

that the vacancies be filled. The Chief Judge noted that, with four vacancies, the four vacancies that arose in the Clinton Administration, the Sixth Circuit "is hurting badly and will not be able to keep up with its work load due to the fact that the Senate Judiciary Committee has acted on none of the nominations to our Court." He predicted: "By the time the next President is inaugurated, there will be six vacancies on the Court of Appeals. Almost half of the Court will be vacant and will remain so for most of 2001 due to the exigencies of the nomination process. Although the President has nominated candidates, the Senate has refused to take a vote on any of them."

However, no Sixth Circuit hearings were held in the last three full years of the Clinton Administration (almost his entire second presidential term), despite these pleas. Not one. Since the shift in majority last summer, the situation has been exacerbated further as two additional vacancies have arisen.

The Committee's April 25th hearing on the nomination of Judge Gibbons to the Sixth Circuit was the first hearing on a Sixth Circuit nomination in almost five years, even though three outstanding, fair-minded individuals were nominated to the Sixth Circuit by President Clinton and pending before the Committee for anywhere from one year to over four years. Judge Gibbons was confirmed by the Senate on July 29, 2002, by a vote of 95 to 0. We did not stop there, but proceeded to hold a hearing on a second Sixth Circuit nominee, Professor Rogers, just a few short months later in June.

Just as we held the first hearing on a Sixth Circuit nominee in many years, the hearing we held on the nomination of Judge Edith Clement to the Fifth Circuit last year was the first on a Fifth Circuit nominee in seven years and she was the first new appellate judge confirmed to that Court in six years.

When we held a hearing on the nomination of Judge Harris Hartz to the Tenth Circuit last year, it was the first hearing on a Tenth Circuit nominee in six years and he was the first new appellate judge confirmed to that Court in six years. When we held the hearing on the nomination of Judge Roger Gregory to the Fourth Circuit last year, it was the first hearing on a Fourth Circuit nominee in three years and he was the first appellate judge confirmed to that court in three years.

A number of vacancies continue to exist on many Courts of Appeals, in large measure because the recent Republican majority was not willing to hold hearings or vote on half—56 percent—of President Clinton's Courts of Appeals nominees in 1999 and 2000 and was not willing to confirm a single judge to the Courts of Appeals during the entire 1996 session.

From the time the Republicans took over the Senate in 1995 until the reorganization of the Committee last July, circuit vacancies increased from 16 to

33, more than doubling. Democrats have broken with that recent history of inaction. In the last 16 months, we have held 26 judicial nominations hearing, including 20 hearings for circuit court nominees.

Professor Roger's nomination was also the fourth judicial nomination from Kentucky to be considered by the Committee in its first year, and the eighth nomination from Kentucky overall. There are no judicial vacancies left in the State.

Professor Rogers of the University of Kentucky College of Law has experience as an appellate litigator and a teacher, and is a prolific author on a number of difficult legal topics. It is important to note that aspects of his record raise concerns. As a professor, he has been a strong proponent of judicial activism. No Clinton judicial nominee with such published views would ever have been confirmed during the period of Republican control. In his writings, Professor Rogers has called on lower court judges to reverse higher court precedents, if the lower court judge thinks the higher court will ultimately reverse its own precedent. Such an activist approach is inappropriate in the lower Federal courts. The Supreme Court itself has noted that lower courts should follow Supreme Court precedent and not anticipate future decisions in which the Supreme Court may exercise its prerogative to overrule itself.

Prognostications about how the Supreme Court will rule often turns out to be wrong. For example, some predicted that the Supreme Court would overturn *Miranda*, but the Supreme Court, in an opinion by Chief Justice Rehnquist, declined to do so. Similarly, people like Professor Rogers have called on the Supreme Court to overturn *Roe v. Wade*, but thus far the Supreme Court has rejected calls to reverse itself in this important decision regarding the rights of women and has resisted calls to return this country to the awful period of dangerous back alley abortions.

Professor Rogers also suggested in his academic writings that lower court judges should consider the political views of Justices in making the determination of when lower courts should overrule Supreme Court precedent. In his answers to the Committee, Professor Rogers acknowledged that he had taken that position but he now says that lower courts should not look to the views of Justices expressed in speeches or settings other than their opinions. Also, in his answers to the Committee, Professor Rogers said he would give great weight to Supreme Court dicta, or arguments that are not part of the holding of the case. I would like to take this opportunity to urge him to take seriously the obligation of a judge to follow precedent and the holdings of the Supreme Court, rather than to look to dicta for views that may support his own personal views. I would also urge him resist acting on

his academic notion that a judge should diverge from precedent when he anticipates that the Supreme Court may eventually do so.

