

have engaged in this debate tonight. I wish we had more time. This press of end-of-year business prevents us from doing so. We will be revisiting this issue. I congratulate the Senator from Oklahoma for an articulate presentation of his views. I look forward to our additional 2 hours together tomorrow.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MCCAIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

#### MORNING BUSINESS

Mr. MCCAIN. Mr. President, I ask that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

#### LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I describe a sad and reprehensible display of intimidation that took place in Peoria, IL, on July 6, 2001. That day, Forest Hatley and Charles Lambert decided to burn a cross at a home in Macomb, IL, where an interracial couple lived. The two men constructed a 7-foot by 3-foot cross and doused it with gasoline. Shortly after midnight, the two men transported the cross to the victims' yard, planted it in front of the home, and ignited it. Lambert and Hatley each admitted this action was taken to intimidate the couple because of the male's race and because he was living with a person of another race.

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 is a symbol that can become substance. By passing this legislation and changing current law, we can change hearts and minds as well.

#### NOMINATION FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. KENNEDY. Mr. President, the nomination of Naomi Churchill-Earp to be a member of the Equal Employment Opportunity Commission in the De-

partment of Labor was approved today by the Health, Education, Labor, and Pensions Committee, despite concerns about her ability to fairly apply employment laws.

Many of us in the committee have strong reservations about her record. A Commissioner of the EEOC must have a record of conduct that supports and promotes equality in the workplace. Ms. Churchill-Earp has served as an equal employment manager at a number of Federal agencies and while serving in these positions, a number of discrimination complaints have been filed against her. African Americans, in particular, say that she has created a hostile working environment by making disparaging remarks about African-American employees. The NAACP and Blacks in Government oppose her nomination, and many of us share their concerns.

The committee did not hold a hearing on this important nomination, and we did not have the opportunity to question her about her qualifications and positions. Unless we have an opportunity to resolve these concerns, I intend to oppose this nomination when it reaches the full Senate.

#### NOMINATION FOR COMMISSIONER OF EDUCATION STATISTICS

Mr. KENNEDY. Mr. President, the nomination of Robert Lerner to be Commissioner of Education Statistics in the Department of Education was approved today by the Health, Education, Labor and Pensions Committee despite concerns about this nominee's qualifications.

The Commissioner of Statistics must conduct the activities of that office in a manner that is "objective, secular, neutral and non-ideological" and "free of partisan political influence and racial, cultural, general or regional bias." The Commissioner must also have "substantial knowledge" of the programs assisted by the National Center for Education Statistics.

Many of us feel that Dr. Lerner does not meet these requirements. He has clearly been an advocate for partisan ideological causes, and his advocacy does not seem to be compatible with a non-partisan role as Commissioner. His published writings raise questions about his ability to set aside his ideological views in dealing with statistical analysis.

Previous nominees for this important position have come from academic backgrounds and with experience in dealing with statistical analysis. Dr. Lerner has no such experience or academic background.

The Committee did not have a hearing on this important nomination and we did not have the opportunity to question Dr. Lerner regarding his qualifications and past advocacy. Unless we have an opportunity to resolve these concerns, I intend to oppose this nomination when it reaches the full Senate.

#### NATIONAL CEMETERY EXPANSION ACT OF 2003

Mr. GRAHAM of Florida. Mr. President, today the House passed important legislation that has already unanimously passed the Senate and authorizes the construction of six new national veterans cemeteries. By passing this bill, we ensure that America's veterans and their families have access to the burial honors they have earned.

The brave men and women who fought for our nation are a population that is aging rapidly. In 2002, America lost 646,264 veterans. Projections show that this rate will continue to climb through the year 2008, when we are expected to lose over 700,000 veterans.

By the end of 2004, only 64 of the 124 veterans national cemeteries will be available for both casketed and cremated remains. As cemetery service capabilities decrease, veterans in areas near cemeteries that are at capacity will lose access to burial options within a reasonable distance of their homes. In order to ensure that burial options are provided for veterans and their family members, we must develop new cemeteries and expand existing cemeteries. This process must start as soon as possible because the construction of a new cemetery takes an average of seven years.

