made. The bill does not decide the fate of the RRW. That is a decision for a future Congress and a future administration.

The bill also includes a requirement for new nuclear posture review and a sense of the Congress to help frame the nuclear policy debate for the next administration. To ensure that weapons dismantlements continue, the bill includes an increase of $20 million to the budget request of $52 million to support nuclear weapons dismantlement.

I would like to note that last night I returned from an extensive 4-day visit to all three of the Department of Energy nuclear weapons laboratories. While I discussed many issues with the laboratory directors and their staff, including nonproliferation issues, we spent a considerable amount of time on the RRW. Most of the discussions were highly classified, and so I cannot go into substantial detail here. But I want to ensure my colleagues that the progress made by the laboratories under the Stockpile Stewardship Program is remarkable and that there are many new opportunities to improve the safety, security, and reliability of nuclear weapons, which in turn should lead to very substantial reductions in the overall size of the stockpile—without a return to nuclear weapons testing.

Wrapping up the balance of the Department of Energy issues, the bill includes two provisions that would task the GAO to review two significant areas of concern at DOE. The first study is on the structure and management of the protective forces at DOE sites, and the second one on the future plans for the environmental restoration programs.

In closing, the Strategic Subcommittee has a broad area of responsibility, much of it controversial, but working with Senator SESSIONS, we have been able to resolve the issues so the national security interests of our country are foremost.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF LIAM O'GRADY TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination which the clerk will report.

The assistant legislative clerk read the nomination of Liam O'Grady, of Virginia, to be U.S. District Judge for the Eastern District of Virginia.

The PRESIDING OFFICER. Unless the Senator from Virginia wants to modify the pending unanimous consent request to make certain that this nomination is called at 5:30, there is now 1 hour of debate equally divided on the nomination under the previous unanimous consent request, which would mean the vote would likely be in the range of 5:40.

Who yields time?

Mr. WARNER. Mr. President, I yield to the distinguished chairman of the committee.

Mr. LEAHY. Mr. President, I am sorry, I was off the floor for a moment. I hesitate to interfere with my Senator away from home. What is the order?

The PRESIDING OFFICER. Under the pending unanimous consent request, the debate was to begin at 4:30, with a vote at 5:30 on the judicial nomination. Senator NELSON asked unanimous consent and received it to proceed to speak and spoke until just a moment ago. So if we project 1 hour from now the debate for the judicial nominee, the vote is likely to occur near 5:40.

Mr. LEAHY. And the distinguished senior Senator from Virginia wishes to take time for the Republican side?

Mr. WARNER. Well, actually, I had hoped to do it on the time of the Defense bill, but I yielded to the request of my colleague.

Mr. LEAHY. We will work out the time.

Mr. WARNER. Mr. President, I need 3 minutes.

Mr. LEAHY. I yield to the Senator from Virginia such time as he needs.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I thank the distinguished chairman of the Judiciary Committee. He is always very courteous to the Senator from Virginia and I am appreciative of that.

I rise with a sense of great pleasure to support an outstanding Virginian, Judge Liam O'Grady, who has been nominated by the President to serve as an article III judge on the United States District Court for the Eastern District of Virginia. I am pleased to note that Judge O'Grady also enjoys the support of my distinguished colleague, Senator WEBB. Senator WEBB, upon joining the Senate, has worked with me, as we do on many things, in a very cooperative spirit to provide nominations to the President with respect to the judicial vacancies as they exist in our United States District Court in Virginia and to the Fourth Circuit, of which Virginia is one of the States served on that distinguished judicial panel, which largely resides in Virginia. I thank my distinguished colleague, Senator WEBB, because he has become a very fast learner about the judicial process and we have worked together, and we now have nominations pending before the President with regard to the vacancies on the Fourth Circuit.

Turning to Judge O'Grady, he has been nominated to fill the seat that was vacated by Judge Claude Hilton. For more than 20 years, Judge Hilton served with distinction as an active judge in the Eastern District of Virginia. We are fortunate he is continuing to serve on the court in senior status. In my view, we are equally fortunate to have a nominee such as Liam O'Grady who is willing to continue his public service on the bench.

Since joining the Virginia bar in 1978—quite a few years ago—Judge O'Grady has worked as a sole practitioner, as assistant Commonwealth's attorney, as an assistant United States attorney, as a partner in an international law firm, and for the last 4 years, he has worked with the Eastern District of Virginia as a magistrate judge. Magistrate judges perform a very valuable function for our district courts.

His career has provided him with a wide array of experiences. As a solo practitioner, he worked as a court-appointed criminal defense lawyer. As an assistant Commonwealth's attorney, he tried upwards of 100 jury trials. As an assistant United States attorney, he focused on narcotics and organized crime cases. As a partner at a well-known law firm, he worked extensively on patent and trademark cases for a number of major industrial organizations in our country. As a magistrate judge, he has seen firsthand the extraordinary variety and volume of cases that come before a district judge serving not only in Virginia but elsewhere in America.

Equally impressive is that despite the rigors of his career, he always found time to give back to his community. He has helped shape young legal minds through the instruction of law at both George Washington University and George Mason University. Moreover, while in private practice, he set up a pro bono legal clinic in his law firm and took court-appointed cases serving those in need.

It is clear to me that this outstanding nominee, now to be voted on shortly by the Senate, is eminently qualified to serve on this prestigious court. In addition to having the support of his home State Senators, Judge O'Grady received the highest—I repeat, the highest—recommendation of the American Bar Association and was equally recommended by a number of the bar associations of the Commonwealth of Virginia.

I thank the distinguished chairman, Senator LEAHY, and Senator SPECTER for providing the Virginia Senators an opportunity to present Liam O'Grady to the committee and for the committee to act in a very expeditious way and now to bring this nomination to the floor.

Mr. WARNER. I yield the floor and thank the distinguished chairman.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the Presiding Officer. I want the distinguished senior Senator from Virginia to know that, of course, I will be supporting his nominee, Judge O'Grady. This is an example of how quickly we can move judges when Senators work together. In this case, one of the most distinguished Republican Senators,

combined with a distinguished Democratic Member, helped move Judge O'Grady to the top of the list. I predict within the next hour or so he will be confirmed.

Mr. WARNER. Mr. President, I thank my colleague for the kind remarks.

Mr. LEAHY. Mr. President, the Senate continues to make progress today with what I anticipate will be the confirmation of four more lifetime appointments to the Federal bench. Along with Judge O'Grady's nomination to the District Court for the Eastern District of Virginia, we consider three nominations for lifetime appointments to the District Court for the Western District of Michigan, those of Janet T. Neff, Paul Lewis Maloney, and Robert James Jonker. All four nominations are for judicial emergency vacancies, and they all have the support of their home State Senators.

I thank Senators LEVIN, STABENOW, WARNER and WEBB for their work in connection with these nominations.

It is unfortunate that the three nominees for the Western District of Michigan are not already on the bench helping to ease the backlog of cases in that district. All three were reported out of committee last fall, but were left pending on the Senate's Executive Calendar when some on the other side of the aisle blocked their nominations. All three are for vacancies that are judicial emergency vacancies—three emergencies in one Federal district.

The Senators from Michigan had worked with the White House on the President's nomination of three nominees to fill those emergency vacancies.

Working with then-Chairman SPECTER, the Democratic members of the committee cooperated to expedite their consideration and reported them to the Senate last year.

But last year Republicans were objecting to Senate votes on some of President Bush's judicial nominees. According to press accounts, Senator BROWNBACK had placed a hold on Judge Neff's nomination, apparently related to her attendance at a commitment ceremony held by some family friends several years ago in Massachusetts.

The Michigan nominations were not returned to the Senate by the President at the beginning of this year. Instead, their renominations were inexplicably delayed for months.

When they were renominated, Senator BROWNBACK sought another hearing on the nomination of Judge Neff. As chairman, I honored his request. At that second hearing in May, Senator BROWNBACK again questioned Judge Neff extensively about her attending the commitment ceremony of a family friend. I then placed the nomination on our agenda and the Judiciary Committee reported it favorably for a second time.

