

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22  
U.S.C. 1754(b), CODEL FRIST FOR TRAVEL FROM JUNE 3 TO JUNE 6, 2004—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Total .....			8,143.00				44,206.99		52,349.99

\* Delegation expenses include payments and reimbursements to the Department of State, and the Department of Defense under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384, and S. Res. 179 agreed to May 25, 1977.

BILL FRIST,  
Majority Leader.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22  
U.S.C. 1754(b), DEMOCRATIC LEADER FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Randy Massanelli:									
Jordan .....	Dinar .....		208.20						208.20
Germany .....	Dollar .....		43.95						43.95
Total .....			252.15						252.15

TOM DASCHLE,  
Democratic Leader, Sept. 21, 2004.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22  
U.S.C. 1754(b), DEMOCRATIC LEADER FOR TRAVEL FROM APR. 1 TO JUNE 30, 2004.

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Tom Daschle:									
Kuwait .....	Dollar .....		344.00						344.00
Senator Joe Biden:									
Kuwait .....	Dollar .....		344.00						344.00
Senator Lindsey Graham:									
Kuwait .....	Dollar .....		344.00						344.00
Denis McDonough:									
Kuwait .....	Dollar .....		344.00						344.00
Rich Verma:									
Kuwait .....	Dollar .....		344.00						344.00
Alex Jarvis:									
Kuwait .....	Dollar .....		344.00						344.00
Anthony Blinken:									
Kuwait .....	Dollar .....		344.00						344.00
Puneet Talwar:									
Kuwait .....	Dollar .....		344.00						344.00
Delegation Expenses:									
Kuwait .....	Dollar .....					2,726.94			2,726.94
Total .....			2,752.00			2,726.94			5,478.94

\* Delegation expenses include payments and reimbursements to the Department of State under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384 and S. Res. 179 agreed to May 25, 1977.

TOM DASCHLE,  
Democratic Leader, Sept. 23, 2004.

## EXECUTIVE SESSION

### EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Calendar Nos. 48, 49, 411, 488, 509, 594, 595, 611, 612, 613, 614, 615, 617, 623, 628, 629, 630, 631, 632, 633, 634, 635, 636, 640, 641, 642, 643, 658, 687, 689, 694, 696, 699, 701, 702, 703, 707, 708, 709, 710, 712, 725, 727, 729, 788, 795, 797, 800, 801, 802, 805, 806, 807, 808, 813, 814, 816, 817, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 914, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951,

952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, all nominations on the Secretary's desk.

Further, the following nominations be discharged from the respective committees and the Senate proceed to their consideration en bloc: HELP Committee, the list of nominations at the desk, and that they be considered en bloc and PN2045, and 1508; the Agriculture Committee, Michael Harrison (PN1969), Frederick Hatfield (PN2014), Sharon Brown-Hruska (PN1837), Michael Dunn (2030), Dallas Tonsager (PN2029); from the Judiciary Committee, PN2050.

I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. I don't suppose I should ask you to restate the unanimous consent request.

Without objection, it is so ordered.

The nominations considered and confirmed are as follows:

### NOMINATIONS

#### UNITED STATES INTERNATIONAL TRADE COMMISSION

Daniel Pearson, of Minnesota, to be 2 Member of the United States International Trade Commission for the term expiring June 16, 2011.

Charlotte A. Lane, of West Virginia, to be a Member of the United States International Trade Commission for a term expiring December 16, 2009.

#### DEPARTMENT OF JUSTICE

Deborah Ann Spagnoli, of California, to be a Commissioner of the United States Parole Commission for a term of six years.

#### DEPARTMENT OF COMMERCE

Michael D. Gallagher, of Washington, to be Assistant Secretary of Commerce for Communications and Information.

## THE JUDICIARY

Alan G. Lance, Sr., of Idaho, to be a Judge of the United States Court of Appeals for Veterans Claims for the term prescribed by law.

## EXPORT-IMPORT BANK OF THE UNITED STATES

Linda Mysliwy Conlin, of New Jersey, to be a Member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 2007.

## DEPARTMENT OF THE INTERIOR

Sue Ellen Wooldridge, of Virginia, to be Solicitor of the Department of the Interior, vice William Gerry Myers III, resigned.

## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Gary Lee Visscher, of Maryland, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years.

