WellPoint, $876.8 million; that is a 51-percent increase over the same quarter in 2009. Humana, $258.8 million; that is a 26-percent increase in the first quarter 2010 over first quarter 2009. Aetna, a $562.6 million profit; that is a 29-percent increase for the first quarter 2010 over first quarter 2009. UnitedHealth, $1.19 billion; that is a 21-percent increase first quarter 2010 over first quarter of 2009. Cigna, $283 million; that is a 36-percent increase first quarter over first quarter of last year.

See, this is amazing. They receive these huge profit margins, then they turn around and raise premiums on consumers, many of whom are struggling to keep their insurance because they have lost their jobs, and many of whom have had a double-digit increase last year and even the year before.

In 2009, despite the worst economic downturn since the Great Depression, these insurers set a full-year profit record. This caps a decade of enormous profit growth in the industry. Between 2000 and 2007, profits at 10 of the largest publicly traded health insurance companies soared 428 percent—from $2.4 billion in 2000 to $12.9 billion in 2007.

The rapidly increasing insurance premiums are a piece of a larger problem. Multiple factors, including the large profit sustained by many hospitals, now are contributing to the cost of health care in the United States. So what we are seeing is an increase in costs charged by major hospitals.

But it is important to note that while the cost of medical care is increasing, premiums are rising much faster than the cost of medical inflation. I must say, there are predictions that we will build into our budget deficit a structural deficit, and that structural deficit will come from these very rising health care costs. Mr. President, we must do something about it.

From 2000 to 2008, premiums for employer-sponsored health plans increased 97 percent for families and 90 percent for individuals. At the same time, the payments that private insurers made to health care providers increased 72 percent, medical inflation increased 39 percent, wages increased 29 percent, and overall inflation increased 21 percent. So figure inflation increased 21 percent, wages 29, medical inflation 39, and payments to health care providers increased 72 percent, yet insurance premiums increased 97 percent. Much more than the increase in medical costs. That is the problem. If we let it happen, we have no one to blame but ourselves.

Meanwhile, consumers struggle to afford these continued rate hikes. Between December 31, 2008, and March 31, 2010, the combined commercial enrollment of these five companies fell by 2.8 million Americans. So insurers make increasing profits by increasing rates and, at the same time, they push 2.8 million Americans off of medical insurance because of those increasing rates. This is very real. It is happening out there every day, every week, every month. We must do something about it.

Let me give you one personal story. Laurel Kaufer is a 48-year-old single mother of two sons. She lives in Woodland Hills in my State. She is a self-employed mediator and lawyer. She has had Blue Cross for 25 years. Her son, Brandon, is 21 and he attends the University of Arizona. Her son, Zack, is 19 and goes to USC.

Anthem Blue Cross has raised her health insurance rates 550 percent over the last 10 years. Between February of 2001 and March of 2010, Ms. Kaufer has spent $52,128 on health insurance premiums alone. That doesn't include deductibles.

She has no choice but to pay the increases. With her two sons in college, she doesn't have any disposable income. She seeks medical treatment only when she has to. She and her son do their annual checkups, but as Ms. Kaufer says:

> Sometimes I don't get a test that a doctor says I should have, because it costs me money, and I wait it out to see if I can do without it.

This is a family with insurance, passing up tests because they already spend over $52,000 on premiums.

There are numerous stories like these. Individuals and families have to choose whether to buy groceries, pay their mortgage, or purchase health insurance.

As I pointed out, in the last few years, 2.8 million Americans who were previously insured by for-profit insurance companies have severed their policies or lost their insurance because they can't pay the bill.

I strongly believe we need to take action on this and soon because it is going to continue and it is going to spiral. These companies are going to take every advantage of a loophole in the law to raise premiums, to be able to increase their profit margin and push more people off of insurance.

This bill is very necessary. Premiums are increasing every day. I urge my colleagues to join me in supporting this legislation, the Health Insurance Rate Authority of 2010, which will close this loophole.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is closed.

EXECUTIVE SESSION

NOMINATION OF MARK A. GOLDSMITH TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

NOMINATION OF MARC T. TREADWELL TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA

NOMINATION OF JOSEPHINE STATON TUCKER TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

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

The assistant legislative clerk read the nominations of Mark A. Goldsmith, of Michigan, to be United States District Judge for the Eastern District of Michigan; Marc T. Treadwell, of Georgia, to be United States District Judge for the Middle District of Georgia; Josephine Staton Tucker, of California, to be United States District Judge for the Central District of California.

The PRESIDING OFFICER. Under the previous order, the time until 6 p.m. will be for debate on the nominations, with the time equally divided and controlled by the Senator from Vermont, Mr. LEAHY, and the Senator from Alabama, Mr. SESSIONS.

The Senator from Georgia.

Mr. ISAKSON. Mr. President, I rise briefly, and with great pride, to commend to my colleagues the confirmation of Marc Treadwell from the State of Georgia to be a U.S. district court judge of the Middle District of Georgia.

Marc is all Georgian. He was born in Blackshear, and he traveled around as the son of an Army officer. But he came back and attended Valdosta State where he earned his bachelor's degree, and then he graduated from Mercer University's Walter F. George Law School in Macon.

After graduating, he came to Atlanta and, ironically, practiced law at the firm of Kilpatrick & Cody, which represented my company for years in Atlanta. It is one of the most distinguished law firms in the State of Georgia.

Marc has been inducted into the American College of Trial Lawyers, and Martindale-Hubbell gave him an ''AV,'' its highest designation.

Marc now teaches at his alma mater, Mercer, and he has written more than 50 publications for Law Reviews and other publications. He is recognized as a leading authority and expert in Georgia evidence law.

Marc is married to his beautiful wife Wimberly. They have two sons, Thomas and John. In addition to juggling his law practice, teaching, and family duties, Marc finds time to be an active member of the Vineville United Methodist Church in Macon.

It is my privilege and honor to thank Chairman LEAHY and Ranking Member SESSIONS for their diligence on this confirmation in the committee.

I commend Marc Treadwell with my highest recommendation for confirmation to the court of the United States of America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Like my friend from Georgia, I rise today also with great pride to strongly support the nomination of Judge Mark Goldsmith, to be a judge for the U.S. District Court for the Eastern District of Michigan.

I have known Judge Goldsmith for a long time. He is a friend and someone for whom I have the greatest admiration both as a person and as a judge. He is extremely intelligent. He is highly respected in Michigan as a judge. Since joining the Oakland County Circuit Court in 2004, he has proven himself to be someone who is highly respected by all sides. He is known for his integrity and fairness. That is certainly what we look for as we look to these important confirmations on the Federal bench.

After graduating from the University of Michigan in 1974, he went on to receive his law degree from Harvard University in 1977. Before joining the State court, he was a partner at Honigman Miller in Detroit. He has also served as an adjunct professor of the law at Wayne State University's law school.