It is time to act on the group of Michigan nominations at long last. There is a dire situation in the Western District of Michigan. Judge Robert Holmes Bell, Chief Judge of the Western District, wrote to us about the situation in that district, where several judges on senior status—one over 90 years old—continue to carry heavy caseloads to ensure that justice is administered in that district. Judge Bell is the only active judge.

The four nominations before us will bring this year's judicial confirmations total to 25. It is our first day back after the Fourth of July recess, and we have already confirmed one and a half times as many judges as were confirmed during the entire 1996 session when President Clinton's nominees were being reviewed by a Republican Senate majority. That was the session in which not a single circuit court nominee was confirmed.

We have already confirmed three circuit court judges in the early months of this session. As I have previously noted, that also puts us well ahead of the pace established by the Republican majority in 1999 when to this date not a single circuit court nomination had yet been confirmed. This also exceeds the total of 22 judges confirmed in all of 2005.

With these confirmations, the Senate will have confirmed 125 judges while I have served as Judiciary chairman. During the more than 6 years of the Bush Presidency, more circuit court judges, more district court judges, and more total judges have been confirmed while I served as Judiciary chairman than during the tenures of either of the two Republican chairmen working with Republican Senate majorities.

I have listed another four judicial nominations on the agenda for our business meeting later this week and will be noticing another hearing on judicial nominations on July 19. I do not intend to follow the Republican example and pocket filibuster more than 60 of this President's nominees as they did President Clinton's nominees.

The Administrative Office of the U.S. Courts lists 47 judicial vacancies after these nominations are confirmed, yet the President has sent us only 22 nominations for these vacancies. Twenty-five of these vacancies—over-half have no nominee. Of the 13 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for 8 of them. That means over half of the judicial emergency vacancies are without a nominee.

Of the 15 circuit court vacancies, two-thirds are without a nominee. If the President had worked with the Senators from Rhode Island, New Jersey, Maryland, California, Michigan, and the other States with the remaining circuit vacancies, we could be in position to make even more progress.

As it is, we have cut the circuit vacancies nearly in half, from 26 to 15. Contrast that with the way the Republican-led Senate's lack of action on President Clinton's moderate and qualified nominees resulted in circuit court vacancies increasing from 17 to 26 and beyond. During most of the Clinton years, the Republican-led Senate engaged in strenuous efforts to keep circuit judgeships vacant in anticipation of a Republican President. To a great extent they succeeded.

The Judiciary Committee has been working hard to make progress on those nominations the President has sent to us. Of course, when he sends us well-qualified, consensus nominees with the support of his home-State Senators like those before us today, we can have success.

Judge O'Grady is a Magistrate Judge in the U.S. District Court for the Eastern District of Virginia, where he has sat since 2003. Previously, he was a partner in the intellectual property law firm of Finnegan, Henderson, Farabow, Garrett, & Dunner, LLP, an assistant U.S. attorney in the Eastern District of Virginia, an assistant commonwealth attorney for the Commonwealth of Virginia, and a sole practitioner.

Judge Neff has been a judge on the Michigan Court of Appeals, Michigan's intermediate appeals court, since January 1989. Previously, she worked in private practice for several law firms and served as an assistant U.S. attorney for the Western District of Michigan, a commissioner for the Michigan Supreme Court, and an assistant city attorney for the city of Grand Rapids.

Judge Maloney has been a circuit judge on the Berrien County Trial Court in Saint Joseph, MI, since 1996 and previously served as a district judge in the same county. Before taking the bench, he served as special assistant to the director at the Michigan Department of Corrections, a deputy assistant attorney general in the criminal division of the U.S. Department of Justice, and a prosecuting attorney at the Berrien County Prosecutor's Office in Michigan.

Robert James Jonker is a partner at the Grand Rapids, MI, law firm of Warner Norcross & Judd LLP where he has worked since serving as a law clerk to Judge John F. Feikens in the U.S. District Court for the Eastern District of Michigan from 1995–1997. I congratulate Judge O'Grady, Judge Neff, Judge Maloney, Mr. Jonker, and their families, on their confirmations today.

EXECUTIVE PRIVILEGE

Mr. LEAHY. Mr. President, I have a very serious matter that I will discuss at this time in my capacity as chairman of the Judiciary Committee. The Presiding Officer is one of the most distinguished members of the Judiciary Committee.

Today, House Judiciary Committee Chairman CONYERS and I received another letter from White House Counsel Fred Fielding responding to duly authorized subpoenas with a blanket assertion of executive privilege.

I had hoped that the Judiciary Committee subpoenas would be met with compliance, not with confrontation. But instead they have been met, yet again, with Nixonian stonewalling that shows this White House's disdain for

our system of checks and balances. This is more stonewalling for a White House that believes it can unilaterally control the other coequal branches of Government. It raises this question: What is the White House trying to hide by refusing to turn over this evidence?

From the outset of this scandal, the President spoke about the firing of U.S. attorneys as if it were a matter handled and decided by the Attorney General, and something Mr. Gonzales would have to explain to Congress and the American people. The President was hands off and arms' length. He had to ask others whether anything was improperly done and relied on a review by White House lawyers for his assertion that nothing improper was done.

This President and the Attorney General have both from time to time expressed confidence that the Congress would get to the bottom of this as if they themselves had no idea what had transpired.

Are we now to understand from the White House claims of executive privilege that, contrary to what the President said, these were decisions made by the President? Is he taking responsibility for this scandal, for the firing of such well-regarded and well-performing U.S. attorneys?

When we had the Attorney General testify under oath, he didn't know who added U.S. attorneys to the list of those to be fired, or the reasons they were added. Somehow they mysteriously arrived on the Attorney General's list. You know, it occurred to me when I flew down from Vermont today and I was looking in the paper, the latest Harry Potter movie is coming out. These mysterious lists sound like something would you see in that movie, not in the White House or the Attorney General's Office.

Indeed, the bottom line of the sworn testimony from the Attorney General, the Deputy Attorney General, the Attorney General's former Chief of Staff, the White House liaison, and other senior Justice Department officials was that while the President was not involved in the decisionmaking that led to the unprecedented firings of several well-performing prosecutors, these people were not responsible either. So I ask, who made these decisions? Was it the political operatives at the White House who set out to severely damage the careers of well-performing U.S. attorneys?

Even this White House cannot dispute the evidence we have gathered to date showing that White House officials were heavily involved in these firings—not only heavily involved in these firings and in the Justice Department's responses to inquiries that I made, the distinguished Presiding Officer made, and others, Republicans and Democrats alike made, about them.

The White House continues to try to have it both ways, but at the end of the day it cannot. The White House cannot block Congress from obtaining the relevant evidence and credibly assert that nothing improper occurred. They are just saying: Trust us, we did nothing wrong.

Trust us? With the revelations that come out almost every single day of things that tell the American people they should not trust them. What is the White House hiding? Was the President involved, were his earlier statements to the American people therefore misleading and inaccurate? Is this an effort by the White House legal team to protect the White House political operatives whose partisan machinations have been discovered in a new set of White House horrors?

Several weeks ago, after Mr. Fielding first conveyed the President's blank executive claim—and I have yet to hear directly from the President—Chairman CONYERS and I sent a letter to the White House asking for a specific factual basis regarding each document withheld and the normal privilege log that would be shown at the time. I asked the White House to provide this information so that it could substantiate its claim.

For months—and I have not done so precipitously but carefully—I have been giving the White House every opportunity to provide voluntarily the information we have sought. For months the only answer we have received is the same unacceptable ''take it or leave it'' offer. I have tried to give the White House every opportunity to explain its claims. A serious assertion of privilege—one they honestly believed in—would include an effort to demonstrate to the committee which documents and which parts of those documents are covered by any privilege that is asserted and why. But it is apparent this White House is contemptuous of the Congress and believes it doesn't have to explain itself to anyone—not to the people's Representatives in Congress, but worse yet not to the American people.

The White House's refusal to provide a listing of those documents on which it asserts privilege, and a specific factual and legal basis for the assertion of executive privilege claims, raises even more questions. What is the White House so intent on hiding? What is it they are so afraid of becoming public that they cannot even identify the documents or the dates, authors, and recipients? Would we see the early and consistent involvement of the White House political operatives in what should be independent and neutral law enforcement decisions? Would we see early and consistent involvement of White House political operatives who are trying to manipulate law enforcement?