## ENVIRONMENTAL PROTECTION AGENCY

Stephen L. Johnson, of Maryland, to be Deputy Administrator of the Environmental Protection Agency.

Charles Johnson, of Utah, to be chief Financial Officer, Environmental Protection Agency.

Ann R. Klee, of Virginia, to be an Assistant Administrator of the Environmental Protection Agency.

Benjamin Grumbles, of Virginia, to be an Assistant Administrator of the Environmental Protection Agency.

## DEPARTMENT OF COMMERCE

Theodore William Kassinger, of Maryland, to be Deputy Secretary of Commerce.

## SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

Jack Edwin McGregor, of Connecticut, to be a Member of the Advisory Board of the Saint Lawrence Seaway Development Corporation.

## DEPARTMENT OF LABOR

Lisa Kruska, of Virginia, to be an Assistant Secretary of Labor, vice Kathleen M. Harrington.

## DEPARTMENT OF EDUCATION

Edward R. McPherson, of Texas, to be Under Secretary of Education.

## JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

David Wesley Fleming, of California, to be a Member of the Board of Trustees of the James Madison Memorial Fellowship Foundation for a term expiring May 29, 2007.

Jay Phillip Greene, of Florida, to be a Member of the Board of Trustees of the James Madison Memorial Fellowship Foundation for a term expiring November 17, 2005.

John Richard Petrocik, of Missouri, to be a Member of the Board of Trustees of the James Madison Memorial Fellowship Foundation for a term expiring September 27, 2008.

## HARRY S TRUMAN SCHOLARSHIP FOUNDATION

Patrick Lloyd McCrory, of North Carolina, to be a Member of the Board of Trustees of the Harry S Truman Scholarship Foundation for a term expiring December 10, 2005.

Juanita Alicia Vazquez-Gardner, of Texas, to be a Member of the Board of Trustees of the Harry S Truman Scholarship Foundation for a term expiring December 10, 2009.

## DEPARTMENT OF EDUCATION

Robert C. Granger, of New Jersey, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of four years.

Gerald Lee, of Pennsylvania, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of four years.

## THE JUDICIARY

Curtis V. Gomez, of Virgin Islands, to be Judge for the District Court of the Virgin Islands for a term of ten years.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Cathy M. MacFarlane, of Virginia, to be an Assistant Secretary of Housing and Urban Development.

Dennis C. Shea, of Virginia, to be an Assistant Secretary of Housing and Urban Development.

Romolo A. Bernardi, of New York, to be Deputy Secretary of Housing and Urban Development.

## AFRICAN DEVELOPMENT FOUNDATION

Constance Berry Newman, Assistant Secretary of State (African Affairs), to be a Member of the Board of Directors of the African Development Foundation for a term expiring September 27, 2009.

## SELECTIVE SERVICE SYSTEM

William A. Chatfield, of Texas, to be Director of Selective Service.

## DEPARTMENT OF DEFENSE

Mark Falcoff, of California, to be a Member of the National Security Education Board for a term of four years.

## DEPARTMENT OF COMMERCE

Jonathan W. Dudas, of Virginia, to be Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

## DEPARTMENT OF VETERANS AFFAIRS

Pamela M. Iovino, of the District of Columbia, to be an Assistant Secretary of Veterans Affairs (Congressional Affairs).

## EXECUTIVE OFFICE OF THE PRESIDENT

David Safavian, of Michigan, to be Administrator for Federal Procurement Policy.

## UNITED STATES POSTAL SERVICE

James C. Miller III, of Virginia, to be a Governor of the United States Postal Service for the term expiring December 8, 2010.

## POSTAL RATE COMMISSION

Dawn A. Tisdale, of Texas, to be a Commissioner of the Postal Rate Commission for a term expiring November 22, 2006.

## FEDERAL ENERGY REGULATORY COMMISSION

Suede G. Kelly, of New Mexico, to be a Member of the Federal Energy Regulatory Commission for the term expiring June 30, 2009. (Reappointment)

## UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

James R. Kunder, of Virginia, to be an Assistant Administrator of the United States Agency for International Development.

## AFRICAN DEVELOPMENT FOUNDATION

Edward Brehm, of Minnesota, to be a Member of the Board of Directors of the African Development Foundation for a term expiring November 13, 2007.