Judge Goldsmith is well known in the community where he formerly served on many boards and is someone who is known for giving back to the community, working with the poor, and working with those who need his help in the Detroit area. He has been recognized for his pro bono involvement and his community work, most notably at B'nai B'rith Antidefamation League and Forgotten Harvest, an organization that collects surplus perishable foods from grocery stores, restaurants, and caterers and provides them to emergency food providers in the metro Detroit area.

The American Bar Association has given him the rating of ''unanimously well qualified,'' which is their highest rating for judicial nominees.

He has been a judge in Michigan since 2002 when he was appointed as a part-time magistrate hearing traffic violations and civil infractions. In 2004, he was appointed to the Oakland County Circuit Court, which has jurisdiction over felonies and major civil claims cases. He was elected to that position in November of 2004 and reelected in 2006.

In the cases that have come before him, he has always been known to be fair and impartial, willing to listen to both sides and make careful rulings based on the law. It has been my great honor and privilege to know him and to join with Senator LEVIN in making a recommendation to the President regarding his possible nomination. We were very pleased when President Obama chose to nominate him to the Federal bench.

I urge my colleagues to support him unanimously, as the American Bar Association has done—again, giving him their highest rating for judicial nominees of ''unanimously well qualified.'' I hope we will do this soon today.

I yield the floor.

Mr. President, I ask that the time be equally divided between both sides, and I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CHAMBLISS. Mr. President, I rise this afternoon to say a few words about an excellent lawyer from Macon, GA, Marc Treadwell, who has been nominated to serve as a U.S. District Court Judge for the Middle District of Georgia, the district I was privileged to practice in for 26 years.

He is a native of Blackshear, GA, but as an ''Army brat,'' he grew up near various bases around the United States and abroad.

He is a graduate of Valdosta State University, as well as the Walter F. George School of Law at Mercer University in Macon.

At Mercer, Marc served on the law review and was a member of the school's prestigious Brainerd Currie Honor Society.

After graduation, Marc went to Atlanta to begin his practice of law and returned to Macon in 1985 and has practiced in Macon ever since. He currently is a partner with the Macon firm of Adams, Jordan & Treadwell.

Marc has been inducted into the American College of Trial Lawyers and Martindale-Hubbell and his colleagues have given him the highest rating available to a lawyer in the country with an AV rating.

He now teaches at his alma mater, Mercer, and has written more than 50 publications for law reviews and other publications. Marc is also recognized as a leading authority on the evidence law in our State of Georgia.

Marc and his wife Wimberly have two sons, Thomas and John. In addition to juggling his law practice, teaching and family duties, Marc is an active member of the Vineville United Methodist Church in Macon.

I am pleased to commend Marc Treadwell to my colleagues, and I believe he will serve Georgians and Americans very well as a Federal judge and will be a fine addition to the bench.

Marc gets the highest remarks from his colleagues with whom I have talked over the last several months. I am extremely pleased to be here today to recommend to all of my colleagues the confirmation of Marc Treadwell to be a U.S. district judge for the Middle District of Georgia.

Mrs. FEINSTEIN. Mr. President, I rise to express my strong support for the nomination of California Superior Court Judge Josephine Staton Tucker to sit on the U.S. District Court for the Central District of California.

Judge Tucker brings a wealth of relevant experience as a lawyer and a judge to her candidacy for the Federal bench.

For the last 8 years, she has been a trial judge on the Orange County Superior Court. She has managed a judicial calendar of up to 500 pending cases at a time. She has presided over trials on topics as diverse as commercial contract disputes, negligence and discrimination actions, felony criminal cases, and family law matters. And she has served for 2 years on the Appellate Division of the court by special appointment from the chief justice of California, giving her important experience with appeals as well as trials.

Additionally, Judge Tucker brings 15 years of litigation experience as an associate and then a partner at the law firm of Morrison Foerster LLP.

Her work in private practice included representation of both plaintiffs and defendants in all aspects of employment law, including individual and class action litigation regarding employment discrimination, wrongful discharge, trade secrets and unfair competition, privacy, and wage and hour issues. She represented clients before State courts, Federal courts, and administrative agencies, and she also provided training to employers regarding compliance with federal and state employment laws.

From 1996 to 2002, Tucker was the cochair of Morrison & Foerster's 50-lawyer employment law practice. In 2001, the Orange County Trial Lawyers Association recognized her work by naming her their Employment Lawyer of the Year.

Judge Tucker has also written prolifically. Her published work includes: The California Employers Guide to Employee Handbooks and Personnel Policy Manuals, a widely used reference book in California; three articles and over 50 case critiques for the California Employment Law Reporter, and 60 discussions of the law confronting employers and employees in the Los Angeles Times Sunday Edition.

Finally, she has been active in community work, providing volunteer services to the San Francisco AIDS Foundation, the Orange Coast Interfaith Shelter, the Make-A-Wish Foundation, and the Intercommunity Child Guidance Center.

Judge Tucker is a summa cum laude graduate of William Jewell College, a graduate of Harvard Law School, and a former law clerk to Judge John Gibson on the U.S. Court of Appeals for the Eighth Circuit. In sum, she is a highly qualified candidate for the Federal Court.

Judge Tucker is also well respected in the Orange County legal community where she works. I have long used a committee process involving local lawyers to identify the most highly qualified candidates for the Federal courts in California. Judge Tucker was recommended to me by my current committee after diligent research into the quality of her work and her reputation among local lawyers. I believe she will be a wonderful addition to the U.S. district court in Orange County.

I thank Senator BOXER for her support of Judge Tucker, and I urge my colleagues to vote in favor of confirmation.

I want to say briefly that while I will be very glad to see Judge Tucker confirmed today, there is much more work to be done in confirming the President's nominees. Let me give one example that is important to me.

The President first nominated Magistrate Judge Edward Chen to serve on the Federal District Court for the Northern District of California over 300 days ago. He has been voted out of committee twice and has been pending on the floor most recently for 137 days without a vote.

Like Judge Tucker, Judge Chen came out of my committee process. He has excellent credentials, including 9 years as a magistrate judge, and has strong, bipartisan support in the community he has been nominated to serve. I understand that certain members of the minority have concerns because Chen worked for the ACLU before becoming a magistrate judge and because of two lines that have been excerpted from his speeches and caricatured in the Washington Times. Chen has a long record as an adjudicator, however, and it is available for all to review.

He has spent 9 years as a magistrate judge and written over 200 published opinions. There has not been a single objection in committee or on the floor to even one of his decisions.

In 2008, an impartial Federal Magistrate Judge Merit Selection Review Panel reviewed his full record. The Panel unanimously recommended him for reappointment. Federal prosecutors they interviewed were ''uniformly positive'' about Chen and called his rulings ''balanced'' and ''well reasoned.'' Similarly, the local civil bar called him ''well prepared,'' ''very intelligent,'' and ''decisive.''

His reputation is stellar among the district judges he works with—whether they are Republican or Democratic appointees. District Judge Lowell Jensen who served as the No. 2 official in the Reagan Justice Department said Chen's decisions ''reflect not only good judgment, but a complete commitment to the principles of fair trial and the application of the rule of law.''