Professor Rogers has assured us that he would follow precedent and not overrule higher courts, despite his clear advocacy of that position in his writings as a scholar. He has sworn under oath that he would not follow the approach that he long advocated. As with President Bush's Eighth Circuit nominee Lavenski Smith, who was confirmed earlier this summer, I am hopeful that Professor Rogers will be a person of his word: that he will follow the law and not seek out opportunities to overturn precedent or decide cases in accord with his private beliefs rather than his obligations as a judge.

I would also note that during his tenure at the Justice Department, Professor Rogers appeared to support an expansive view of the power of the Executive Branch vis-a-vis Congress. I am hopeful, however, that Professor Rogers will recognize the important difference between being a zealous advocate for such positions and being a fair and impartial judge sworn to follow precedents and the law.

When he was asked to describe any work he had handled which was not popular but was nevertheless important, he said that the case which came to mind was one in which he defended the CIA against a lawsuit seeking damages for the CIA's illegal opening of the private mail of tens of thousands of U.S. citizens during this 1970s or 1980s. Those were dark days of overreaching by the intelligence community against the rights of ordinary law-abiding American citizens. Although times have changed forever since the tragic events of September 11, I think it is important that the American people have access to judges who will uphold the Constitution against government excesses while also giving acts of Congress the presumption of constitutionality to which our laws are entitled by precedent.

Professor Rogers has repeatedly assured the Committee, however, that he would follow precedent and not seek to overturn decisions affecting the privacy of women or any other decision of the Supreme Court. Senator MCCONNELL has also personally assured me that Professor Rogers will not be an activist but is sincerely committed to following precedent if he is confirmed. I sincerely hope that his decisions on the Sixth Circuit do not prove us wrong.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred April 29, 2002 in Indianapolis, IN. A self-proclaimed neo-Nazi shot a 13-year-old black teenager as she walked with friends outside a convenience store. Investigators say that the assailant, who has tattoos of swastikas, argued with several black men about the insignias and then went on a mission to hurt someone who was black. The victim recovered from her injury, but surgeons did not remove the bullet from her body.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

NATIONAL ALZHEIMER'S AWARENESS WEEK

Mr. HARKIN. Mr. President, 20 years ago, President Reagan signed a proclamation designating the first National Alzheimer's Awareness Week. Today, as part of this year's National Alzheimer's Disease Awareness Month, I would like to commend and thank all those who have worked to battle this terrible disease.

As the chairman of the Appropriations subcommittee that oversees funding for the National Institutes of Health, and someone who has watched many close friends succumb to Alzheimer's over the years, I have learned perhaps more than I wish I knew about this disease. In 1982, 2 million people suffered from Alzheimer's; today, the number is 4 million. By the year 2050, that number will rise to 14 million, and we will be paying \$357 billion a year in health care costs, unless science can find a way to prevent or delay this disease.

Fortunately, that goal is in sight. Researchers are finally closing in on what causes Alzheimer's; they are using cutting-edge brain imaging to figure out how to diagnose it; and they are studying everything from folic acid and statins to Advil and ginkgo biloba to see if any of these drugs and supplements can help delay it.

Much of that research would not have been possible without the substantial increase in Federal funding that Senator SPECTER and I, working together on the Senate Labor, Health and Human Services, and Education Appropriations Subcommittee, have secured for NIH. In fiscal year 1998, when we began our bipartisan effort to double the NIH's budget, NIH spent \$356 million on Alzheimer's disease. When Congress completes the doubling effort this year, that number will rise to almost \$650 million.

But it is still not enough. We need to raise that total to \$1 billion as soon as possible, if we're really going to be serious about reducing the physical and economic costs of Alzheimer's. Accord-

ing to experts, delaying the onset and progression of Alzheimer's for even 5 years could save as much as \$50 billion in annual health care costs. President Reagan's son-in-law, Dennis C. Revell, makes an excellent case for investing more money in Alzheimer's research in an op-ed in today's Washington Times.

In the meantime, we are fortunate that so many people across this country are working to support Alzheimer's research and care. I have worked for many years with the national Alzheimer's Association, as well as with their local chapters in Iowa, and I can tell you firsthand that they will not rest until scientists find a cure. As the Nation recognizes Alzheimer's Disease Awareness Month throughout November, I thank them for their dedication.

I ask unanimous consent that the article be printed in the RECORD.