## EXECUTIVE OFFICE OF THE PRESIDENT

Adam Marc Lindemann, of New York, to be a Member of the Advisory Board for Cuba Broadcasting for a term expiring October 27, 2005.

## DEPARTMENT OF STATE

Ann M. Corkery, of Virginia, to be an Alternate Representative of the United States of America to the Fifty-eighth Session of the General Assembly of the United Nations.

Walid Maalouf, of Virginia, to be an Alternate Representative of the United States of America to the Fifty-eighth Session of the General Assembly of the United Nations.

John D. Rood, of Florida, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Commonwealth of The Bahamas.

Charles Graves Untermeyer, of Texas, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the State of Qatar.

Aldona Wos, of North Carolina, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Estonia.

## UNITED STATES PAROLE COMMISSION

Isaac Fulwood, Jr., of the District of Columbia, to be a Commissioner of the United States Parole Commission for a term of six years.

## DEPARTMENT OF THE TREASURY

Timothy S. Bitsberger, of Massachusetts, to be an Assistant Secretary of the Treasury.

Paul Jones, of Colorado, to be a Member of the Internal Revenue Service Oversight Board for a term expiring September 14, 2008.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Carin M. Barth, of Texas, to be Chief Financial Officer, Department of Housing and Urban Development.

## MERIT SYSTEMS PROTECTION BOARD

Neil McPhie, of Virginia, to be Chairman of the Merit Systems Protection Board.

Barbara J. Sabin, of Maryland, to be a Member of the Merit Systems Protection Board for the term of seven years expiring March 1, 2007.

## DEPARTMENT OF COMMERCE

Benjamin H. Wu, of Maryland, to be Assistant Secretary of Commerce for Technology Policy.

Brett T. Palmer, of New York, to be an Assistant Secretary of Commerce.

Albert A. Frink, Jr., of California, to be an Assistant Secretary of Commerce.

## SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

Scott Kevin Walker, of Wisconsin, to be a Member of the Advisory Board of the Saint Lawrence Seaway Development Corporation.

## SOCIAL SECURITY ADMINISTRATION

Patrick P. O'Carroll, Jr., of Maryland, to be Inspector General, Social Security Administration.

## MERIT SYSTEMS PROTECTION BOARD

Neil McPhie, of Virginia, to be a Member of the Merit Systems Protection Board for the term of seven years expiring March 1, 2009.

## FEDERAL TRADE COMMISSION

Jon D. Leibowitz, of Maryland, to be a Federal Trade Commissioner for a term of seven years from September 26, 2003.

Deborah P. Majoras, of Virginia, to be a Federal Trade Commissioner for the unexpired term of seven years from September 26, 2001.

## NATIONAL COUNCIL ON THE ARTS

Gerard Schwarz, of Washington, to be a Member of the National Council on the Arts for the remainder of the term expiring September 3, 2006.

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

James Ballinger, of Arizona, to be a Member of the National Council on the Arts for a term expiring September 3, 2010.

Terrence Alan Teachout, of New York, to be a Member of the National Council on the Arts for a term expiring September 3, 2010.

## DEPARTMENT OF EDUCATION

Jonathan Baron, of Maryland, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of three years.

Elizabeth Ann Bryan, of Texas, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of four years.

James R. Davis, of Mississippi, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of two years. (New Position)

Frank Philip Handy, of Florida, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of three years.

Eric Alan Hanushek, of California, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of two years.

Caroline M. Hoxby, of Massachusetts, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of four years.

Roberto Ibarra Lopez, of Texas, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of two years.

Richard James Milgram, of New Mexico, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of three years.

Sally Epstein Shaywitz, of Connecticut, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of three years.

Joseph K. Torgesen, of Florida, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of four years.

Herbert John Walberg, of Illinois, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of three years.

#### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Herman Belz, of Maryland, to be a Member of the National Council on the Humanities for a term expiring January 26, 2010.

Tamar Jacoby, of New Jersey, to be a Member of the National Council on the Humanities for a term expiring January 26, 2010.

Craig Haffner, of California, to be a Member of the National Council on the Humanities for a term expiring January 26, 2010.

James Davidson Hunter, of Virginia, to be a Member of the National Council on the Humanities for a term expiring January 26, 2010.