Two bipartisan selection committees have recommended Chen for the district court—one in the Bush administration and the committee I have established to review candidates for the current Administration.

The American Bar Association has also unanimously rated him well qualified.

There is a long track record that shows that Chen understands the difference between his work as a lawyer almost a decade ago and the work of a judge, which he has been doing for the last nine years with great success.

It is long past time for the minority to agree to a time agreement and for the full Senate to have an up-or-down vote on Judge Chen's nomination.

I will be very pleased to see Judge Tucker confirmed today, and I also believe that we should move forward to confirm other nominees pending.

Mrs. BOXER. Mr. President, I wish to express my strong support for California Superior Court Judge Josephine Staton Tucker, who will be confirmed today to the U.S. District Court for the Central District of California. Judge Tucker was recommended to the President by my colleague, Senator FEINSTEIN, and will be a great addition to the Federal bench.

Judge Tucker has had a distinguished career. After graduating from Harvard Law School, she served as a Federal clerk for Judge Gibson of the Eighth Circuit Court of Appeals. Following her clerkship, she practiced labor and employment law at Morrison & Foerster in San Francisco and Irvine, CA, becoming a partner at the firm in 1995. In 2002, she was appointed by then-Governor Gray Davis to the Orange County Superior Court.

I congratulate Judge Tucker and her family on this important day, and wish her the best as she begins her tenure as a Federal judge.

Mr. President, I yield the floor. I ask that the time in the quorum call be charged to both sides equally. I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I apologize for the voice. There is a fair amount of pollution in the air. It will be much better as soon as I get to Vermont at the end of the week.

Mr. President, this evening the Senate is being allowed to confirm a few more of the 26 judicial nominations that have been reported by the Senate Judiciary Committee over the past several months, but that continue to be stalled by the Republican leadership. We have yet to be allowed to consider nominations reported last November. In addition to the three nominations being considered today, there are more than a dozen more judicial nominations that were reported unanimously by the Judiciary Committee, and a total of almost two dozen that are being held up without good reason. There is no excuse for these months of delay.

The Senate Republican leadership refuses to enter into time agreements on these nominations. Their stalling and obstruction is unprecedented. They refuse to enter into a time agreement to consider the North Carolina nominees to the Fourth Circuit, who were reported by the committee in January, one unanimously and one with only a single negative vote. They refuse to enter into a time agreement to debate and vote on the Sixth Circuit nominee from Tennessee who was reported last November. I have told Senator ALEXANDER that all Democrats are prepared to vote on that nominee and have agreed to do so since November. It is his own leadership that continues to obstruct the nominee from Tennessee.

The Senate is well behind the pace I set for President Bush's judicial nominees in 2001 and 2002. A useful comparison is that in 2002, the second year of the Bush administration, the Democratic Senate majority's hard work led to the confirmation of 72 Federal circuit and district judges nominated by a President from the other party. In this second year of the Obama administration, we have confirmed just 19 so far—72 to 19.

In the first 2 years of the Bush administration, we confirmed a total of 100 Federal circuit and district court judges. So far in the first 2 years of the Obama administration, the Republican leadership has successfully obstructed all but 31 of his Federal circuit and district court nominees—100 to 31. Today that number will rise, but to just 34. Meanwhile Federal judicial vacancies around the country hover around 100.

By this date in President Bush's Presidency, the Senate had confirmed 57 of his judicial nominees. Despite the fact that President Obama began sending us judicial nominations 2 months earlier than did President Bush, the Senate has to date only confirmed 31 of his Federal circuit and district court nominees—57 to 31.

Last year, Senate Republicans refused to move forward on judicial

nominees. The Senate confirmed the fewest number of judges in 50 years. The Senate Republican leadership allowed only 12 Federal circuit and district court nominees to be considered and confirmed despite the availability of many more for final action. They have continued their obstruction throughout this year. By every measure the Republican obstruction is a disaster for the Federal courts and for the American people.

To put this into historical perspective, consider this: In 1982, the second year of the Reagan administration, the Senate confirmed 47 judges. In 1990. the second year of the George H.W. Bush administration, the Senate confirmed 55 judges. In 1994, the second year of the Clinton administration, the Senate confirmed 99 judges. In 2002, the second year of the George W. Bush administration, the Senate confirmed 72 judges. The only year comparable to this year's record-setting low total of 16 was 1996, when the Republican Senate majority refused to consider President Clinton's judicial nominees and only 17 were confirmed all session.

Senate Democrats moved forward with judicial nominees whether the President was Democratic—1994—or Republican—1982, 1990, 2002—and whether we were in the Senate majority—1990, 1994, 2002—or in the Senate minority—1982. Senate Republicans, by contrast, have shown an unwillingness to consider judicial nominees of Democratic Presidents—1996, 2009, 2010.

Over the last recess, I sent a letter to Senator MCCONNELL and to the majority leader concerning these matters. In that letter, I urged, as I have since last December, the Senate to schedule votes on these nominations without further obstruction or delay. I called on the Republican leadership to work with the majority leader to schedule immediate votes on consensus nominations—many, like those finally being considered today, I expect will be confirmed unanimously—and consent to time agreements on those on which debate is requested. As I said in the letter, if there are judicial nominations that Republicans truly wish to filibuster—after arguing during the Bush administration that such action would be unconstitutional and wrong—then they should so indicate to allow the majority leader to seek cloture to end the filibuster. It is outrageous that the majority leader may be forced to file cloture petitions to get votes on the North Carolina, Tennessee and other nominees.

The three nominees being considered today were all reported unanimously by the Judiciary Committee in March, more than 3 months ago. They could and should have been confirmed long before now. They are supported by their home State Senators. I congratulate them on their confirmation today.

After these votes, there will still be 23 judicial nominees favorably reported by the Judiciary Committee being stalled from Senate consideration by the Republican leadership. We should change this course, and schedule confirmation votes without further delay.

Mr. President, I realize about half the time remaining is mine. No one else is seeking recognition.

First off, I wish to thank Senator ISAKSON for his kind words earlier.

As I announced last month, the confirmation hearing on the President's nomination of Elena Kagan to be an Associate Justice of the Supreme Court will begin next Monday. On Monday, I will give each Senator who is a member of the committee an opportunity to deliver an opening statement. After the nominee is presented to the committee, she will proceed with her opening statement. On Tuesday morning we will ask questions of the nominee. I hope that we will conclude the hearing by the end of the week, including testimony from a few public witnesses, as has become our custom.

Over the last few weeks, I have come to the Senate floor to outline the qualifications and achievements of the nominee, and to comment on the attacks that have been launched against her. I have noted my disappointment that too many Republican Senators seem predisposed to oppose the nomination.

When he set out to find a well-qualified nominee to replace retiring Justice John Paul Stevens, the President said this:

> I will seek someone who understands that justice isn't about some abstract legal theory or footnote in a casebook. It's also about how laws affect the daily realities of people's lives—whether they can make a living and care for their families, whether they feel safe in their homes and welcome in our nation.