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

ALZHEIMER'S DISEASE

(By Dennis C. Revell)

"That's the worst part of this disease. There's nobody to exchange memories with." (Nancy Reagan, Sept. 25, "60 Minutes II.")

Alzheimer's disease doesn't make special arrangements for anyone, even for the leader of the free world. In tragic irony, 20 years ago this week President Reagan launched a national campaign against Alzheimer's disease. In a historic White House ceremony, he drew national attention to Alzheimer's and defined it as a major health menace. He proclaimed November National Alzheimer's Disease Awareness Month, warning the American people of "the emotional, financial and social consequences of Alzheimer's disease." With vision and leadership, he argued for research as "the only hope for victims and families."

The brain is a miracle when it works, and a mystery when it fails. One of the most haunting, puzzling, and soon to be most costly of the brain's failures is Alzheimer's—a degenerative, progressive, and terminal brain disorder.

Most people think of Alzheimer's strictly as memory loss. It is much more, although memory loss alone would be scary enough. Memories are the records of our lives—the essential stuff of our identities and personalities—the very essence of what we share with those we love.

On Nov. 5, 1994, Ronald Reagan wrote a courageous letter to the American people about his own diagnosis of Alzheimer's, and his 1982 presidential campaign against the disease became his family's personal struggle.

We have made giant strides toward fulfilling his vision, and now this Congress and President Bush have the opportunity to finish the battle he began. Congress has steadily invested public funds in Alzheimer's research over the past 20 years and the Alzheimer's Association has added millions in private funds.

That investment in research is now paying off. Science is at the point where effective treatment and prevention of Alzheimer's is within reach. The research infrastructure is in place; the paths for further investigation are clear. The missing ingredient is money. A \$1 billion federal investment now will pay big dividends in the future.

When Ronald Reagan sounded his battle cry against Alzheimer's, an estimated 2 million people were suffering from this awful disease. Today, the number has grown to

more than 4 million, with an additional 19 million family members suffering the emotional and financial impact—24 hours a day, seven days a week, 365 days a year.

Unfortunately, over the next 50 years, as many as 14 million baby boomers will be the next large pool of victims, unless we find ways to further slow down or stop the changes in their brains that might already be taking place.

The threat to so many American families should be enough to urge us to action, but the economic impact of the disease drives us as well. In just 10 years, the annual cost of Alzheimer's disease to Medicare and Medicaid will rise from \$50 billion to more than \$82 billion. Since 1998, estimates of the annual cost of Alzheimer's disease to American business have risen from \$33 billion to more than \$61 billion.

During this Alzheimer's Awareness Month, we reflect upon the extraordinary progress we have made as a nation these past 20 years:

Twenty years ago, there were no treatments for Alzheimer's disease; today, four Alzheimer drugs have been approved, and researchers are working to bring even more promising treatments, including a potential vaccine, to market.

Twenty years ago, we had little information on risk factors to point the way to prevention; today, there is growing evidence that known risk factors for heart disease, including high blood pressure and high cholesterol, may also increase the risk for Alzheimer's.

Twenty years ago, only a handful of scientists were studying Alzheimer's; now, thousands of scientists around the world are racing to find the answers.

Twenty years ago, Alzheimer scientists were working in isolation; today, 33 Alzheimer's disease centers are funded by the National Institute on Aging, where scientists collaborate to speed the search.

We are so close. Thanks to the dynamics Ronald Reagan set in motion two decades ago, science has changed the view of Alzheimer's disease from one of helplessness to one of hope. But this is no time to sit back and rest on a sense of accomplishment.

The answer is still research, research, and more research. Individuals and families living with the disease research. Individuals and families living with the disease have joined the Alzheimer's Association in challenging Mr. Bush and Congress to increase the federal commitment to Alzheimer research.

We call on Congress to increase funding for the National Institutes of Health to \$1 billion a year to continue the momentum in Alzheimer research. We call upon Mr. Bush to make this important cause his own by including in his budget for next year the necessary funds to accelerate the pace of research.

We are in a race against time. Without sufficient research resources now, we will lose that race.

We can change the course of Alzheimer's disease, for the 4 million people suffering today, for the 19 million family members who are caring for them, and for up to 14 million Americans who today face the fate that befell a man who means so much to us and to the world.

Testifying before the Senate about Alzheimer's disease shortly before her own death, Maureen Reagan took up her father's mission, calling upon Congress to "make this the last generation that would live without hope."

Both Ronald Reagan and Maureen always looked to a brighter horizon. Congress and Mr. Bush can ensure that we reach that horizon before the sun sets on another generation with Alzheimer's disease.