Harvey Klehr, of Georgia, to be a member of the National Council on the Humanities for a term expiring January 26, 2010.

Thomas K. Lindsay, of Texas, to be a Member of the National Council on the Humanities for a term expiring January 26, 2010.

Iris Love, of Vermont, to be a Member of the National Council on the Humanities for a term expiring January 26, 2010.

Thomas Mallon, of Connecticut, to be a Member of the National Council on the Humanities for a term expiring January 26, 2010.

Ricardo Quinones, of California, to be a Member of the National Council on the Humanities for a term expiring January 26, 2010.

#### NATIONAL MUSEUM AND LIBRARY SERVICES BOARD

Beverly Allen, of Georgia, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2008.

Donald Leslie, of Wisconsin, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2006.

Amy Owen, of Utah, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2008.

Sandra Pickett, of Texas, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2005.

Renee Swartz, of New Jersey, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2007.

Kim Wang, of California, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2004.

#### NATIONAL INSTITUTE FOR LITERACY

William T. Hiller, of Ohio, to be a Member of the National Institute for Literacy Advisory Board for a term expiring November 25, 2006.

Richard Kenneth Wagner, of Florida, to be a Member of the National Institute for Literacy Advisory Board for a term expiring November 25, 2006.

Juan R. Olivarez, of Michigan, to be a Member of the National Institute for Literacy Advisory Board for a term expiring November 25, 2006.

#### UNITED STATES INSTITUTE OF PEACE

Maria Otero, of the District of Columbia, to be a Member of the Board of Directors of the United States Institute of Peace for a term expiring January 19, 2007.

#### NATIONAL COUNCIL ON DISABILITY

Young Woo Kang, of Indiana, to be a Member of the National Council On Disability for a term expiring September 17, 2006.

#### DEPARTMENT OF EDUCATION

John H. Hager, of Virginia, to be Assistant Secretary for Special Education and Rehabilitative Services, Department of Education.

#### NATIONAL SCIENCE FOUNDATION

Arden Bement, Jr., of Indiana, to be Director of the National Science Foundation for a term of six years.

#### THE JUDICIARY

Raymond L. Finch, of the Virgin Islands, to be Judge for the District Court of the Virgin Islands for a term of ten years. (Re-appointment)

Micaela Alvarez, of Texas, to be United States District Judge for the Southern District of Texas.

Keith Starrett, of Mississippi, to be United States District Judge for the Southern District of Mississippi.

#### DEPARTMENT OF JUSTICE

Lisa Godbey Wood, of Georgia, to be United States Attorney for the Southern District of Georgia for the term of four years.

David E. Nahmias, of Georgia, to be United States Attorney for the Northern District of Georgia for the term of four years.

Richard B. Roper III, of Texas, to be United States Attorney for the Northern District of Texas for the term of four years.

#### UNITED STATES SENTENCING COMMISSION

Ricardo H. Hinojosa, of Texas, to be Chair of the United States Sentencing Commission.

Michael O'Neill, of Maryland, to be a Member of the United States Sentencing Commission for a term expiring October 31, 2009. (Re-appointment)

Ruben Castillo, of Illinois, to be a Member of the United States Sentencing Commission for a term expiring October 31, 2009. (Re-appointment)

Christopher A. Boyko, of Ohio, to be United States District Judge for the Northern District of Ohio.

#### UNITED STATES SENTENCING COMMISSION

Beryl A. Howell, of the District of Columbia, to be a Member of the United States Sentencing Commission for the remainder of the term expiring October 31, 2005.

#### DEPARTMENT OF VETERANS AFFAIRS

Robert Allen Pittman, of Florida, to be an Assistant Secretary of Veterans Affairs (Human Resources and Administration).

#### THE JUDICIARY

Robert N. Davis, of Florida, to be a Judge of the United States Court of Appeals for Veterans Claims for the term prescribed by law.

Mary J. Schoelen, of the District of Columbia, to be a Judge of the United States Court of Appeals for Veterans Claims for the term of fifteen years.

William A. Moorman, of Virginia, to be a Judge of the United States Court of Appeals for Veterans Claims for the term of fifteen years.

#### DEPARTMENT OF STATE

Catherine Todd Bailey, of Kentucky, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Latvia.

#### UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Douglas Menarchik, of Texas, to be an Assistant Administrator of the United States Agency for International Development.

#### INTER-AMERICAN DEVELOPMENT BANK

Hector E. Morales, of Texas, to be United States Executive Director of the Inter-American Development Bank for a term of three years.

#### UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Lloyd O. Pierson, of Virginia, to be an Assistant Administrator of the United States Agency for International Development.

#### AFRICAN DEVELOPMENT FOUNDATION

Lloyd O. Pierson, an Assistant Administrator of the United States Agency for International Development, to be a Member of the Board of Directors of the African Development Foundation for a term expiring September 22, 2009.

#### DEPARTMENT OF JUSTICE

Robert Cramer Balfe III, of Arkansas, to be United States Attorney for the Western District of Arkansas for the term of four years.

#### DEPARTMENT OF THE TREASURY

J. Russell George, of Virginia, to be Inspector General for Tax Administration, Department of the Treasury.

#### NATIONAL COUNCIL ON DISABILITY

Milton Aponte, of Florida, to be a Member of the National Council On Disability for a term expiring September 17, 2006.

#### NATIONAL SCIENCE FOUNDATION

Dan Arvizu, of Colorado, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Steven C. Beering, of Indiana, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Gerald Wayne Clough, of Georgia, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Kelvin Kay Droegemeier, of Oklahoma, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Louis J. Lanzerotti, of New Jersey, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Alan I. Leshner, of Maryland, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Jon C. Strauss, of California, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Kathryn D. Sullivan, of Ohio, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

#### DEPARTMENT OF THE TREASURY

Anna Escobedo Cabral, of Virginia, to be Treasurer of the United States.

## THE JUDICIARY

Gregory E. Jackson, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

## DEPARTMENT OF DEFENSE

Vinicio E. Madrigal, of Louisiana, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2009. (Reappointment)

Otis Webb Brawley, Jr., of Georgia, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2009. (Reappointment)

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

R. Bruce Matthews, of New Mexico, to be a Member of the Defense Nuclear Facilities Safety Board for a term expiring October 18, 2005.

Joseph F. Bader, of the District of Columbia, to be a Member of the Defense Nuclear Facilities Safety Board for a term expiring October 18, 2007.

## DEPARTMENT OF EDUCATION

Eugene Hickok, of Pennsylvania, to be Deputy Secretary of Education.

Edward R. McPherson, of Texas, to be Under Deputy Secretary of Education.

## NATIONAL COUNCIL ON DISABILITY

Robert Davila, of New York, to be a Member of the National Council On Disability for a term expiring September 17, 2006. (Reappointment)

Linda Wetters, of Ohio, to be a Member of the National Council On Disability for a term expiring September 17, 2006. (Reappointment)

## BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

Julia L. Wu, of California, to be a Member of the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation for a term expiring February 4, 2008, vice James Roger Angel, term expired.

Laurie Stenberg Nichols, of South Dakota, to be a Member of the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation for a term expiring March 3, 2010, vice Donna Dearman Smith, term expired.

## DEPARTMENT OF EDUCATION

Carol D'Amico, of Indiana, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of two years. (New Position)

## DEPARTMENT OF STATE

Yousif B. Ghafari, of Michigan, to be an Alternate Representative of the United States of America to the Fifty-ninth Session of the General Assembly of the United Nations.

Jane Dee Hull, of Arizona, to be a Representative of the United States of America to the Fifty-ninth Sessions of the General Assembly of the United Nations.

Susan L. Moore, of Texas, to be an Alternate Representative of the United States of America to the Fifty-ninth Session of the General Assembly of the United Nations.

## CORPORATION FOR PUBLIC BROADCASTING

Gay Hart Gaines, of Florida, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2010.

Claudia Puig, of Florida, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2008.

Ernest J. Wilson, III, of Maryland, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2010. (Reappointment)

## SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

James S. Simpson, of New York, to be a Member of the Advisory Board of the Saint Lawrence Seaway Development Corporation.

## FEDERAL MARITIME COMMISSION

Harold Jennings Creel, Jr., of South Carolina, to be a Federal Maritime Commissioner for the term expiring June 30, 2009.