In introducing Solicitor General Kagan as his Supreme Court nominee, President Obama praised her ''understanding of the law, not as an intellectual exercise or words on a page, but as it affects the lives of ordinary people.''

President Obama is not alone in recognizing the value of judges and Justices who are aware that their duties require them to understand how the law works, and the effects it has in the real world. Within the last month, two Republican appointees to the Supreme Court have made the same point. Last month, Justice Anthony Kennedy told a joint meeting of the Palm Beach and Palm Beach County Bar Associations that, as a Justice:

> You certainly can't formulate principles without being aware of where those principles will take you, what their consequences will be. Law is a human exercise and if it ceases to be that it does not deserve the name law.

In addition, Justice David Souter, who retired and was succeeded by Justice Sotomayor last year, delivered a thoughtful commencement address at Harvard University. He spoke about judging and explained why thoughtful judging requires consideration of human experience and grappling with the complexity of constitutional questions in a way that takes the entire Constitution into account. He spoke about the need to ''keep the constitutional promises our nation has made.'' Justice Souter concluded:

> If we cannot share every intellectual assumption that formed the minds of those who framed that charter, we can still address the constitutional uncertainties the way they must have envisioned, by relying on reason, by respecting all the words the Framers wrote, by facing facts, and by seeking to understand their meaning for living people.

Justice Souter understood the real-world impact of the Supreme Court's decisions, as does, I believe, his successor Justice Sotomayor. Across a range of fields including bankruptcy, the fourth amendment, statutory construction, and campaign finance, Justice Sotomayor has written and joined opinions that have paid close attention to the significance of the facts in the record, to the considered and long-standing judgments of the Congress, to the arguments on each side, to the Supreme Court's precedents, and to the real-world ramifications of the Supreme Court's decisions. She has voted to keep the courthouse doors open in important employment discrimination and pension rights cases.

A hallmark of real-world judging is acknowledging the challenges of construing the Constitution's broad language given our social and technological developments. I am talking about getting away from sloganeering and being concrete. I appreciate Justices like Justice John Paul Stevens, Justice David Souter and Justice Sandra Day O'Connor who are grounded, who draw on the lessons of experience and use common sense. In the real world of judging, there are complex cases with no easy answers. In some, as Justice Souter pointed out, different aspects of the Constitution point in different directions, toward different results, and need to be reconciled.

This approach to judging is not only mainstream, it is as old as the Constitution itself and has been evident throughout American history. Chief Justice John Marshall wrote for a unanimous Supreme Court in the 1819 landmark case of McCulloch v. Maryland that for the Constitution to contain detailed delineation of its meaning ''would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind.'' He understood, as someone who served with Washington, Jefferson, Adams and Madison, that its terms provide ''only its great outlines'' and that its application in various circumstances would need to be deduced. The ''necessary and proper'' clause of the Constitution entrusts to Congress the legislative power ''to make all laws which shall be necessary and proper for carrying into

execution'' the enumerated legislative powers of article I, section 8, of our Constitution as well as ''all other powers vested by this Constitution in the Government of the United States.'' In construing it, Chief Justice Marshall explained that expansion clause ''is in a constitution, intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.'' He went on to declare how, in accordance with a proper understanding of the ''necessary and proper'' clause and the Constitution, Congress should not by judicial fiat be deprived ''of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to human affairs'' by judicial fiat. Chief Justice Marshall understood the Constitution, knew its text and knew the Framers. He rejected stagnant construction of the Constitution.

McCulloch v. Maryland was the Supreme Court's first construction of the ''necessary and proper'' clause. The most recent was just last month in United States v. Comstock. That case upheld the power of Congress to enact the Adam Walsh Child Protection and Safety Act, which included provisions authorizing civil commitment of sexually dangerous Federal prisoners who had engaged in sexually violent conduct or child molestation and were mentally ill. Quoting Chief Justice Marshall's language from McCullough, Justice Breyer wrote in an opinion joined by a majority of the Supreme Court, including Chief Justice Roberts, about the ''foresight'' of the Framers who drafted a Constitution capable of resilience and adaptable to new developments and conditions.

Justice Breyer's judicial philosophy is well known. A few years ago, he authored ''Active Liberty'' in which he discussed how the Constitution and constitutional decisionmaking protects our freedoms and, in particular, the role of the American people in our democratic government. When he writes about how our constitutional values applying to new subjects ''with which the framers were not familiar,'' he looks to be faithful to the purposes of the Constitution and the consequences of various decisions.

During the Civil War, in the 1863 Prize Cases decision, the Supreme Court upheld the constitutionality of President Lincoln's decision to blockade southern ports before a formal congressional declaration of war against the Confederacy. Justice Grier explained that it was no less a war because it was a rebellion against the lawful authority of the United States. Noting that Great Britain and other European nations had declared their neutrality in the conflict, he wrote that the Court should not be asked ''to affect a technical ignorance of the existence of a war, which all the world acknowledges to be the greatest civil war known in the history of the human race.'' That, too, was real-world judging.

In the same way, the Supreme Court decided more recently in Rasul v. Bush, that there was jurisdiction to decide claim under the Great Writ securing our freedom, the writ of habeas corpus, from those in U.S. custody being held in Guantanamo. Justice Stevens, a veteran of World War II, engaged in real-world judging, recognizing that the United States exercised full and exclusive authority at Guantanamo if not ultimate, territorial sovereignty. The ploy by which the Bush administration had attempted to circumvent all judicial review of its actions was rejected recognizing that ours is a government of checks and balances.

Examples of real-world judging abound in the Supreme Court's decisions upholding our individual freedoms. For example, the First Amendment expressly protects freedom of speech and the press, but the Court has applied it, without controversy, to television, radio broadcasting, and the Internet. Our privacy protection from the fourth amendment has been tested but survived the invention of the telephone and institution of Government wiretapping because the Supreme Court did not limit our freedom to tangible things and physical intrusions but sought to ensure privacy consistent with the principles embodied in the Constitution.

Real-world judging is precisely what the Supreme Court did in its most famous and admired modern decision in Brown v. Board of Education. I recently saw the marvelous production of the George Stevens, Jr., one-man play ''Thurgood'' starring Laurence Fishburne. It was an extraordinary evening recalling one of the great legal giants of America. At one point, Justice Marshall reads a few lines from the unanimous decision of the Supreme Court in 1954 that declared racial discrimination in education unconstitutional. Chief Justice Warren had written:

> In approaching this problem, we cannot turn the clock back to 1868, when the [Fourth] Amendment was adopted or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

That was real-world judging that helped end a discriminatory—and dark—chapter in our history. The Supreme Court did not limit itself to Constitution as written in 1787. At that point in our early history, ''We the People'' did not include Native Americans or African-American slaves, and our laws failed to accord half the population equality or the right to vote because they were female. Real-world judging takes into account that the world and our Constitution have changed since 1788. It took into account not only the Civil War, but the Civil War amendments to the Constitution adopted between 1865 and 1870.