Nor is the White House content with blanket assertions of privilege regarding matters in its control. It has now reached outside the White House to direct the Republican National Committee not to provide information it has to Congress and has today instructed a former White House official, Sara Taylor, not to cooperate with the investigation by testifying to the best of her knowledge.

Mr. President, let me explain our attempts to procure the e-mails that White House officials sent using Republican National Committee accounts. At first, they gave the impression that we would be happy to give you those 60,000 of her e-mails, or 130,000 of Karl Rove's but, of course, they were all erased, so we cannot give them to you. When I and others suggested that you cannot erase e-mails like that and that they are in a backup system somewhere else, they sent somebody who works in the White House Press Secretary's Office out to tell the American people that this is a ridiculous claim and that we now have Senators pretending to be computer experts. Actually, no, that is an answer any 12-year-old could have given. What happened? Suddenly, they found, yes, they do have the e-mails. And as we had said, and as any 12-year-old would have said, they weren't erased.

Ms. Taylor is scheduled to testify on Wednesday to comply with a subpoena authorized by the committee. It is unfortunate that the White House is trying to interfere with Ms. Taylor's testimony before the Senate, and they are trying to interfere with Congress's responsibility to get to the truth behind the unprecedented firings of several U.S. attorneys.

Let's review the facts. Sometimes it is good to get outside the hyperbole of politics and just talk about the facts. There is clear evidence that Sara Taylor is one of several White House officials who played a key role in these firings and the administration's response to cover up the reasons behind them when questions first arose. The question I have is this: Why were they so eager to cover up what they did?

There is also clear evidence that Ms. Taylor was part of 66,000 RNC e-mails being kept from the public as part of a White House effort to avoid oversight by ignoring the laws meant to ensure a public record of official Government business. Basically, they are saying the law applies to everybody else, but they are above the law.

I am willing to discuss the matter in good faith with the White House. I have been trying to engage the White House for months in discussions to come to some sort of accommodation. I hope we can do that. I am reluctant to agree to anything, though, that prevents Congress from doing our oversight job effectively. I have been here with six administrations, with Republicans and Democrats alike, and we found ways to work with Congress. Ultimately, even the Nixon administration—the administration that was here before I arrived—found ways.

This administration, unlike all those others, wants to obstruct and obfuscate. We should not lose sight of the fact that this is a serious matter. This is about improper political influence on our justice system. It is about the White House manipulating the Justice

Department into its own political arm. It is about manipulating our justice system to pursue a partisan political agenda. It is about pressuring prosecutors to bring cases of voter fraud to try to influence elections—of sending a partisan operative like Bradley Schlozman to Missouri to file charges on the eve of an election, in direct violation of their own Justice Department guidelines.

It is about high-ranking officials misleading Congress and misleading the American people about their political manipulation of justice. It is about the unprecedented and improper reach of politics into the Department's professional ranks, such as the admission by the Department's White House Liaison, Monica Goodling, that she improperly screened career employees for political loyalty and wielded undue political influence over key law enforcement decisions and policies.

It is about political operatives pressuring prosecutors to bring partisan cases and seeking retribution against those who refused to bend to their political will, such as the example of New Mexico's U.S. attorney, David Iglesias, who was fired a few weeks after Karl Rove complained to the Attorney General about the lack of purported ''voter fraud'' enforcement cases in Mr. Iglesias's jurisdiction.

Along the way, this subversion of the justice system has included lying, misleading, stonewalling, and ignoring the Congress in our attempts to find out what happened. We know White House officials are involved, but it is difficult to get the facts when the White House, even as of today, refuses to provide even a single witness or a single document.

This administration has instituted an abusive policy of secrecy aimed at protecting themselves from embarrassment and accountability. Apparently, the President and Vice President think they are above the law. In America, nobody is above the law, not even George Bush or DICK CHENEY.

The President has sought to make the Vice President's former Chief of Staff above the law when he granted him a form of amnesty last week. The President chose to override a prosecution, jury trial, conviction, and prison sentence and to excuse his lying to Federal investigators and a grand jury and his perjury, and to reward his silence by giving Mr. Libby what commentators have called a ''get out of jail free'' card.

The lack of accountability for anyone in the Bush administration has reached new heights—or lows. It is not often that the New York Times and the Washington Times editorial boards agree, but they did about this President's abrupt commutation of Mr. Libby's 30-month prison term for perjury and obstruction of justice. The Washington Times opined that President Bush's action is ''neither wise nor just,'' and it continued in its Independence Day editorial by saying:

> Perjury is a serious crime. . . . The integrity of the judicial process depends on fact-finding and truth-telling. A jury found Libby guilty of not only perjury but also obstruction of justice and lying to a grand jury.

I would add that the widely respected trial judge, who was nominated by President Bush and confirmed by the Senate at the time I chaired the committee in 2001, imposed a reasonable sentence which was actually at the lower end of what the prosecutor recommended, and the DC Circuit refused to stay the sentence pending appeal in accordance with the law.

The New York Times in a July 3 editorial entitled ''Soft on Crime'' called the President's action a ''baldly political act,'' noting that ''[a]s president, he has repeatedly put himself and those on his team, especially Mr. CHENEY, above the law.'' They noted that the President ''sounded like a man worried about what a former loyalist might say when actually staring into a prison cell.''

That Presidential act sent the message that silence, bad memory, and abject loyalty would be rewarded, just as the mass firings of U.S. attorneys sent the message that all remaining Federal prosecutors and law enforcement had better knuckle under to the political agenda of the administration.

Untoward White House interference with Federal law enforcement is a serious matter. It corrupts Federal law enforcement, threatens our elections, and has seriously undercut the American people's confidence in the independence and evenhandedness of law enforcement.

Despite the attitude of the current administration, our Constitution does not include the phrase ''executive privilege'' or ''unitary executive.'' What the U.S. Constitution does provide in the oath of office is that the President has to swear to ''faithfully execute the Office of President of the United States'' and ''preserve, protect and defend the Constitution of the United States.'' His essential duties require him to ''take care that the Laws be faithfully executed.'' I have grave concern with regard to how this administration is fulfilling these sworn and essential duties. The political intrusion into the law enforcement functions of the Government through the scheme to fire and replace our U.S. attorneys is a key part of that concern.

Congress will continue to pursue the truth behind this matter not only because it is our constitutional responsibility but because it is the right thing to do.

I hope the White House stops the stonewalling. I hope they accept my offer to negotiate a workable solution to the committee's oversight needs so we can effectively get to the bottom of what was done wrong and what has gone wrong.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. STABENOW). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, the existing order is to have consideration of four nominees for the U.S. district court. I urge my colleagues to confirm all of them.

The first is Liam O'Grady for the Eastern District of Virginia. I am pleased to see that there are substantial Pennsylvania connections with these nominees. Liam O'Grady received a bachelor's degree from Franklin & Marshall College in Lancaster. I am interested to see his diversification of employment. He was a pension examiner for the United Mine Workers of America, Welfare and Retirement Fund, as well as other outstanding credentials, and was rated unanimously ''well qualified'' by the American Bar Association.

I ask unanimous consent to have the full records of these nominees printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. SPECTER. Madam President, I think it is unnecessary to speak at length about any of these nominees because they all passed unanimously from the Judiciary Committee, and it would be my expectation, based on prior practices, that they would all be confirmed. I would be surprised if there were any negative votes at all. It may be even possible to abbreviate the proceedings today with some voice votes. That is the decision for the distinguished chairman. We will come to that later.

Mr. LEAHY. I am sorry, what was the question?

Mr. SPECTER. I was commenting that all were passed out unanimously by the Judiciary Committee. I said it was my expectation from prior practice that they would probably be confirmed unanimously. I would be surprised if we have a dissenting vote among the four. And I said I am not going to speak long. I am putting their records into the RECORD. I said it might even be possible to abbreviate the rollcalls. That is the chairman's call.

Mr. LEAHY. Madam President, I will be very happy to do that. I think there are a lot of people who have stacks of paper since we have been gone who would probably be happy to have one or two rollcalls.

Mr. SPECTER. I am sorry, I didn't understand.

Mr. LEAHY. Some may be happy to have one or two rollcall votes and get out of here.