In anticipation of veterans' future needs, the Department of Veterans Affairs conducted a study that identifies veteran population centers not served by an open national or state veterans cemetery. The report, "Future Burial Needs," was initially released in May 2002 and has been recently revised using veteran population estimates from the 2000 census. The report identified 31 locations as areas where cemeteries would need to be established.

Recognizing that it would not be practicable to establish national cemeteries in all 31 locations, especially in areas where state cemeteries could meet the needs of smaller veterans' populations, VA established guidelines to determine the neediest areas. In locations that had more than 170,000 veterans residing more than 75 miles from an open state or national cemetery, VA would establish or expand national cemeteries. Based on revised population estimates and the new guidelines, VA identified 11 locations that required either a new national cemetery or an expansion of an existing national cemetery. Of these locations, five will be served by an already-planned state cemetery funded through VA's State Cemetery Grants Program or by expanding existing national cemeteries. This bill directs the Department of Veterans Affairs to construct veterans cemeteries six cities: Jacksonville, Florida; Sarasota, Florida; Birmingham, Alabama; Bakersfield, California; Philadelphia, Pennsylvania; and Columbia, South Carolina.

We cannot afford to wait any longer to fulfill this commitment to our nation's veterans. Mr. President, I am

proud to have sponsored legislation to help provide peace of mind to veterans and their families at that difficult time. Now, I look forward to working with my colleagues on securing the necessary resources to begin construction of these cemeteries expeditiously.

#### CONFIRMATION OF THOMAS HARDIMAN

Mr. SANTORUM. Mr. President, in this sadly historic era of unprecedented filibusters of judicial nominees, the truth is an unwelcome visitor to those in the minority who seek to deprive President Bush of his constitutional duty to nominate Article III judges. The latest salvo in this increasingly disappointing game is the ranking member of the Judiciary Committee's written statement regarding Thomas M. Hardiman, who was confirmed by the Senate by unanimous consent on October 22, 2003.

The ranking member claims that Mr. Hardiman has "no judicial experience," which is of course not unusual for district court nominees. Although Mr. Hardiman has not stood for election as a State trial court judge in Allegheny County, a county where Democrats outnumber Republicans by a margin of more than 2-1, Mr. Hardiman is not without significant adjudicatory experience. In 1995 the Disciplinary Board of the Pennsylvania Supreme Court appointed Mr. Hardiman as a Hearing Officer to adjudicate cases involving alleged violations of the Rules of Professional Conduct brought by clients against their lawyers. Mr. Hardiman served with distinction in this capacity, on a pro bono basis, until his recent confirmation. In addition, Mr. Hardiman has adjudicated securities cases as an arbitrator under the auspices of the National Association of Securities Dealers. His work for the Disciplinary Board and the NASD has provided Mr. Hardiman with valuable experience ruling on motions, reviewing evidence, assessing the credibility of witnesses, deciding cases, and researching and writing opinions. Without doubt, Mr. Hardiman's experiences adjudicating these cases has increased his preparedness for the Federal bench.

In addition to his quasi-judicial experience, Mr. Hardiman has impeccable academic credentials. As Senator SPECTER has noted, Mr. Hardiman graduated with honors from both the University of Notre Dame and Georgetown University Law Center. He was appointed to the prestigious position of Notes and Comments Editor of the Georgetown Law Journal, was a semifinalist in the first-year moot court competition and participated on the Criminal Law moot court team. Mr. Hardiman's academic credentials are especially impressive considering the fact that he is the first in his family to attend college and he worked part-time during most of his law school career.