Would anyone today, even Justice Scalia, really read the eighth amendment's limitation against cruel and unusual punishment to allow the cutting off of ears that was practiced in colonial times? Of course not, because the standard of what is cruel and unusual punishment was not frozen for all time in 1788. Does anyone dispute today that the fundamental rights set forth in the Bill of Rights are correctly applied to the States through the due process clause of the 14th amendment? Literally, the freedoms in our Bill of Rights were expressed only as limitations on the authority of Congress. Does anyone think that the equal protection clause of the 14th amendment cannot be read to prohibit gender discrimination? It was most assuredly not women that its drafter had in mind when it was adopted.

Our Constitution was written before Americans had ventured into outer space, or cyberspace. It was written before automobiles, airplanes or even steamboats. Yet the language and principles of the Constitution remain the same as it is applied to new developments. The Constitution mentions our ''Armed Forces'' but there was no air force when the Constitution was written. Similarly, in construing the ''commerce clause'' and the intellectual property provisions to provide copyright and patent protection for ''writings and discoveries,'' the Supreme Court has engaged in real-world judging as it applies our constitutional principles to the inventions, creations and conditions of the 21st century. Jefferson and Madison may have mastered the quill pen, but never envisioned modern computers.

There are unfortunately occasions on which the current conservative, sometimes activist, majority on the Supreme Court did not engage in real-world judging. One such case, the Lilly Ledbetter case, would have perpetuated unequal pay for women, by using a rigid, results-oriented, cramped reading of a statute to defy congressional intent. We corrected that case by statute. Similarly, the Gross decision seeks to close our courts to those treated unfairly. The legislature must correct it. And, of course, the Citizens United case wrongly reversed 100 years of legal developments to unleash corporate influence in elections.

We saw yet another troubling example in a narrow 5–4 decision handed down earlier today in a case called Rent-A-Center v. Jackson, in which the conservative activists in the majority, once again, have ruled in favor of big business at the expense of hardworking Americans. With this narrow decision,

the five Justices in the majority have overridden the intent of Congress in passing the Federal Arbitration Act and abandoned our longstanding tradition of allowing people to go to court to challenge unconscionable agreements. Just as it was in the wake of the Ledbetter case, it will be up to Congress to correct this error and undo the damage it has done to thousands of people who have no choice but to sign unfair agreements in order to get a job and put food on their table for their families.

The issue before the Court was whether a court or an arbitrator should decide the enforceability of an agreement to settle disputes that may arise. Justice Stevens, writing for the four dissenting Justices noted that the question whether a legally binding arbitration agreement existed is an issue that the Federal Arbitration Act assigns to the courts. Congress did not intend to prevent employers from having access to an impartial court's determination whether the agreement was unconscionable. Today's ruling turns that purpose, and even the Court's own precedent, upside down.

It is estimated that more than one hundred million Americans work under binding mandatory arbitration agreements. Most Americans are not even aware that according to the new Supreme Court ruling, they will have waived their constitutional rights to a jury trial when they accept a job to provide for their families. This divisive decision not only closes the courthouse doors to millions of American workers and their families, it gives big business even more incentive to require their employees to sign one-sided arbitration agreements as a condition of employment.

Considering how the law will work in the real world is an indispensable part of a judge's responsibility. I expect that Elena Kagan learned that lesson early in her legal career when she clerked for Justice Marshall. In 1993, upon the death of Justice Thurgood Marshall, she observed:

> Above all, he had the great lawyer's talent . . . for pinpointing a case's critical fact or core issue. That trait, I think, resulted from his understanding of the pragmatic—of the way in which the law acted on people's lives.

If confirmed, Elena Kagan would be the third member of the current Supreme Court to have had experience working in all three branches of the government prior to being nominated. Some have criticized her work during the Clinton administration as political. I suggest that a fair reading of her papers indicates that she has the ability to take many factors into account in analyzing legal problems and that her skills include practicality, principle and pragmatism. These were all used in their service to the American people by Justices Sandra Day O'Connor, Souter and Stevens.

I have always thought that a nominee's judicial philosophy was important. Nearly 25 years ago, I noted in an earlier hearing for a Supreme Court nominee:

> There can hardly be an issue closer to the heart of the Senate's role than a full and public exposition of the nominee's approach to the Constitution and to the role of the courts in discerning and enforcing its commands. That is what I mean by judicial philosophy.

It is only recently that some Republican Senators conceded that judicial philosophy matters. I hope this means that they will abandon the false premise that all a Justice does is mechanically apply obvious legal dictates to reach preordained outcomes. There is more to serving the country as a Supreme Court Justice. A Supreme Court Justice needs to exercise judgment, should appreciate for the proper role of the courts in our democracy, and should consider the consequences of decisions on the fundamental purposes of the law and in the lives of Americans—in other words, engage in real-world judging.

I intend to ask the nominee about her judicial philosophy and about real-world judging. That is what I have done through the course of a dozen Supreme Court nominations hearings. Real-world judging is an important part of American constitutional life.

As I have said, I reject the ideological litmus test that Senate Republicans would apply to Supreme Court nominees. Unlike those on the right who drove President Bush to withdraw his nomination of Harriet Miers and those who opposed Justice Sotomayor, I do not require every Supreme Court nominee to swear fealty to the judicial approach and outcomes ordained by adhering to the narrow views of Justice Scalia and Justice Thomas. I expect judges and Justices to faithfully interpret the Constitution and apply the law, and also to look to the legislative intent of our laws and to consider the consequences of their decisions. I hope that judges and Justices will respect the will of the people, as reflected in the actions of their democratically elected representatives in Congress, and serve as a check on an overreaching executive.

What others seem to want is assurance that a nominee for the Supreme Court will rule the way they want so that they will get the end results they want in cases before the Supreme Court. Lack of such assurances was why they vetoed President Bush's nomination of Harriet Miers, the third woman to be nominated to the Supreme Court in our history and the only one not to be confirmed. They forced Ms. Miers to withdraw even while Democrats were preparing to proceed with her hearing. They do not want an independent judiciary. They demand Justices who will guarantee the results they want. That is their ideological litmus test. As critics level complaints against Elena Kagan, I suspect that the real basis of that discontent will be that the nominee will not guarantee a desired litigation outcome.

Of course that is not judging. That is not even umpiring. That is fixing the game. It is conservative activism plain and simple. It is the kind of conservative activism we saw when the Supreme Court in Ledbetter disregarded the plain language and purpose of title VII. It is the kind of activism we saw when, this past January, a conservative activist majority turned its back on the Supreme Courts own precedents, the considered judgment of Congress, the interests of the American people and our long history of limiting corporate influence in elections in their Citizens United decision.

We can do better than that. In fact, we always have done better than that. In reality, we can expect Justices who are committed to do the hard work of judging required of the Supreme Court. In practice, this means that we want Justices who will pay close attention to the facts in every case that comes before them, to the arguments on every side, to the particular language and purposes of the statutes they are charged with interpreting, to their own precedents, to the traditions and longstanding historical practices of this Nation, and to the real-world ramifications of their decisions. Judging is not just textual and is not automatic. If it were, a computer could do it. If it were, important decisions would not be made 5 to 4.