Mr. SPECTER. In accordance with the practice Chairman LEAHY and I adopted in the good old days.

The second nominee, Janet Neff, in the court of the Western District of

Michigan, was born in Wilkinsburg, PA, is a University of Pittsburgh graduate, and is rated ''majority qualified'' and others rated ''well qualified.'' She has an outstanding academic and professional record.

The third nominee is Paul Lewis Maloney, again for the Western District of Michigan, again a Pennsylvania connection. He received a bachelor's degree from Lehigh University. His ABA rating was unanimously ''well qualified.''

The fourth nominee is Robert James Jonker, again from the Western District of Michigan. I am not distressed, but I note no Pennsylvania connection here. But I know the distinguished presiding Senator from Michigan will be relieved to have these three nominees confirmed because there has been a judicial emergency, and on occasion the Congressman from the area has been on the Senate floor urging us to confirm these nominees. I think we will get there today.

EXHIBIT 1

LIAM O'GRADY

UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

Birth

September 24, 1950; Newark, New Jersey.

Legal Residence

Virginia.

Education

B.A., Franklin & Marshall College, 1973.

J.D., George Mason University School of Law, 1977.

Employment

Pension Examiner, United Mine Workers of America, Welfare & Retirement Fund, 1973–1975.

Attorney Advisor and Law Clerk, Administrative Law Judge George Koutras, Departments of Interior and Labor, 1976–1979.

Sole Practitioner, Private Practice, 1979–1982.

Assistant Commonwealth's Attorney, Office of the Virginia Commonwealth's Attorney, 1982–1986.

Assistant U.S. Attorney, Department of Justice, 1986–1992—Chief of the Narcotics Section (four years); Acting Chief of the Criminal Division (one year).

Adjunct Professor, George Washington University, Columbia Graduate School for Forensic Sciences, 1986–1994.

Partner, Finnegan, Henderson, Farabow, Garrett, & Dunner, LLP, 1992–2003.

U.S. Magistrate Judge, U.S. District Court, Eastern District of Virginia, 2003–Present.

Selected Activities

Member, Virginia State Bar.

Member, American Bar Association.

Member, George Mason Inns of Court.

Member, American Intellectual Property Law Association.

Member, Arlington County Bar Association.

Coach, McLean Youth Soccer.

ABA Rating

Unanimous ''well qualified.''

LIAM O'GRADY—U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

Magistrate Judge Liam O'Grady was initially nominated to be a U.S. District Judge for the Eastern District of Virginia on August 2, 2006. No further action was taken on his nomination in the 109th Congress. Judge O'Grady was re-nominated on January 9, 2007. He received a committee hearing on May 10, 2007, and was favorably reported on May 24, 2007.

He comes before the committee with an impressive resume.

He received a B.A. from Franklin & Marshall College in 1973 and a J.D. from George Mason University School of Law in 1977.

After graduating from law school, Judge O'Grady briefly worked as an attorney advisor to Administrative Law Judge George Koutras in the Departments of Interior and Labor.

In 1979, Judge O'Grady entered private practice as a sole practitioner. His focus was on domestic relations cases, real estate closings, bankruptcy proceedings, criminal cases, and general civil disputes.

After three years of private practice, Judge O'Grady became an Assistant Commonwealth's Attorney for the Commonwealth of Virginia. He was the liaison to robbery homicide squad at the police department, and handled many of the homicide cases.

From 1986 to 1992, Judge O'Grady served as an Assistant United States Attorney for the Eastern District of Virginia. In that capacity, he focused on drug conspiracies, drug related homicides, and organized crime. For a one-year stint, as Acting Chief of the Criminal Division, he supervised the criminal cases for the whole district.

Meanwhile, from 1986 to 1994, Judge O'Grady was an adjunct professor at George Washington University's forensic sciences graduate school, teaching courses in criminal law, evidence, and trial advocacy.

In 1992, Judge O'Grady returned to private practice as a partner for Finnegan, Henderson, Farabow, Garrett & Dunner LLP. As chief litigator, he handled patent, trademark, copyright, and trade secret cases for Fortune 500 clients in courts around the country and the world.

In 2003, Judge O'Grady became a Magistrate Judge for the United States District Court for the Eastern District of Virginia.

The ABA has unanimously rated Judge O'Grady ''well qualified.''

JANET T. NEFF

UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

Birth

April 8, 1945, Wilkinsburg, Pennsylvania.

Legal residence

Michigan.

Education

B.A., cum laude, University of Pittsburgh, 1967.

Omicron Delta Epsilon, National Economics Honor Society.

J.D., Wayne State University Law School, 1970.

Employment

Tax Examiner, Internal Revenue Service, 1970.

Research Attorney, Michigan Court of Appeals, 1970–1971.

Assistant City Attorney, City of Grand Rapids, 1971–1973.

Associate/Partner, VanderVeen, Freihofer & Cook, 1973–1978.

Commissioner, Michigan Supreme Court, 1978–1980.

Assistant United States Attorney, Western District of Michigan, 1980.

Associate, William G. Reamon, P.C., 1980–1988.

Judge, Michigan Court of Appeals, 1989–Present.

Selected Activities

Member, U.S. District Court Professional Review Committee.

Member, Michigan Bar Association.

Member, Grand Rapids Bar Association.

Member, Michigan Trial Lawyers Association.

Member, Women Lawyers Association of Michigan.

Member, Association of Trial Lawyers of America.

Member, American Bar Association.

ABA Rating

Majority ''qualified''/minority ''well qualified.''

JANET T. NEFF—U.S DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

Janet T. Neff was nominated to be a U.S. District Judge for the Western District of Michigan on June 28, 2006. A hearing was held on her nomination on September 19, 2006, and it was reported out of Committee on September 29 by voice vote. The Senate was unable to act on her nomination before the end of the 109th Congress.

President Bush re-nominated Judge Neff on March 19, 2007. A second hearing was held on her nomination on May 10, 2007, and she was favorably reported on May 24, 2007.

She comes before this Committee with a distinguished record of public service.

Judge Neff received a B.A., cum laude, from the University of Pittsburgh in 1967 and a J.D. from Wayne State University Law School in 1970.

Following law school, Judge Neff worked briefly as an estate and gift tax examiner for the Internal Revenue Service (IRS). This position involved review and audit of Federal estate and gift tax returns.

In 1970, Judge Neff accepted a position as a research attorney for the Michigan Court of Appeals, where she reviewed briefs and lower court records.

Beginning in 1971, Judge Neff served as an Assistant City Attorney for the City of Grand Rapids. As Assistant City Attorney, she prosecuted offenses ranging from drunk driving to assaults.

Judge Neff entered private practice in 1973, when she worked as an associate and then a partner at Vander Veen, Freifoher & Cook. She had a broad and varied practice that included insurance, products liability, criminal defense, domestic relations, commercial litigation, bankruptcies, and the representation of numerous municipal governments.

In 1978, Judge Neff became a Commissioner of the Michigan Supreme Court. In that capacity she worked as a staff attorney to the court, conducting research and reviewing applications for leave to appeal, motions, and other matters.

She served as an Assistant U.S. Attorney for the Western District of Michigan in 1980.

From 1980 until 1988, Judge Neff was as an associate with William G. Reamon, P.C., where she handled personal injury cases.

In 1988, Judge Neff was elected as a Judge of the Michigan Court of Appeals where she continues to serve today.

A substantial majority of the American Bar Association Standing Committee rated Judge Neff ''qualified,'' and a minority rated her ''well qualified'' for service on the Federal bench.

The seat to which Judge Neff is nominated has been designated a ''judicial emergency'' by the nonpartisan Administrative Office of the Courts.

The Chief Judge of the U.S. District Court for the Western District of Michigan, Judge Robert Bell, has written the Committee to impress upon us the need to provide his court with another judge. According to the Chief Judge, ''with the present three vacancies [he] is the sole active judge.'' The Western District of Michigan has the weightiest docket per authorized judgeship in the Sixth Circuit.

PAUL LEWIS MALONEY

UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

Birth

December 15, 1949; Cleveland, Ohio.

Legal Residence

Michigan.

Education

B.A., Lehigh University, 1972.

J.D., University of Detroit School of Law, 1975.

