, her Shriners methodology would operate to demand that we ask what she thought in *LeCroy* to be constitutionally mandated under the Eighth Amendment is instead constitutionally impermissible under the Equal Protection clause.

In sum, Justice Backet's serious misapplication of rational-basis review under the Fourteenth Amendment is instead constitutionally impermissible under the Equal Protection clause.

The manner in which Justice Barket has invoked "substantive due process"—even where no fundamental right is at stake and rational-basis review is therefore in order—also raises serious concerns. In *State v. State*, 408 So.2d 1155 (Fla. 1982), for example, she wrote in her dissent that state law is "unnecessarily criminalizing the possession of embossing machines capable of counterfeiting credit cards" under the "fourteenth amendment to the United States Constitution" (as well as under Florida's constitution). Specifically, she held that the Florida statute was "related to achieving [the] legitimate legislative purpose" of curtailting credit card fraud. In her words, it is unreasonable to "permit the use of embossing machines when such a prohibition clearly interferes with the legitimate personal and property rights of a number of Florida businessmen who use embossing machines in their businesses and for other non-criminal activities." Justice Backet cited no federal authority in support of this proposition.

The principle set forth in *Salem*, if taken seriously, would have far-reaching consequences. A broad range of criminally proscribed items also have legitimate uses. *Swissbollo* can be used to slice apples. Marijuana can be prescribed as medicine. Explosive devices can be used to build tunnels. It is extraordinary to conclude that "substantive due process" or any other principle can be applied to "prevent the exercise of a public power without demonstrating that the harmful effects of some or all of these are outweigh the beneficial effects that that possession should be criminalized. Again, the whole point is that the rational-basis un­ sound principle can be applied selectively in an unprincipled manner.

Justice Backet acknowledged that she had relied on the federal due process clause, but again thought such reliance misguided by the fact that she had discussed only cases construing the state constitutional counterparts; "if you go on to look at the language that is used from other cases, they are all Florida cases which have utilized the same phrase, but interpreted it in a different way." *126:12-15* When asked why she didn't apply just the state due process clause, she responded: "I think in essence I did, Senator, and all I can—I mean, I can certainly accept that in a body of law there are going to be occasions when you are going to be careless.

III. LITIGATING AND THE FIRST AMENDMENT

In her plurality opinion (over a vigorous 3-justice dissent) in *Wyche v. State*, 619 S.2d 231 (Fla. 1992), Justice Backet struck down as facially unconstitutional an ordinance prohibiting lettering the purpose of engaging in drug-related activity.

Her first holding in *Wyche* was that the ord­ inance was not facially unconstitutional because it did not specifically provide for laws that engaged in unlawful acts of prostitution. This holding is puzzling. The language of the ordi­ nance—criminalizing lettering "in a manner tending to induce, entice, solicit, or procure another to commit an act of prostitution"—appears plainly amenable to a narrow construction that limits the ordi­ nance's scope to unlawful acts of prostitution. The court did not explicitly hold that the ordinance was not facially unconstitutional, however, despite the fact that the majority opinion did not explicitly hold that the ordinance was constitutional.
March 22, 1994

CONGRESSIONAL RECORD—SENATE

8537

ing this subsection if it appears at trial that the defendant had a substantial and disclosed

purpose to invoke the tenet that is basic to our separation-of-powers system and that was clearly recognized in Florida case law: namely, that courts have a duty to avoid a holding of unconstitutionality if a fair construction of the legislation will so allow." State v. Ecker, 311 So.2d 104, 106 (Fla. 1975).

Justice Barkett's second holding in Wyche was that, even if the ordinance were construed to require specific intent to engage in unlawful acts of prostitution, it "still would be subject to unconstitutional application" and therefore would chill protected speech in

port Commissioners banned all First Amendment activities at an airport—could not be permitted to be remedied by case-by-case adjudication. To compare the absolutist ban on First Amendment speech in that case to the hypothetical and purely incidental effect on speech arguably resulting from the ordinance in Wyche is strained in the extreme.

Another serious problem with Justice Barkett's opinion in Wyche is that it is at some points quite irreconcilable with—either as an appeal of or as a comment on—this Court's 1975 ruling in State v. Ecker, 311 So.2d 194 (Fla. 1975), which held that a general anti-obscenity law, such as that in Florida, is not an adequate procedural safeguard against speech that is of public significance. In Ecker, Wyche appears to override Ecker without even citing it or otherwise acknowledging it. This is not a proper way to deal with predece

V. QUOTAS

Justice Barkett's views on quotas are of serious concern. According to newspaper reports, Justice Barkett was a member of the Florida Commission on the Status of Women, which issued a report in February 1993 that recommended passage of state legislation requiring all of Florida's decision-making boards, councils, and commissions be half male and half female by 1996.