## FEDERAL COMMUNICATIONS COMMISSION

Jonathan Steven Adelstein, of South Dakota, to be a Member of the Federal Communications Commission for a term expiring June 30, 2008.

## AIR FORCE

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

*To be brigadier general*

Col. Guy K. Dahlbeck

The following Air National Guard of the United States officer for appointment in the Reserve of the Air Force to the grade indicated under title 10, U.S.C., section 12203:

*To be brigadier general*

Col. Brent E. Winget

## ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

*To be lieutenant general*

Maj. Gen. Robert L. Van Antwerp, Jr.

The following named officer for appointment in the United States Army to the grade indicated under title 10, U.S.C., section 624:

*To be major general*

Brig. Gen. Jason K. Kamiya

The following named officers for appointment in the Reserve of the Army to the grades indicated under title 10, U.S.C., section 12203:

*To be brigadier general*

Col. Keith L. Thurgood

The following named officers for appointment in the United States Army to the grade indicated under title 10, U.S.C., section 624:

*To be brigadier general*

Colonel Michael J. Lally, III

## NOMINATIONS PLACED ON THE SECRETARY'S DESK

## COAST GUARD

PN2001 COAST GUARD nominations (154) beginning Gerard P. Achenbach, and ending Elizabeth D. Young, which nominations were received by the Senate and appeared in the Congressional Record of September 23, 2004.

PN2051 COAST GUARD nominations (257) beginning Joel A. Amundson, and ending Joseph M. Zwack, which nominations were received by the Senate and appeared in the Congressional Record of November 16, 2004.

## FOREIGN SERVICE

PN2019 FOREIGN SERVICE nominations (148) beginning Ralph L. Boyce Jr., and ending Robert J. Whigham, which nominations were received by the Senate and appeared in the Congressional Record of October 7, 2004.

PN2020 FOREIGN SERVICE nominations (206) beginning Robert M. Clay, and ending Marcia L. Norman, which nominations were received by the Senate and appeared in the Congressional Record of October 7, 2004.

Patricia Cushwa, of Maryland, to be a Commissioner of the United States Parole Commission for a term of six years.

Sharon Tucker, of Georgia, to be a Member of the Board of Trustees of the Harry S Tru-

man Scholarship Foundation for a term expiring December 10, 2005.

Kathleen Martinez, of California, to be a Member of the National Council on Disability for a term expiring September 17, 2006.

William A. Schambra, of Virginia, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term expiring September 14, 2006.

Donna N. Williams, of Texas, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term expiring October 6, 2006.

Leona White Hat, of South Dakota, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term expiring October 6, 2008.

Henry Lozano, of California, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term expiring October 6, 2008.

Mimi Mager, of the District of Columbia, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term expiring December 27, 2007.

Jacob Joseph Lew, of New York, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term expiring October 6, 2008.

Mark D. Gearan, of New York, to be a Member of the Board of Directors of the Corporation for National and Community Services for a term of one year.

Dorothy A. Johnson, of Michigan, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term expiring October 6, 2007.

Cynthia Boich, of California, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term expiring October 6, 2007.

Edward Alton Parrish, of Virginia, to be a Member of the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation for a term expiring April 17, 2008.

Raquel Egusquiza, of Michigan, to be a Member of the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation for a term expiring October 13, 2005.

Michael J. Harrison, of Connecticut, to be an Assistant Secretary of Agriculture.

Fredrick William Hatfield, of California, to be a Commissioner of the Commodity Futures Trading Commission for a term expiring April 13, 2008.

Sharon Brown-Hruska, of Virginia, to be a Commissioner of the Commodity Futures Trading Commission for the term expiring April 13, 2009.

Michael V. Dunn, of Iowa, to be a Commissioner of the Commodity Futures Trading Commission for the remainder of the term expiring June 19, 2006, vice James E. Newsome, resigned.

Dallas Tonsager, of South Dakota, to be a Member of the Farm Credit Administration Board, Farm Credit Administration, for a term expiring May 21, 2010.

## NOMINATION OF KEITH STARRETT

Mr. LEAHY. Mr. President, the nomination of Keith Starrett of Mississippi is strongly supported by Senator LOTT and Senator COCHRAN. Judge Starrett is nominated to a vacancy on the Southern District of Mississippi created when the President ignored the Senate's withholding of its consent and unilaterally appointed Judge Charles Pickering to the Fifth Circuit.