Employment

Assistant Prosecutor, Berrien County Prosecutor's Office, 1975–1981; Prosecuting Attorney, 1981–1989.

Deputy Assistant Attorney General, Criminal Division, United States Department of Justice, 1989–1993.

Special Assistant to the Director, State of Michigan, Department of Corrections, 1993–1995.

District Judge, Berrien County, Michigan, 1995–1996.

Circuit Judge, Berrien County, Michigan, 1996–Present.

Selected Activities

Member, Michigan Prosecuting Attorneys Association.

Member, Michigan District Judges Association.

Member, Michigan Judges Association (Board of Directors Member for one year).

Member, Michigan Bar Association.

Member, American Bar Association.

Member, Berrien County Bar Association.

Member, Knights of Columbus.

President, Catholic Community Education Commission.

ABA Rating

Unanimous ''well qualified''.

PAUL LEWIS MALONEY—U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

Paul Lewis Maloney was initially nominated to be a U.S. District Court Judge for the Western District of Michigan on June 28, 2006. A hearing was held on his nomination on September 19, 2006, and he was reported out favorably on September 29, 2006, by a voice vote. No further action was taken on the nomination before the 109th Congress adjourned.

Judge Maloney was re-nominated by the President on March 19, 2007, and reported favorably by the Committee on May 24, 2007.

Judge Maloney has an impressive resume reflecting a devotion to public service.

He received a B.A. from Lehigh University in 1972 and a J.D. from the University of Detroit School of Law in 1975.

Following law school, Judge Maloney began working as an assistant prosecutor for the Berrien County Prosecutor's Office. In 1981, he was appointed the county's Prosecuting Attorney and was re-elected in 1982, 1984, and 1988.

In 1989, Judge Maloney left the Berrien County Prosecutor's Office to serve as a Deputy Assistant Attorney General for the Criminal Division of the United States Department of Justice.

Following his work at the Department of Justice, Judge Maloney returned to Michigan to serve as Special Assistant to the Director of Michigan's Department of Corrections.

In 1995, Judge Maloney was appointed District Judge for Berrien County. He held this position for a year, before he was appointed to be Circuit Judge of Berrien County, where he continues to serve.

The American Bar Association rated Judge Maloney unanimously well-qualified, its highest rating.

This vacancy has been designated a ''judicial emergency,'' and, indeed, the Western District of Michigan is in dire need of judges. Currently, there is only one active judge—Chief Judge Bell—out of the four judgeships authorized for the district. Chief Judge Bell wrote letters on December 28, 2006, and April 18, 2007, explaining that he and the senior judges are ''exhausted.''

ROBERT JAMES JONKER

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

Birth

March 9, 1960, Holland, Michigan.

Legal Residence

Michigan.

Education

B.A., with honors, Calvin College, 1982.

J.D., summa cum laude, University of Michigan Law School, 1985; Order of the Coif; Robert S. Feldman Labor Law Award.

Employment

Law Clerk, Honorable John F. Feikens, U.S. District Court for the Eastern District of Michigan, 1985–1987.

Associate, Warner Norcross & Judd LLP, 1987–1993; Partner, 1994–Present.

Selected Activities

Fellow, Michigan State Bar Foundation.

Member, Federal Bar Association, Western District Chapter; President-Elect, October 2006; Vice President—Operations, 2 years; Treasurer, 2 years; Executive Board Member, 1999–2006.

Chairperson, Judicial Code Committee of the Christian Reformed Church.

Listed in Best Lawyers in America for Business Litigation.

Member, Grand Rapids Bar Association.

Member, Michigan Bar Association.

Member, American Bar Association.

ABA Rating

Unanimous ''well qualified''.

ROBERT JAMES JONKER—U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

Robert James Jonker was nominated to be a United States District Judge on June 29, 2006. A hearing was held on his nomination on September 19, 2006. His nomination was favorably reported out of the Judiciary Committee on September 29, 2006; however, the Senate failed to act on his nomination prior to the adjournment of the 109th Congress. President Bush renominated Mr. Jonker on March 19, 2007, and the committee favorably reported him on June 7, 2007.

Mr. Jonker received his B.A., with honors, from Calvin College in 1982 and his J.D., summa cum laude, from the University of Michigan Law School in 1985, where he was elected Order of the Coif.

Upon graduation from law school, Mr. Jonker served as a law clerk to the Honorable John F. Feikens of the U.S. District Court for the Eastern District of Michigan. His clerkship lasted from 1985 to 1987.

Following his clerkship, Mr. Jonker accepted an associate position with the Michigan law firm, Warner Norcross & Judd, where he focuses on complex business and environmental litigation.

In 1994, Warner Norcross made him a partner, a position he holds today.

For 6 years, Mr. Jonker has served as chair of the professional staff committee of Warner Norcross, which is responsible for the recruitment, development, retention and review of associate attorneys.

Mr. Jonker was recognized in the Best Lawyers in America for his business litigation expertise.

The American Bar Association has unanimously rated Mr. Jonker ''Well Qualified'' to serve as a Federal district court judge.

This vacancy has been designated a ''judicial emergency.'' In fact, the Western District of Michigan has the highest weighted case filings in the Sixth Circuit. Currently, there is only one active judge—Chief Judge Bell—out of the four judgeships authorized for the district. Chief Judge Bell wrote letters on December 28, 2006, and again on April 18, 2007, explaining the dire need for judges in the Western District and that he and the senior judges are ''exhausted.''

EXECUTIVE PRIVILEGE

Mr. SPECTER. Madam President, I wish to make a comment or two on the subject broached by the distinguished chairman of the committee on the current issue with the challenge on executive privilege where letters were received today from the White House Counsel indicating that executive privilege would be asserted. It is my hope that we will yet be able to resolve this controversy because of the importance of getting the information which the Judiciary Committee has sought in its oversight capacity.

We are dealing with a Department of Justice which I think, fairly stated, is dysfunctional. We have seen the Attorney General of the United States come before the Judiciary Committee and say he was not involved in discussions, not involved in deliberations, and then was contradicted by three of his top deputies, contradicted by documentary evidence in the e-mails.

I think it is generally conceded that the President of the United States has the authority to remove U.S. attorneys for no reason, just as President Clinton did when he took office in 1993, but you cannot remove a U.S. attorney for a bad reason.

There have been questions raised as to the request for the resignation from the U.S. attorney from San Diego, that she perhaps was hot on the trail of confederates of former Congressman Duke Cunningham, who is serving 8 years in jail. I do not know whether that is true. We have yet not had an explanation from the Department of Justice as to why her resignation was requested.

Similarly, a cloud has existed over the reasons for the requested resignation for the U.S. attorney from New Mexico, with some suggestions that he was asked to resign because he would not bring prosecutions for vote fraud when he thought there was no basis, and some of us thought there was a basis. That has not yet been explained, and the request for resignations generally has not been explained.

The Department of Justice is second only to the Department of Defense in importance to the United States. The Department of Justice has the responsibility for investigating terrorism, has the responsibility for investigating and prosecuting drug dealers in international cartels, the responsibility for investigating and prosecuting organized crime and violent crime. Yet it is pretty hard to make a more conclusive description than to say that the Department of Justice is dysfunctional, and the Attorney General insists on

staying. I think, as to his own decision, it is a matter for him personally. I am not going to tell him what to do, nor am I going to make a recommendation to the President. Under separation of powers, it is the President's call. I don't want the President to tell me how to conduct my office in the Senate and I am not going to impede upon his executive authority, but I do believe that the inquiry which the Judiciary Committee is conducting might produce facts, if we get to the bottom of things, find out what they are, which would lead us to a new Attorney General, which I think is very much in the national interest.

So I am hopeful we can yet avoid the confrontation. I think, candidly, there is a lot of posturing on both sides. I don't think it is realistic to seek a contempt citation brought against the President—that is newspaper talk—contempt citation brought against anybody in the executive branch, because there are arguments on both sides of this issue. I hope we can work it out so that we don't test the good faith of the executive branch in asserting privilege or the good faith of the legislative branch, the House of Representatives Judiciary Committee and the Senate Judiciary Committee, in seeking facts as part of our oversight responsibility. I hope we can work it out.