The resilience of the Constitution is that its great concepts and phrases are not self-executing. They involve constitutional values that need to be applied. Cases often involve competing constitutional values. In the hard cases that come before the Court in the real world, we want—and need—Justices who have the good sense to appreciate the significance of the facts in the cases in front of them as well the ramifications of their decisions in human and institutional terms. I expect in close cases that hard-working Justices will sometimes disagree about results. I do not expect to agree with every decision of every Justice. I understand that. I support judicial independence. I voted for Justice Stevens, Justice O'Connor and Justice Souter, who were all nominees of Republican Presidents.

A year ago, most Republican Senators opposed the nomination of Justice Sotomayor to the Supreme Court, in spite of her outstanding record for more than 17 years as a Federal district and court of appeals judge. Most Republican Senators opposed Justice Sotomayor's nomination not because she lacked the requisite professional qualifications or because there were issues about her character or integrity.

Her record was impeccable. Sadly, the complaints about both Justice Sotomayor and now being echoed in opposition to Solicitor General Kagan are based on the two nominees' unwillingness to promise to deliver results that align with a narrow political ideology.

We 100 who are charged with giving our advice and consent on Supreme Court nominations should consider whether those nominated have the skills, temperament and good sense to independently assess in every case the significance of the facts and the law and real-world ramifications of their decisions. I have urged Republican and Democratic Presidents to nominate people from outside the judicial monastery because I think real-world experience is helpful and because I know that real-world judging matters in the lives of the American people. The American people live in a real world of great challenges. We have a guiding charter that provides great promise. At the end of the day, the Supreme Court functions in the real world that affects all Americans. Judicial nominees need to appreciate that simple, undeniable fact. history—segregation.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. Six and a half minutes.

Mr. SESSIONS. Mr. President, since Ms. Kagan was nominated, President Obama and his administration have attempted to defend not only her discriminatory treatment of the military at Harvard but to do so through misleading and even untrue statements. Indeed, Vice President BIDEN said Ms. Kagan's policy was ''right,'' and he suggested she was merely following the law, both of which were not correct.

The recent statements made by the White House after the release late Friday of relevant records on this matter are most troubling. The records not only prove Ms. Kagan deliberately obstructed military activity at the Harvard campus during wartime, but they reveal her actions were even more concerning than previously known. The White House continues to insist she worked to accommodate military recruiters—which is just the opposite of accurate—that she assiduously worked to follow the law—not so—and to ensure that Harvard law students could choose a career in the military service. Well, I guess they could, but she certainly was not furthering that opportunity.

The documents revealed late Friday night show these statements are not accurate and really seem to be part of a campaign to rewrite what happened there. The documents show that Ms. Kagan reversed Harvard's policy—which allowed the military to come and recruit, as any other group would—without basis or notice, in order to block the access of the recruiters, not to accommodate them. That is not disputed. It shouldn't be disputed.

The documents further show that she defied Federal law, forcing the Department of Defense to use its authority to bring Harvard into compliance. They had to threaten to cut off Harvard's money. They showed she did not ensure access to military careers and recruiters, but that the Office of Career Services prevented the military from even posting job openings on campus. They show that she sanctioned a demeaning second-class entry system for the military that the Department of Defense finally stood up to and said: No, that is intolerable and we will not accept it.

The documents also show that Ms. Kagan continued to fight military recruitment even when her defiance of the law meant that Harvard could lose $½ billion a year. In a memorandum we obtained from the Department of Defense, Larry Summers—then president of Harvard, now President Obama's chief economic adviser—approved the entrance of the military recruiters fully on campus over the objection of Dean Kagan. Now, that is the fact.

So this policy was designed to obstruct recruiters and not only to end recruiting on campus, really, but to punish and demean the military in an attempt to force them to change the ''Don't Ask Don't Tell'' policy. But that rule was not enacted by the military. It was enacted by Congress and Ms. Kagan's former boss, President Bill Clinton, in whose White House she worked for 5 years—without apparently any serious objection to his signing of the policy.

Ms. Kagan's actions, combined with the fact that she had little to say about recruiting policy while working with President Clinton, raise questions about whether this is just a hostility to the military. They were just saluting and following the policy of Congress and the President. Why should they be blamed for this? Why should people who risk their lives to ensure Harvard's freedom be given second-class treatment on the Harvard campus? It was absolutely unacceptable then; it is unacceptable now.

I was involved, and this Congress had to pass a new law, an updated Solomon amendment, to end this policy. And Dean Kagan was one of the leaders of the law school's efforts. That is just a fact. And to suggest otherwise is misleading.

Here are some quotes from some of the e-mails that were released.

Harvard Law School is delaying and providing a ''slow role'' to Air Force's efforts to recruit during the Spring recruiting season. Seems they have delayed sufficiently in providing permission that the Season may already be ''too late.''

That was in February 2005, when she was dean.

In March 2005, this memo was written:

The Army was stonewalled at Harvard. Phone calls and e-mails went unanswered and the standard response was—we're waiting to hear from our higher authority.

How about another one? This was in April of 2006:

We're all searching for a way to limit the polarizing nature of the anti Solomonites—

Those are the people who were trying to have the Solomon amendment passed in Congress thrown out—

who now rattle sabers over an intent to shout down the military. Dean Kagan is a case in point below as she reportedly ''encouraged students to demonstrate against the presence of recruiters . . . . (and to) express their views clearly and forcefully.''

Indeed, she sent out e-mails to students explaining why she thought this was so important. She was a national leader in this effort.

Another e-mail, March 10 of 2005. This military person said he explained to Harvard that the Third Circuit opinion they were using as a pretext to not follow the law had issued a stay of injunction and the Solomon amendment remained current law. He goes on to say:

I asked him if I could at least post a job posting via their office and he said no. He stressed that I could contact interested students via the Harvard veterans Student Group but that his office could not provide any support to us.

So we need a fair and honest evaluation. I, for one, have frankly been disappointed in this administration's obfuscation, deliberately attempting to hide the nature of what happened at Harvard, because it was, in fact, inexcusable. The administration should not defend this. They should give her a chance. Maybe she would say she made a mistake; maybe she would defend it. But I can't imagine an administration would to want defend this kind of policy.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. There is 2 minutes 40 seconds remaining.

Mr. LEVIN. First, Mr. President, I wish to thank Senator LEAHY and members of the Judiciary Committee for the hearing they gave to Mark Goldsmith for the Eastern District of Michigan. He is an extraordinary judge. He has proved it already on the bench in Michigan. He has wonderful judicial temperament, he knows how to listen, he knows how to think, and he brings to the bench—and will bring to the bench when, hopefully, we confirm him—the kind of judicial temperament we want in our district court judges. So I thank Senator LEAHY and Senator

SESSIONS, while he is on the floor. I have talked to Senator SESSIONS about Mark Goldsmith, and I thank him for his receptiveness.

I believe all the members of the Judiciary Committee who had the chance to read the record or to be there at the hearing will agree that this is an unusually well-qualified nominee for our district court bench, and I thank them for their unanimous vote to bring him out of the committee.