With this nomination, President Bush forfeited another opportunity to

be a uniter and to draw the country together. I understand the concerns of so many African-American organizations and lawyers who continue to ask the President to begin to achieve some diversity on that bench by the nomination and appointment of a qualified African American. The Magnolia Bar Association, a primarily African-American bar association in Mississippi, has written the Senate in connection with this nomination. The Magnolia Bar's president, Crystal Wise Martin, expresses the group's strong opposition to proceeding with Judge Starrett's nomination, not only because it is so late in the session but also because, as she writes: "[I]t fails to remedy the egregious problem concerning the lack of diversity on Mississippi's federal bench." She points out that Mississippi has the highest percentage of African Americans of any State, but that Mississippi has had only one African-American Federal judge. She explains that the Magnolia Bar and the National Bar Association have both made direct requests to the President that he appoint an African American to fill this important vacancy.

During the consideration of Charles Pickering's nomination, reports were that Republicans were indicating that they would advocate for an African-American nominee if some African Americans would support Judge Pickering's elevation to a higher court. The administration has chosen not to fulfill those hopes by proceeding with a qualified African-American nominee for this important judgeship.

This President has shown where his priorities are by nominating more lawyers affiliated with the Federalist Society than qualified African Americans, Hispanics and Asian Americans combined.

I ask unanimous consent that a copy of the letter from the Magnolia Bar Association be printed in the RECORD.

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

MAGNOLIA BAR  
ASSOCIATION, INC.,

*Jackson, MS, September 6, 2004.*

Senator ORRIN HATCH,  
*Chair, Senate Judiciary Committee, Senate  
Dirksen Office Building, Washington, DC.*  
Senator PATRICK LEAHY,  
*Ranking Member, Senate Judiciary Committee,  
Senate Dirksen Office Building, Wash-  
ington, DC.*

DEAR SENATORS HATCH AND LEAHY: Founded in 1955 by less than ten black lawyers with several purposes including advancing the science of jurisprudence and promoting reform in the law, the Magnolia Bar Association can now boast that it has more than four hundred African-American and white members who practice across Mississippi and many states throughout America. Our members are engaged in every form of practice just as other members of the Mississippi Bar. We are prosecutors, criminal defense attorneys, plaintiff attorneys, defense attorneys, and we are administrative lawyers. Our ranks also include attorneys who specialize in domestic relations and commercial litigation. Simply put, we do it all. We practice in state, federal and tribal courts. The Mag-

nolia Bar is represented on every court in Mississippi except the Fifth Circuit Court of Appeals. We are proud of what we do, and we are committed to our profession. I, Crystal Wise Martin, am indeed honored to serve as its president.

We are strongly opposed to the Senate's consideration of the nomination of Keith Starrett to the Southern District of Mississippi so late in this Administration's term. We understand there is a longstanding and well-respected practice of the Senate Judiciary Committee to withhold consideration of controversial federal judicial nominations by the fall of an election year. We see no reason to deviate from this tradition in the case of the Starrett nomination.

The Starrett nomination is particularly untimely. President Bush only nominated Keith Starrett on July 7 of this year, to fill the seat vacated by Charles Pickering upon his recess appointment to the Fifth Circuit. Consideration of the nomination at this point in an election year is simply inappropriate. In Mississippi, absentee voting in the Presidential election begins on September 20. Holding a hearing on the nomination just twelve days before Mississippians can cast their Presidential votes is simply too late. Moreover, it is doubtful that Mr. Starrett could even proceed through the Judiciary Committee before the voting begins.

We know of no federal judicial nomination in recent history in which the nomination was made so late in a Presidential term and yet still received a hearing before the Judiciary Committee in the fall of an election year. In the last presidential election year of 2000, there were no hearings whatsoever held in the fall. For example, when President Clinton nominated Ricardo Morado to the district court in Texas on May 11, 2000, Senators objected to the nomination as occurring too late in an election year. Mr. Morado never received a hearing.

Additionally, we strongly object to the Starrett nomination because it fails to remedy the egregious problem concerning the lack of diversity on Mississippi's federal bench. Mississippi has the highest percentage of African Americans of any state in the country. Yet Mississippi has had only one African American federal judge—ever. Judge Henry Wingate, who holds this distinction, was appointed nearly twenty years ago.