I said a long while ago I would be prepared to accept the President's terms, with only one exception, and that was the importance of having a transcript as to what happens. The President made an offer on national television months ago saying he would allow White House personnel to come in and be informally questioned, but he did not want to have them under oath, and I would prefer to see them under oath. But I would give on that issue, because what they say is subject to a criminal prosecution with a 5-year penalty, the same as a perjury conviction for a false official statement under 18 U.S. Code 1001.

Mr. LEAHY. Will the distinguished Senator yield for a question on that point?

Mr. SPECTER. I yield.

Mr. LEAHY. Would the distinguished Senator accept the offer of the President, if the rejoinder of the President was if we did it the way you describe—transcript, knowing that the criminal code applies—but once you have done that, there would be no followup? Even if you were to find something out during that meeting, there would be no followup; there would be a promise of no subpoenas, there would be no further proceedings?

Mr. SPECTER. I will be pleased to respond to that relevant inquiry. Senator LEAHY and I have discussed this before. We have discussed just about everything, because we do things on a joint basis—about as pure as Ivory Snow, 99.4. We have some disagreements, but we try to work them out on a bipartisan basis because we think it is the right way to approach it.

The Senator from Vermont has said he thinks we would be barred from a followup, and I don't know whether that is part of the offer which the President has made, but we can get it clarified further. I do not think we could make the commitment not to pursue a subpoena at a later time if we felt the informal interviews were insufficient. I don't think we can give up our authority in that process, and if we could, I wouldn't agree to that because I don't know what the informal interviews are going to produce and I would want to retain the right to exercise our right to subpoena. I would acknowledge at the same time that if we exercise our right to a subpoena that the President could exercise whatever rights he has on executive privilege. We would be back to square one, but at least we would have the advantage of the questioning. I know the questioning of Senator LEAHY, a tough prosecutor from Burlington, VT. I have been there. And on an informal basis, Senator LEAHY can extract quite a lot of information, and Chairman CONYERS has the capacity to extract a lot of information. I might even have a relevant question or two to ask in the course of the proceedings.

I think we can get a lot of information. I want to have that information. I want to find out as much as I could before I go to court on what is going to be a 2-year battle. It is going to outlast the President's term. It is going to outlast Attorney General Gonzales's tenure. I don't think the next President is going to reappoint Attorney General Gonzales.

Let the record show there is a smile from staff in the back. It was intended to be not serious.

Then the President doesn't want there to be these witnesses to go before both committees, and that is all right. I think Chairman CONYERS and Chairman LEAHY, in consultation with their ranking members, can work out a smaller group from the House and Senate, bipartisan, bicameral, sufficient to ask the questions. Then I would prefer that it be public. But as long as the transcript is published, I would give that up as well.

I think it is so important that we get to the bottom of this important issue so we can have the Department of Justice function in the interest of the public that I am prepared to make those concessions, but I want a transcript. I would even be willing to give up the transcript if I am compelled to. I would take the interviews rather than have nothing. It would be at least something. But I would say to the President, the executive branch, that the transcript protects not only the questioners but the persons being questioned so there is no doubt as to what was said. I have been in closed-door meetings and had a number of participants walk out and, in perfectly good faith, have different versions as to what occurred. That happens when you are in a closed session. That happens when you are in a closed meeting, in perfectly good faith. That is why a transcript would protect Sara Taylor. It would protect Ms. Harriet Miers. It would protect the people who are being questioned.

It is my hope we can yet work this out. Before taking the floor, I asked Senator LEAHY if he would be willing to accept—he doesn't want to go as far as I do, and I can understand why he would insist on a transcript—I say I would like to have a transcript—but rather than have nothing, I would be willing to go into a closed session and have Senator LEAHY question, Chairman LEAHY question, Chairman CONYERS question, and I question, some others question, to find out what we can. If at the end of that process we feel it is necessary to revert to subpoenas, we cannot, I think—but in any event should not—give up that power that resides with the legislative branch. I don't think we have the authority to give it up, but if we had the authority to give it up, I wouldn't want to give it up.

But I want to pursue this matter and I want to get the information. When you talk about a criminal citation, a citation for criminal contempt, you are talking about a very serious matter. I have great empathy for the witnesses, Sara Taylor and Harriet Miers, who have been subjected to these subpoenas. If they assert executive privilege, and I agree that they are compelled to, I think once they are instructed by the President that the work they did for him is subject to his executive privilege, as he sees it, I think they have no choice. But when you bring a criminal contempt citation against Sara Taylor, people aren't going to understand she is an innocent pawn in the midst of this proceeding. If you bring a criminal contempt citation against anybody, there is an inference of some wrongdoing. You don't have a criminal charge customarily unless there is probable cause to believe a crime has been committed. That is when you have a warrant of arrest. That is when you have an indictment. Of course, a contempt citation is different, but if you call it a citation for criminal contempt, that has a tarring effect which is very serious and which is very profound.

The U.S. attorney has to bring the charge, and the U.S. attorney has discretion. It is not an automatic matter that if the Congress refers the issue for a criminal contempt citation, it is mandated. U.S. attorneys have discretion as to what they do. They can bring it or not, depending upon their conclusions, upon their allocation of resources. And they can bring it on what they want to do. I could see how a U.S. attorney might not want to spend a whole lot of time on this matter. I can see how the taxpayers of the United States wouldn't like to spend a whole lot of time on this matter. But that is where we are heading if this posturing continues.

Most importantly, we will not find out the underlying facts on the request for the resignations of these U.S. attorneys, and that is important to do so we can make a final evaluation by the Judiciary Committee as to what our conclusions are on this matter, and it would bear heavily on the continued service, the continued activity, by Attorney General Gonzales in holding that position.

Madam President, I see the distinguished Senator from Kansas on the floor, and we have a short time left until the votes start at 5:30, but I yield to Senator BROWNBACK.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. I wish to address the nomination of Janet Neff, who is the second nominee to come up. I can do so now or wait until after the first vote. I would defer to my colleague from Pennsylvania, if he wants to do it that way, or if there an order established on the vote or for debate on the second nomination.

The PRESIDING OFFICER. There are 10 minutes provided to the Senator from Kansas after the first vote.

Mr. BROWNBACK. I would be happy to take my time at that point in time, and I yield the floor.

Mr. SPECTER. Madam President, I think there is going to be real interest on the part of the body in moving to the second vote, but there are 10 minutes for the Senator from Kansas after the first vote?

The PRESIDING OFFICER. That is correct.

Mr. BROWNBACK. I would be happy, if I could, Madam President, to take that time now. It won't be the full 10 minutes, but I wish to be able to discuss this. This is a matter of some concern. It has been pending for over a year, and I think it is meritorious of the nominee that it be brought forward.

Mr. SPECTER. Madam President, I would ask the Senator from Kansas if he would be willing to take 5 minutes and delay it to that extent.

Mr. BROWNBACK. Let us see if I can cover it, but if I can't, I will take some time before the second vote occurs. This has been pending for a year's period of time, and it is a significant matter.

Mr. SPECTER. Madam President, I suggest we proceed to regular order then.

The PRESIDING OFFICER. The Senator from Pennsylvania has time remaining, if you choose to yield that to the Senator or yield it back.

Mr. SPECTER. How much time do I have remaining?

The PRESIDING OFFICER. Nine minutes.

Mr. SPECTER. Ten minutes. I yield to the Senator from Kansas on the understanding that will be the time he would have had otherwise, and that we may proceed then to the sequence of votes.

Mr. BROWNBACK. That is acceptable to me.

The PRESIDING OFFICER. Without objection, it is so ordered. There are 9 minutes remaining.

Mr. BROWNBACK. I thank my colleague from Pennsylvania for accommodating me. Also, we wish to accommodate the other Members who will come in and I think will want to vote in a series of votes. I think that is perfectly fine.

I wish to address the second nominee who will be up today, Janet T. Neff, for the District Court of the Western District of Michigan. The Presiding Officer has had an interest in this matter, as well as many others. Alexander Hamilton, in Federalist 78, said this about judges:

> The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it proves anything, would prove that there ought to be no judges distinct from that body.

As we consider judicial nominees, we must consider whether they have the temperament, disposition, and ideology to interpret the law without regard to their own personal will. Because I am not convinced Judge Neff can do that, I cannot support her nomination.