Judge Goldsmith has had an impressive legal career. He graduated with high distinction and honors in economics from the University of Michigan in 1974. He was a member of the Honors Program in Economics at the University of Michigan and founded and served as editor-in-chief of the Michigan Undergraduate Journal of Economics. He graduated cum laude from Harvard Law School in 1977.

Judge Goldsmith has served on the Oakland County Circuit Court in the civil/criminal division since March 19, 2004, when he was appointed by Governor Jennifer Granholm. He also served as a magistrate at the 45–B District Court and as a Special Counsel to the State Bar Committee on the Unauthorized Practice of Law, a hearing panelist for the Attorney Discipline Board and as an adjunct instructor at Wayne State University Law School.

Prior to his service as a circuit court judge, Judge Goldsmith practiced law for nearly 25 years. He is admitted to practice in several states, as well as the U.S. Supreme Court, U.S Court of Appeals for the Sixth Circuit, U.S. Court of Military Appeals, U.S. Air Force Court of Military Review and numerous U.S. District Courts.

Judge Goldsmith is also committed to legal community service. He served as president of the Federal Bar Association, Eastern District of Michigan Chapter and has served for many years as that organization's pro bono chair, receiving certificates of recognition from the U.S. District Court, Eastern District of Michigan for his pro bono involvement. He is currently a member of the executive board of Wayne State University's Center for the Study of Citizenship and a member of the Fair Housing Advisory Board of Legal Aid and Defender Association, Inc. Further, he helped establish the Circle of Friends—teaching language and acculturation skills to immigrants—and has served on the board of Forgotten Harvest—a distributor of food to the needy—and on the Regional Advisory Board of the B'nai B'rith Anti-Defamation League.

Judge Goldsmith will be an excellent addition to the Eastern District Court and will serve with great distinction. I wish him well and thank my colleagues for supporting his nomination.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask unanimous consent to have printed in the RECORD the e-mails I made reference to earlier.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

To: Sullivan, John, Mr., DoD OGC, Koffsky, Paul, Mr., DoD OGC
Subject: FW: AF Phase I Letter to Harvard Background

I just got back and going through my e-mails . . . Harvard Law School is delaying and providing a ''slow role'' to Air Force's efforts to recruit during the Spring recruiting season. Seems they have delayed sufficiently in providing permission that the Season ending March 4th may already be ''too late''. Any advice? I recommend a Phase I letter if another phone call on Feb 22–24 comes up negative or ''inconclusive''. What do you advise?

Subject: AF Phase I Letter to Harvard Background

Good Morning—AF provided the basis for which they would like to send the Phase I letter to Harvard. Both e-mails attached for your files.

V/R.

Subject RE: Harvard Phase I Pushups

. . . checked with Army JAG Recruiting and Major Jackson provided the following.

''Hi, Ma'am—

The Army was stonewalled at Harvard Phone calls and emails went unanswered and the standard response was—we're waiting to hear from higher authority.

The CSD refused to inform students that we were coming to recruit and the CSD refused to collect resumes or provide any other assistance.

V/R''

Subject FW: Harvard Phase I Pushups

Do you know, . . .

Subject RE: Harvard Phase I Pushups

Thanks, . . . Did the other services run into the same problems, or only the AF'' (It would be odd if the law school treated the AF differently from other services).

Subject FW: Harvard Phase I Pushups

See below.

To Sullivan, John, Mr., DoD OGC, . . . Koffsky, Paul, Mr., DoD OGC
Subject FW: Harvard Phase I Pushups

I have modified the proposed P&R Action Memo and the proposed DSD Info Memo because the Spring recruiting program will come and go by the time this gets to DSD and without Harvard LS notifying the Air Force . . .

To: Carr, Bill, CIV, OSD–P&R
Subject: RE: Solomon Olive Branch

Bill:

I have been discussing this with our Legal Counsel office. We have some concerns and will talk to Paul Koffsky when he returns from leave on Tuesday. Please hold off taking any action until Paul and I can get together and talk to you about this.

From: Carr, Bill, Mr., OSD PR [mailto :bill.carr@osd.mil]
Subject: Solomon Olive Branch

. . . we had discussed merit of conveying to public an outreach for calm and reason WRT Solomon. You asked that we convey the draft for P&HP review. It is attached, and edits are welcome.

Doubt we can make it an appealing length for an Op-Ed, so maybe best to think of it as an article for professional journals (e.g., Chronicle of Higher Ed or—more congently—a publication circulated widely among law schools).

To those ends, would you be willing to take a whack at it, Bob? Many thanks. Bill.

From: Carr, Bill, CIV, OSD–P&R [mailto :bil.carr@osd.mil]
To: Dr. Curt Gilroy, SES, OSD–P&R
Subject: S: 3-22-06/Solomon Olive Branch—Or Not

Curt, I have a mission that requires an ambassadorial type with strong writing talent. . . . comes to mind, particularly since she will reap the fruits of this labor over the forthcoming year(s).

I spoke with Paul Koffsky today. We're all searching for a way to limit the polarizing nature of the anti-Solomonites who now rattle sabers over an intent to shout down the military. Dean Kagan is a case in point below as she reportedly ''encouraged students to demonstrate against the presence of recruiters . . . (and to) express their views clearly and forcefully.'' Not a true fan of ''equal in quality and scope'' it would appear.

Despite that (or because of it) we'll want to reach out to academe to find a sober means of accomplishing our varied purposes within statutory intent, but we lack a venue . . . and AALS is too hostile to constructively . . .

Subject Re: Harvard Law School

Thanks, . . . share with the other recruiters. I will pass it to OSD.

Thanks.

AP/JAX

Subject Harvard Law School

Thursday 10 March 2005

Sir, I just received a phone call from Mr. Mark Weber, Assistant Dean for Career Services, Harvard Law School. All my previous communication has been with one of his staff members, Ms. Kathleen Robinson, the recruitment manager. He stated that he was calling because he ''felt bad that they had left us without an answer'' and wanted to pass on the contact data of the president of the Harvard Veterans Student Group. He stated that the faculty had still not decided whether to allow us to participate in on-campus interviews and that the official on-campus interview program for Spring 2005 had already concluded. I asked him if we'd be allowed to participate in the Fall 2005 on-campus interview program and he said he did not know.

Mr. Weber, asked me what our current position on the Solomon Amendment was, and I explained that since the 3rd Circuit had issued a stay of the injunction, the Solomon Amendment was current law and that we were in the process of following the procedures outlined in 32 CPR 216. He asked me when they could expect a letter and I stated that I did not know. We then briefly discussed the utility of on-campus interviews.

I asked him what generated the phone call and he responded that he ''felt bad they had left us with no answer but still had no answer.''

I asked him if I could at least post a job posting via their office and he said no. He stressed that I could contact interested students via the Harvard Veterans Student Group but that his office could not provide any support to us.