Justice Barkett defended the Commission against charges that it report advocated a quota system, by saying: "It is not in the context of a quota system. It is simply an acknowledgment that women are under-represented and that we need one-half of the seats of this state." (St. Petersburg Times, 2/23/93.) If a rigid requirement that positions be filled by quotas is ever to be justified, it would seem that other constitutional principles would then be difficult to imagine what would be. (Florida Governor Lawton Chiles stated that he opposed the Commission proposal because it would have as a federal judge in cases of alleged discrimination. The Supreme Court has ruled that the use of preferential remedies and volun
tary preferences is generally disfavored, although it has upheld them in narrow cir

stances. If Justice Barkett cannot recognize a quota for what it is, how can one have confidence that she will properly construe Supreme Court precedents governing quotas and other preferences and respect the limits that the Supreme Court has placed on their use?

Told that her views appeared to lead to preferential and discriminatory policies (as she did not dispute this. Indeed, she appeared to embrace it (in the euphemism of "representation"), "The goal of every woman is to be treated as if she were a member of some group, and the goal of every minority group is that there be representation in policy-making bodies that are going to affect their lives, whether it is in the private sector or in the public sector. And I think that that is a goal that is laudable. There are many different ways of trying to achieve it, but I do not think that there is any question that it should be achieved, and I am committed to that." 1983-11)

The net effect of Wyche, E.L., and Holliday is to hamper severely the ability of communities to combat the scourges of prostitution and drugs.

IV. OBSCENITY

In Stall v. State [570 So.2d 257 (Fla. 1990)], the Florida Supreme Court ruled—as it had several times before—that Florida's laws against obscenity were constitutional. In a brief 4-paragraph dissent, Justice Barkett took aim at the Florida child pornography laws. She decried provisions in the laws that allow judges to sentence people convicted of child pornography with a sexual conduct statute.

If a person chal

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and then held a knife to Lanier's throat and sliced his neck. Foster and the women then dragged the still-breathing Lanier into the basement and tortured her with burning and electric shocks. Foster then took a knife and cut Lanier's spine. Foster and the women then slit the money found in Lanier's wallet.

Foster was convicted of murder and sentenced to death in 1975. On resentencing, the trial court, finding three aggravating circumstances, set aside the death sentence. The Florida Supreme Court, by a 4-3 vote, rejected Foster's claim that his death sentence was a product of racial discrimination against black victims. (The court did require the resentencing to occur on other grounds.)

Justice Barkett, dissenting from this racial discrimination ruling, would not accept the majority's conclusion that Foster's statistical evidence purporting to show that white-victim defendants in Bay County were more likely to get the death penalty than black-victim defendants failed to establish a constitutional violation. (Lanier, evidently, was white; Foster, according to newspaper accounts, was non-white.) If such statistical evidence would have relied on the Florida Constitution's Equal Protection Clause to reach a result rejected by the U.S. Supreme Court in McCleskey v. Kemp, 481 U.S. 279 (1987), then it would have failed.

In McCleskey, the Court ruled that a capital defendant claiming a violation of the federal Equal Protection Clause must show a 'concrete and insidious' instance of purposeful discrimination and a disciplinary effect on him. According to Justice Barkett:

(1) The McCleskey standard fails to address the problem of "unconscious discrimination."

(2) Statistical evidence of discriminatory impact in capital sentencing that "cannot be traced to blatant or overt discrimination" should establish a violation of Florida's Equal Protection Clause.

(3) This statistical evidence should be construed broadly to include not only analysis of the disposition of first-degree murder cases, "but also other information that could suggest discrimination, such as the resources devoted to the prosecution of cases involving white victims as compared to those involving minority victims, and the general conduct of a state attorney's office, including hiring practices and the use of racial epithets and jokes." (Emphasis in italics.)

(4) The defendant should have the initial burden of showing the strong likelihood that discrimination influenced the decision to seek the death penalty. Such discrimination conceivably could be based on the race of the victim or on the race of the defendant.

Once the initial burden has been met, "the burden then shifts to the State to show that the practices in question are not racially motivated."

The paralyzing effect that Justice Barkett's proposed standard would have on the death penalty—and, indeed, if taken to its logical conclusion, on the criminal justice system generally—will be addressed in another memorandum. For present purposes, what must be emphasized are the broad-ranging implications that Justice Barkett's defendant's position could have had on the issue of quotas generally. Her focus on "unconscious discrimination" shows that she rejected the Federal Constitution's Equal Protection Clause, the basic principle under the federal Constitution that discriminatory intent is an essential element of an Equal Protection violation. She also raised a basic concern that she might adopt a view of statistical disparities under federal statutes like the recently amended Title VII that effectively mandates pervasive adoption of race and sex quotas.