I wish to give the body some background on this matter. On June 28, 2006, Judge Janet Neff was nominated by President Bush for a seat on the U.S. District Court for the Western District of Michigan. I wish to point out that she was part of an overall package of judges that was put forward and that the Michigan Senators were part of this discussion of her nomination. I do not know if she would have been the top pick of the President, but this is where we work together in this body, trying to get district judges the Senators from that State would support. These were supported by my two distinguished colleagues from Michigan. They were for Judge Neff.

In September of 2006, following her hearing before the Senate Judiciary Committee, I became aware of Judge Neff's participation in a same-sex commitment or marriage ceremony in Massachusetts in 2002. This was reported in the New York Times.

This concerned me. I placed a hold on Judge Neff's nomination in order to ascertain her role in the ceremony and her position on the constitutional validity of State bans on same-sex marriage. That is the core issue. No. 1, factually, what is it that took place that she participated in and, No. 2, what is her view of the constitutionality of same sex marriages? She would be going on to the Federal bench and this issue is likely to come in front of her.

With regard to her involvement in the 2002 Massachusetts commitment ceremony, Judge Neff first responded to my concerns in a letter. She described the context of the ceremony itself but declined to answer questions regarding the legality of traditional marriage laws and initiatives. For that reason, I requested a second hearing with Judge Neff, which was held on May 10, 2007. My distinguished colleague from Vermont, the chairman of the committee, accommodated that hearing, and I appreciate that he did. At that hearing, Judge Neff testified she attended the commitment ceremony in Massachusetts as a close friend of one of the women involved. She stated she did not ''lead'' the proceeding, as the New York Times reported but, rather, participated as the homilist in the formal ceremony itself. Judge Neff testified that when she was asked to deliver the homily, she was pleased to do that.

I spent much time considering whether her role as a homilist can fairly be described as leading the ceremony. It is my belief, whether she led the ceremony, she was an active participant and not a mere bystander.

I wish to make clear my decision to oppose Judge Neff's nomination is not based merely on her involvement in this ceremony. Rather, her participation in this ceremony was simply the means I became aware of her approach to interpreting same-sex marriage laws, which are likely to come in front of her or have a good possibility of coming in front of her were she to be placed on the Federal bench.

After discussing her role in the ceremony, I asked about her understanding of the law regarding same-sex marriage. When asked whether she feels the Constitution creates a right to same-sex marriage, Judge Neff said that is a ''continuing legal controversy.''

When asked what her understanding is regarding Michigan statutory defense of marriage law, she said, ''I really don't have an understanding of it.''

I would note for the record the State of Michigan passed a constitutional amendment by a vote of the people in 2004, 59 percent to 41 percent, defining marriage as a union of a man and woman. But prior to that, in 1996, prior to this commitment ceremony in 2002, the legislature passed a State law defining marriage as between a man and a woman—clearly the law of Michigan.

When asked her understanding regarding the law in Michigan, she said, ''It's not entirely settled,'' even though the legislature had passed this in 1996 and by 2004 the people of Michigan had passed a definition of marriage.

These answers of hers give me pause. Michigan's defense of marriage law, which has been on the books since 1996, says:

> Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this State has a special interest in encouraging, supporting and protecting that unique relationship in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this State.

In addition to this statute, in 2004, the voters of Michigan passed a similar constitutional amendment defining marriage as a union of a man and a

woman. In my opinion, the law of Michigan could not be more settled. The fact that Judge Neff feels the court has to weigh in before this issue is settled suggests a misunderstanding of the role of the judiciary. The people of Michigan have spoken, similar to those of 27 other States. The amendment was a direct statement by the people of Michigan. Never is it more important to respect the will of the people than with issues of fundamental family values. Those issues must be decided by the people and not by Federal judges.

Because I am not persuaded that Judge Neff will fairly uphold the law of the State of Michigan, I cannot support her nomination for a lifetime appointment to the bench.

This has been a long and arduous journey and I recognize that for Judge Neff and I recognize that for the State of Michigan. I appreciate her willingness to come in front of us in the confirmation process. But I believe one of the most important aspects of my job as a Senator is the consideration of judges for the Federal bench. I take the Senate's role in the judicial nomination process very seriously. Individuals who are put in these positions assume lifetime appointments. We have a responsibility to ensure they understand their role and are firmly rooted in the principles of law and justice and what they will do in interpreting the law, not writing the law. They must be committed to following the letter of the law without imposing their own ideologies.

Because I am not satisfied that Judge Neff can do this, on a very important, very controversial issue of our day, I cannot support her nomination. I have reached out. I met personally with Judge Neff. I met with the Senators from the State of Michigan. This has been a long ordeal.

It is my considered judgment that she is not well-set on her role as a judge and more willing to consider her role as an activist in this particular issue.

With that, I ask my colleagues and urge my colleagues to consider it and consider opposing and voting against Judge Neff's nomination.

I thank my colleagues for accommodating me. I urge a ''no'' vote on Judge Neff, the second nominee. I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Vermont.

Mr. LEAHY. Madam President, does the Senator from Vermont have any time remaining?

The PRESIDING OFFICER. The Senator does not have any further time on this nomination.

Mr. LEAHY. Madam President, I ask unanimous consent that 3 minutes of the time I have reserved between this vote and the next vote be yielded to the distinguished senior Senator from Michigan at this point.

The PRESIDING OFFICER. Is there objection?

Mr. BROWNBACK. Madam Present, do I have any time remaining? The only reason I am asking this is—I think that is a fair request, but I would like to have a minute between the votes when our colleagues are gathered here. It seems it would be only fair.

The PRESIDING OFFICER. The Senator from Kansas has 45 seconds remaining.

Mr. BROWNBACK. If I could ask for a minute at that time, I would have no problem for 3 minutes for my colleague from Michigan. I think it is fair when our colleagues are present to hear some of this discussion.

The PRESIDING OFFICER. Is there objection? The Senator from Michigan.

Mr. LEVIN. I believe the Presiding Officer would also need some time between the votes, and I believe that is not impacted by the current request; is that correct?

Mr. LEAHY. I will take it off my time between the votes. But there will be time for both the Senator from Pennsylvania and the Senator from Vermont between the votes.

Mr. SPECTER. Is the Senator from Kansas asking for 1 minute?

Mr. BROWNBACK. I am.

Mr. LEVIN. Between the votes or no?

Mr. BROWNBACK. Between the votes. That is when your time would occur.

Mr. LEAHY. I have no objection to that.

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

Mr. LEAHY. Madam President, before the Senator from Michigan speaks, the first pending is who?

The PRESIDING OFFICER. O'Grady is the next.

Mr. LEAHY. Madam President, I ask it be in order to ask for the yeas and nays on both the O'Grady and the Neff nominations at this point.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

Mr. LEAHY. I ask for the yeas and nays on those two and only those two.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays are ordered on the two nominations.

The PRESIDING OFFICER. The distinguished Senator from Michigan is recognized for up to 3 minutes.

Mr. LEVIN. I am pleased the long road to confirmation for three nominations for the Federal bench in the Western District of Michigan, Janet Neff, Robert Jonker, and Paul Maloney is apparently near the end of the road. Senator STABENOW and I worked with the White House on these nominations. Last year they were unanimously reported out of the Judiciary Committee and again this year. The confirmation of these nominees has been blocked since last November. The sticking point of the Senator who objected was that one of the nominees, Judge Neff, personally attended a same-sex commitment ceremony of a family friend who was a next-door neighbor of hers for 26 years.

When Judge Neff was asked to deliver some remarks, Judge Neff felt it was similar to being asked by one of her own daughters to be part of an important event in her life.

The ceremony was entirely private. It took place in Massachusetts, where Judge Neff has no official capacity. The ceremony had no legal effect. Judge Neff took no official role in the ceremony whatsoever.

Her qualifications are clear. She currently serves on the Michigan Court of Appeals, where she has served for a significant period of time.