Consistent with his academic achievements, Thomas Hardiman has

had a distinguished career as a litigator and trial lawyer. After working for the prestigious law firm of Skadden, Arps, Slate, Meagher & Flom, Mr. Hardiman and his wife moved to Pittsburgh in 1992 where he has been a rising star in the Pittsburgh legal community. Mr. Hardiman is admitted to practice law in Pennsylvania, Massachusetts, and the District of Columbia. He has been a member of the bar of the Supreme Court of the United States, the U.S. Court of Appeals for the Third Circuit, the U.S. Tax Court, as well as the court he now joins. He has handled well over 60 trials. For the record—and to address the ranking member's semantic game regarding the number of trials Mr. Hardiman has conducted—a "trial" is defined as "A judicial examination and determination of issues between parties to action . . . whether they be issues of law or fact." *Black's Laws Dictionary*, 5th ed. 1979. Among these 60-plus cases are: four cases before the Court of Appeals for the Third Circuit, two cases before the Pennsylvania Supreme Court, and 11 cases before the intermediate appellate courts of Pennsylvania. Mr. Hardiman has been lead counsel on several jury and non-jury trials in Federal and State court, and has tried cases to judgment on a variety of dispositive motions at all levels of the Pennsylvania judiciary. Mr. Hardiman has been lead and associate counsel on several equity matters in Federal and State court as well. Finally, he has handled matters involving real estate, contracts, securities, taxation, Medicare fraud, civil rights, and cases arising under the first, fourth, fifth, sixth, seventh, eighth, tenth, eleventh, and fourteenth amendments to the U.S. Constitution. In sum, Thomas Hardiman has deep and broad experience as a trial lawyer which is particularly extraordinary for a man his age.

In a letter dated June 18, 2003, Chief Justice of the Pennsylvania Supreme Court and lifelong Democrat Ralph J. Cappy wrote of Mr. Hardiman: "As a professional, he is outstanding. His competence and ethics are beyond reproach. It is rare that we see a person of his age and experience argue before our Court, often successfully, with a courtesy and depth of knowledge which could serve as a benchmark for any who appear before us." The Chief Justice continued: "As an individual, Tom is exemplary. He is extremely bright and knowledgeable in the law." Another prominent Democrat and Professor of Law at Duquesne Law School, Kenneth Gormley, wrote on June 19, 2003: "Tom is a first-rate litigator, who is conscientious about every aspect of his work; he is a perfectionist when it comes to representing clients in a professional manner. As an appellate lawyer, Tom possesses an extremely high level of sophistication when it comes to analytical reasoning and writing. His written work product is first-rate. An oral advocate, he is as good as any appellate lawyer I have seen in ac-

tion in twenty years." Professor Gromley said of Mr. Hardiman: "He is a lawyer of superior intellect, good judgment, and boundless energy. It is my opinion that he will constitute an excellent addition to the federal bench here in the Western District of Pennsylvania."

Finally, the dean of the Democratic bar in Allegheny County, David Armstrong, wrote of Mr. Hardiman on June 17, 2003: "I have come to know Mr. Hardiman as an excellent lawyer and a person of great intellectual curiosity and ability, as well as personal integrity. Mr. Hardiman's temperament, intellect, character and experience in my opinion, would make him an excellent member of the federal bench." Significantly, attorney Armstrong came to know Mr. Hardiman through trials they litigated against one another.

As the aforementioned facts demonstrate, the ranking member's unfair criticism and inappropriate reliance on the comments of a disgruntled lawyer in Pittsburgh who was the chief contributor to the local bar's rating of Mr. Hardiman demonstrate beyond doubt that the only partisanship involved with Mr. Hardiman's nomination and confirmation emanated from those who slandered him in an effort to defeat the nomination of a good and able man. It is always more appropriate to raise allegations about a nominee at his hearing rather than after his confirmation by the Senate. I am pleased to have the opportunity to set the record straight and I commend the Senate for its confirmation of Thomas Hardiman who will serve the people of Pennsylvania well as a Federal judge.

#### TRIBUTE TO THE LATE EARL GOODWIN, FORMER ALABAMA STATE SENATOR

Mr. SHELBY. Mr. President, I pay tribute today to a dear friend and Alabama icon, Mr. Earl Goodwin. Earl passed away on Friday, October 24, 2003 at the age of 93. He and I and our families have been close friends for nearly 40 years, and his death is a great loss for the State of Alabama.

Earl was a soldier in the United States Armed Forces, fighting on the beaches of Normandy. He made multiple trips back to England to pick up more groups of troops bringing them over to France. He completed these missions in aircraft that were unsafe because of their frequent crash landings. Earl was a true war hero, who put love of country before everything else.

After the war, he returned to Alabama and eventually created Bush Hog which became one of the world's foremost manufacturer of farm implements. Bush Hog employs hundreds of Dallas County residents, and has made great contributions in economic development to the region. Earl was a visionary with a smart mind for business. He will certainly be remembered for the tremendous difference he made in Dallas County.