Sir, would you like me to forward the above to Mr. Reed and LCDR Syring as well as to my fellow Service recruiters (i.e., Maj. Jackson, LCDR Passarello, and Capt. Houtz?) Also, should I contact the Harvard Veterans Student Group's president. There's danger there, since in the past they were the de facto ''replacement'' for the CSO office's service.

Interesting timing of the phone call.

v/r

___

. . . that a decision has been made to allow military recruiting, they have engaged in a ''practice'' that in effect denied the Air Force an opportunity to recruit in a manner that is at least equal in quality and scope with other prospective employers who participated in the HLS recruiting program. By delaying until the last minute (or never providing an answer) to the AF request to recruit, the AF is unable to organize and schedule the recruiting effort in time to participate in the HLS program which ends on March 4, 2005. We shouldn't allow HLS to ''play this game.''

Please review and provide comments before I go back to . . . in P&R.

___

Subject FW: Harvard Phase I Pushups

. . .

Good Afternoon—Mr. Carr requested that I draft an info paper to DSD as outlined below. Attached is draft of info paper. Would you like me to provide a package for formal coordination on the paper or will informal e-mail review be okay?

Thanks, V/R

___

Subject: Harvard Phase I Pushups

. . . before sending Harvard Phase I letter, we must do following pushups per agreement Koffsky/Carr:

1. (AP) Info paper to DSD outlining what we're about to do and why (since DSD has had personal involvement), once done (and absent immediate objections);

2. (OGC) Mr. Koffsky will then alert Jeff Smith, out of house counsel for Harvard on Solomon, who has generally worked faithfully with us, then;

3. (AP) Notify AF that it is clear to launch.

Over to you for step 1 Tks' Bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. LEVIN. Mr. President, I ask for the yeas and nays on the Goldsmith nomination.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Mark A. Goldsmith, of Michigan, to be United States District Judge for the Eastern District of Michigan?

The clerk will call the roll.

The bill clerk called the roll.

Mr. REID. I announce that the Senator from Indiana (Mr. BAYH), the Senator from West Virginia (Mr. BYRD), the Senator from Illinois (Mr. DURBIN), the Senator from Florida (Mr. NELSON), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Utah (Mr. BENNETT), the Senator from Missouri (Mr. BOND), the Senator from New Hampshire (Mr. GREGG), the Senator from Texas (Mrs. HUTCHISON), the Senator from South Dakota (Mr. THUNE), and the Senator from Louisiana (Mr. VITTER).

The PRESIDING OFFICER (Mrs. SHAHEEN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 89, nays 0, as follows:

[Rollcall Vote No. 195 Ex.]

YEAS—89

Akaka	Enzi	McConnell
Alexander	Feingold	Menendez
Barrasso	Feinstein	Merkley
Baucus	Franken	Mikulski
Begich	Gillibrand	Murkowski
Bennet	Graham	Murray
Bingaman	Grassley	Nelson (NE)
Boxer	Hagan	Pryor
Brown (MA)	Harkin	Reed
Brown (OH)	Hatch	Reid
Brownback	Inhofe	Risch
Bunning	Inouye	Roberts
Burr	Isakson	Rockefeller
Burris	Johanns	Sanders
Cantwell	Johnson	Schumer
Cardin	Kaufman	Sessions
Carper	Kerry	Shaheen
Casey	Klobuchar	Shelby
Chambliss	Kohl	Snowe
Coburn	Kyl	Specter
Cochran	Landrieu	Stabenow
Collins	Lautenberg	Tester
Conrad	Leahy	Udall (CO)
Corker	LeMieux	Udall (NM)
Cornyn	Levin	Voinovich
Crapo	Lieberman	Warner
DeMint	Lincoln	Webb
Dodd	Lugar	Whitehouse
Dorgan	McCain	Wicker
Ensign	McCaskill	

NOT VOTING—11

Bayh	Durbin	Thune
Bennett	Gregg	Vitter
Bond	Hutchison	Wyden
Byrd	Nelson (FL)	

The nomination was confirmed.

VOTE ON NOMINATION OF MARC T. TREADWELL

The PRESIDING OFFICER. There is now 2 minutes of debate evenly divided before the vote on the next nominee.

Mr. CONRAD. Madam President, I yield back all time.

The PRESIDING OFFICER. Without objection, all time is yielded back.

The question is, Will the Senate advise and consent to the nomination of Marc T. Treadwell, of Georgia, to be U.S. District Judge for the Middle District of Georgia?

Mr. CONRAD. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Indiana (Mr. BAYH), the Senator from West Virginia (Mr. BYRD), the Senator from Florida (Mr. NELSON), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. MCCONNELL. The following Senators are necessarily absent: the Senator from Utah (Mr. BENNETT), the Senator from Missouri (Mr. BOND), the Senator from New Hampshire (Mr. GREGG), the Senator from Texas (Mrs. HUTCHISON), the Senator from Arizona (Mr. KYL), the Senator from South Dakota (Mr. THUNE), and the Senator from Louisiana (Mr. VITTER).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 89, nays 0, as follows:

[Rollcall Vote No. 196 Ex.]

YEAS—89

Akaka	Ensign	McConnell
Alexander	Enzi	Menendez
Barrasso	Feingold	Merkley
Baucus	Feinstein	Mikulski
Begich	Franken	Murkowski
Bennet	Gillibrand	Murray
Bingaman	Graham	Nelson (NE)
Boxer	Grassley	Pryor
Brown (MA)	Hagan	Reed
Brown (OH)	Harkin	Reid
Brownback	Hatch	Risch
Bunning	Inhofe	Roberts
Burr	Inouye	Rockefeller
Burris	Isakson	Sanders
Cantwell	Johanns	Schumer
Cardin	Johnson	Sessions
Carper	Kaufman	Shaheen
Casey	Kerry	Shelby
Chambliss	Klobuchar	Snowe
Coburn	Kohl	Specter
Cochran	Landrieu	Stabenow
Collins	Lautenberg	Tester
Conrad	Leahy	Udall (CO)
Corker	LeMieux	Udall (NM)
Cornyn	Levin	Voinovich
Crapo	Lieberman	Warner
DeMint	Lincoln	Webb
Dodd	Lugar	Whitehouse
Dorgan	McCain	Wicker
Durbin	McCaskill	

NOT VOTING—11

Bayh	Gregg	Thune
Bennett	Hutchison	Vitter
Bond	Kyl	Wyden
Byrd	Nelson (FL)	

The nomination was confirmed.

VOTE EXPLANATION

Mr. DURBIN. Mr. President, due to travel delays, I was not present for vote No. 195, the vote on the nomination of Mr. Mark Goldsmith to serve as a U.S. district judge for the Eastern District of Michigan. Had I been present, I would have voted ''yea.''

VOTE ON NOMINATION OF JOSEPHINE S. TUCKER

The PRESIDING OFFICER. Is all time yielded back on the next nomination?

If so, the question is, Will the Senate advise and consent to the nomination of Josephine Staton Tucker, of California, to be United States District Judge for the Central District of California?

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider the vote on the foregoing nominations are made and laid upon