Judge Neff graduated with honors from the University of Pittsburgh in 1967, then graduated from Wayne State University Law School in 1970. She has had a distinguished legal career. After law school, Judge Neff served as an estate and gift tax examiner for the Internal Revenue Service and then as a research attorney for the Michigan Court of appeals, before becoming an assistant city attorney for the city of Grand Rapids. Judge Neff has also worked in private practice, served as a commissioner for the Michigan Supreme Court and then as an assistant U.S. attorney. Judge Neff currently serves on the Michigan Court of Appeals. She has been granted numerous awards and honors, including the Outstanding Member for 2006 of the Women Lawyers Association of Michigan.

We are fortunate to have the opportunity today to confirm Judge Neff, along with two other qualified nominees, Robert Jonker and Paul Maloney.

I only hope now that we finally have an opportunity to confirm these three judges, that we will do so and do so overwhelmingly.

I yield the floor.

Mr. WEBB. Madam President, it is my distinct pleasure to offer my support—along with my colleague Senator WARNER—for the nomination of Magistrate Judge Liam O'Grady to be a judge on the U.S. District Court for the Eastern District of Virginia.

Since graduating from law school, Judge O'Grady's career has been as expansive as it has been distinguished. Judge O'Grady currently serves as magistrate judge in the U.S. District Court for the Eastern District of Virginia, where he has sat since 2003. Prior to taking the bench, Judge O'Grady was a partner at the law firm of Finnegan, Henderson, Farabow, Garrett, & Dunner, LLP, 1992–2003, an assistant U.S. Attorney in the Eastern District of Virginia, 1986–1992, and an assistant Commonwealth Attorney for the Commonwealth of Virginia. Judge O'Grady began his career as a law clerk to an administrative law judge for the Department of Labor and the Department of the Interior, 1976–1979, and was subsequently a sole practitioner, 1979–1982.

Judge O'Grady has spent equal time in Federal and State courts and has spent equal time handling criminal and civil matters. Judge O'Grady has tried more than 100 cases before a jury.

Moreover, he has authored and published several scholarly articles, and he has devoted countless hours in pro bono work for low-income and indigent clients. Judge O'Grady was unanimously rated ''well-qualified'' by the American Bar Association.

Judge O'Grady is married to Grace McPhearson O'Grady and has four children. He resides in McLean, VA. Judge O'Grady received a B.A. from Franklin & Marshall College, 1973, and a J.D. from George Mason University School of Law, 1977.

As I have previously noted, the Constitution assigns a pivotal role to the Senate in the advice and consent process related to Federal judges. These judgeships are lifetime appointments, and Virginians expect me to take very seriously my constitutional duties. In my mind, it matters not whether a nominee is a Republican or a Democrat, but rather whether the nominee will be respectful of the Constitution, and impartial, balanced, and fair-minded to those appearing before him. After careful deliberation, including conferring with Senator Warner, I believe that Judge O'Grady meets these high standards.

I thank the Chair for the opportunity to make these remarks about Judge O'Grady and for the expeditious way the Senate has moved his nomination through the process during the 110th Congress. Again, it is with pride that I join Senator WARNER in recommending Judge O'Grady to each of my colleagues in the Senate.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Liam O'Grady, of Virginia, to be U.S. district judge for the Eastern District of Virginia.

On this question, the yeas and nays have been ordered. The clerk will call the roll.

The assistant journal clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. DORGAN), the Senator from Hawaii (Mr. INOUYE), the Senator from South Dakota (Mr. JOHNSON), the Senator from Arkansas (Mrs. LINCOLN), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. LOTT. The following Senators are necessarily absent: the Senator from Colorado (Mr. ALLARD), the Senator from North Carolina (Mr. BURR), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Nevada (Mr. ENSIGN), the Senator from Arizona (Mr. MCCAIN), the Senator from South Dakota (Mr. THUNE), and the Senator from Ohio (Mr. VOINOVICH).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 88, nays 0, as follows:

[Rollcall Vote No. 239 Ex.]

YEAS—88

Akaka	Dole	Menendez
Alexander	Domenici	Mikulski
Barrasso	Durbin	Murkowski
Baucus	Enzi	Murray
Bayh	Feingold	Nelson (FL)
Bennett	Feinstein	Nelson (NE)
Biden	Graham	Pryor
Bingaman	Grassley	Reed
Bond	Gregg	Reid
Boxer	Hagel	Roberts
Brown	Harkin	Rockefeller
Brownback	Hatch	Salazar
Bunning	Hutchison	Sanders
Byrd	Inhofe	Schumer
Cantwell	Isakson	Sessions
Cardin	Kennedy	Shelby
Carper	Kerry	Smith
Casey	Klobuchar	Snowe
Clinton	Kohl	Specter
Coburn	Kyl	Stabenow
Cochran	Landrieu	Stevens
Coleman	Lautenberg	Sununu
Collins	Leahy	Tester
Conrad	Levin	Vitter
Corker	Lieberman	Warner
Cornyn	Lott	Webb
Craig	Lugar	Whitehouse
Crapo	Martinez	Wyden
DeMint	McCaskill	
Dodd	McConnell	

NOT VOTING—12

Allard	Ensign	McCain
Burr	Inouye	Obama
Chambliss	Johnson	Thune
Dorgan	Lincoln	Voinovich

The nomination was confirmed.

NOMINATION OF JANET T. NEFF TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to Executive Calendar No. 140, which the clerk will report.

The bill clerk read the nomination of Janet T. Neff, of Michigan, to be United States District Judge for the Western District of Michigan.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. I am about to yield momentarily to the Senator from Michigan. I know the Senator from Pennsylvania has assured, as I have, the Senator from Kansas that he will have a minute. Then I will yield back whatever time remains so we can go to a rollcall vote on this nomination. Neither the Senator from Pennsylvania nor I will ask for rollcall votes on the remaining nominations. They would then have a voice vote, assuming this one is confirmed.

I yield such time as the Senator from Michigan needs.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Ms. STABENOW. Mr. President, I thank Judiciary Chairman LEAHY and Ranking Member SPECTER for their assistance in moving forward the nominations of Judge Paul Maloney and Judge Janet Neff and Robert Jonker to the U.S. District Court for the Western District of Michigan.

Judge Paul Maloney has served as a circuit judge on the Berrien County Trial Court for over 10 years. Judge Maloney also brings a wealth of public service experience to the bench, including: working as a Berrien County prosecutor, a deputy assistant attorney general in the Department of Justice and as chairman of the Michigan Sentencing Commission.

Judge Janet Neff has served as a judge on the Court of Appeals for the Third District of Michigan for nearly 20 years. In addition to her distinguished career on the bench, Judge Neff has been an active leader in Grand Rapids, including serving as the first woman president of the Grand Rapids Bar Association.

Robert Jonker has been a partner at Warner, Norcross & Judd in Grand Rapids for over 12 years. A life-long Michiganian, Robert Jonker is a graduate of Calvin College and the University of Michigan Law School, and has served as a law clerk for U.S. District Court Judge Robert Feikens in the Eastern District.

This situation is critical for my State. Currently, the Western District has only one full-time judge hearing cases, and the Judicial Conference has declared it a judicial emergency. Even when the bench is full, this district presents logistical challenges because it covers Michigan cities all the way from Marquette to Benton Harbor—St. Joe.

I was deeply disappointed that in the last Congress, the Senate failed to act on these three nominees despite a bipartisan agreement between myself and Senator LEVIN and the administration.

I am pleased the full Senate will be voting to confirm the three nominees, who will all bring distinguished legal careers to the Federal bench.

This is an important example of how we can work together. I hope the administration sees the value of working together in a bipartisan fashion with the Senate to ensure an independent and impartial judiciary that is accessible to all.

Senator LEVIN and I have worked closely with the White House. While it has taken longer than we would have liked to come to this point, we are extremely pleased and grateful to our distinguished chairman, who has worked very hard on our behalf, Senator LEAHY, and the ranking member, Senator SPECTER. Both Senators have worked hard to bring these nominees forward. These are three very distinguished people from Michigan with tremendous credentials for the bench. They will serve ably, and I am proud to support them.

The ACTING PRESIDENT pro tempore. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I urge my colleagues to vote against Judge Neff going onto the bench for a lifetime appointment. I have met directly with her. I have been present for two hearings where she has spoken on the controversial issue of same-sex marriage, which we all agree should be decided by legislative bodies and by the people, not by the courts. She has an