CONCLUSION

In re Constitutionality of Senate Joint Resolution 2G, 601 So.2d 543 (Fla. 1992), the Florida Supreme Court selected from among six different modifications to a state legislative redistricting proposal a bill championed by Justice Barkett that wrote that she was "loathe to agree to any of the convoluted plans submitted under these circumstances, if I had to choose only among those presented, however, I would choose the plan submitted by the NAACP simply because this is the organization that had traditionally represented and promoted the position that advances all minority interests." (Emphasis in Italics.)

Justice Barkett's frank admission that she would give special weight to a position based on one offered rather than on its intrinsic merits is very disturbing and appears clearly at odds with the obligation of judicial impartiality.

Justice Barkett claimed that her words were "concededly very inartful" and that she was attempting to say "... that the plan I have adopted was in rebuttal to a claim that the NAACP did not adequately represent the interests of African Americans." (175:1-4; see also 177:1-3.) If I were to re-examine this case, I would not read the words you would read it. It is inartful, and I wish that I had the opportunity to edit that more than anything else that we have been talking about." (175:12-14)

Concern about Justice Barkett's impartiality also arose at her hearing before her involvement with a trial lawyer's group, the Academy of Florida Trial Lawyers, while the case of University of Miami v. Echateau was pending.

(1) The Academy of Florida Trial Lawyers submitted an amicus brief in this case in October 1991. The Trial Lawyers brief (like other briefs submitted on behalf of one party) argued that the cap on non-economic damages in medical malpractice cases was unconstitutional.

(2) In 1992, this same organization of trial lawyers created an annual award named after her, the Rosemary Barkett Award, to be given to a "trial lawyer who submits an outstanding amicus brief in a case of wide public interest." The charter "cannot be printed in the Record."

(3) In May 1992, she, in dissent, accepted the argument that the cap on non-economic damages was unconstitutional.

It does not seem at all consistent with her obligation to maintain both the fact and the appearance of impartiality for her to decide a case in which an organization that had named an award after her had filed a brief. Indeed, her actions would seem to have violated the ABA Code of Judicial Conduct. If she had stated that she was "unambiguously stating" her position on what she described as "... the problem of systemic racism against black victims..." and that she would have relied on the Florida Constitution's Equal Protection Clause to reach a result rejected by the U.S. Supreme Court in McCleskey v. Kemp, 481 U.S. 279 (1987), then it would have failed.

PRESIDENT MARY ROBINSON OF IRELAND ON THE FUTURE OF THE WORLD COMMUNITY

Mr. Kennedy. Mr. President, during her visit to Boston earlier this month, Ireland’s President, Mary Robinson, delivered a major address at Harvard on the future of the world community and the need for more effective international cooperation to deal with the challenges we face.

In her address on March 11, she emphasized the opening words of the preamble of the U.N. Charter—"We the peoples of the United Nations, determined to save succeeding generations from the scourge of war." She urged the western industrial nations of the world to remember their commitment today, by dealing more effectively with the opportunities and responsibilities of being part of the larger global community. She reminded us all of the importance of this aspect of our leadership. As she stated, we need a vision of the whole... that does not protect some of us from an acceptance of crisis simply because we are fortunate enough to be exempt from its immediate consequences.

She urged nations to learn to respect one another’s diversity, so that we can draw strength and not weakness from our differences. She urged us to explore and share new approaches to economic development, alleviation of poverty, and protection of the environment.

I believe that President Robinson’s thoughtful and stimulating address will be of interest to all of us concerned with the issues that are discussed around the future of relations among nations, and I ask unanimous consent that it may be printed in the RECORD.

There being no objection, the address ordered to be printed in the Record, as follows:

[Irish Times/Harvard Colloquium, John F. Kennedy School of Government, Boston, Mar. 11, 1994]

ADDRESS BY THE PRESIDENT OF IRELAND, MARY ROBINSON

WE THE PEOPLES OF THE UNITED NATIONS

* * *—RENEWING THAT DETERMINATION

The preamble to the United Nations Charter, written in 1945, is an eloquent statement of its fundamental aims. It begins with these words: “We the peoples of the United Nations, determined to save succeeding generations from the scourge of war.” And it then sets out those aims. I want to reflect on that preamble today, but with an emphasis on its opening words. Even as I prepare to do so, I am fully aware that I cannot claim a specialist wisdom on the United Nations. On the other hand, I am also aware that I have the true privilege of holding an elected office which probably represents policy initiatives. This in turn has allowed me the advantage and responsibility of a different time-