Earlier this year, the Magnolia Bar Association made a direct plea to President Bush to rectify this lack of diversity. In a letter dated February 2, we urge President Bush to appoint an African American to the Southern District of Mississippi. We wrote that the "appointment of an African American . . . is long overdue." We set forth the history of the lack of appointments, and concluded there was a "compelling case" for the appointment. We noted the existence of hundreds of African American lawyers in the State and the representation we have been able to achieve on our State and local bench. We offered to consult with the President about the numerous candidates who exist for a federal court position. The National Bar Association, the nationwide organization of African American lawyers, made a similar request this year, directed specifically to the vacancy in the Southern District of Mississippi.

Moreover many members of the African American community in Mississippi were led to believe that an African American would receive the nomination to fill Judge Charles Pickering's district court seat. Judge Pickering's supporters, including but not limited to his son, Representative Chip Pickering, were express about their intentions to bring about the nomination of an African American should Judge Pickering be elevated. These representations are well docu-

mented in the press. The Washington Post reported that "Chip Pickering confirmed that he has also been telling prominent African Americans in the state that if his father is promoted to the appeals court, his replacement on the district court will likely be an [African American nominee]." ("Judge's Fate Could Turn on 1994 Case," Washington Post, May 27, 1993). The Clarion-Ledger from Jackson, Mississippi referred to Congressman Pickering's representations in an article entitled, "Pickering Vows to Push Diversity." (Clarion-Ledger, May 28, 2003).

President Bush has refused to heed our requests. Despite having four opportunities, he has not nominated one African American to the federal bench in Mississippi. During his term, President Bush has nominated three persons to the federal district court in Mississippi and one person from Mississippi to the Fifth Circuit Court of Appeals. None are African American. We deplore this Administration's record on diversity in judicial appointments in Mississippi.

The failure to diversify Mississippi's federal bench is just one example of the lack of diversity in this Administration's judicial appointments generally. In four years, President Bush has appointed only 11 African Americans to district court seats anywhere in the country. These 11 appointments constitute only less than seven percent of the total of 162 district court appointments. This stands in stark contrast to the record of President Bush's predecessor. In his first term, President Clinton appointed 33 African Americans out of 170 district court appointments, or almost twenty percent. In his second term, President Clinton appointed 20 African Americans out of 137 district court appointments, or fourteen percent. The Magnolia Bar Association strongly believes we should be advancing in African American representation on the federal bench, not retreating.

For all of these reasons, we urge you to refrain from considering the Starrett nomination at this late date. Thank you.

Respectfully yours,

CRYSTAL WISE MARTIN,  
*President.*

#### NOMINATION OF DAVID NAHMIAS

Mr. LEAHY. Mr. President, after months of stonewalling by this administration, we are still trying to uncover the truth about the abuse of prisoners in U.S. custody overseas. I have long said that somewhere in the upper reaches of the executive branch a process was set in motion that rolled forward until it produced this scandal. To date, senior administration officials have avoided any accountability for these atrocities.

The Senate is today including the nomination of David Nahmias to serve as a U.S. Attorney in Georgia in a final package of confirmations for this Congress. Mr. Nahmias has held senior positions at the Department of Justice where he worked on the legal underpinnings of the President's war against terror. The overbroad assertions of executive power have been rejected by the Supreme Court and other Federal courts.

In speeches, he has unequivocally supported the President's authority as Commander in Chief to designate and detain suspected terrorists, including

American citizens, as enemy combatants without judicial review by an article III court. In the case of the American citizens detained as enemy combatants, argued that there was no reason for judicial review of their detentions because they, "received the absolute ultimate executive branch process," because the "President of the United States, operating as the Commander-in-Chief, personally reviewed their cases, and personally designated them as enemy combatants." The Supreme Court strongly rejected this position this year and held that the detainees in Guantanamo Bay and U.S. citizens being held as enemy combatants have the right to challenge their detentions in Federal courts.

I asked Mr. Nahmias questions about his views on the rights of enemy combatants, his role in investigating, approving, or otherwise reviewing rules, procedures, or guidelines involving the interrogation of individuals held in the custody of the U.S. Government or an agent of the U.S. Government, and his role in the prosecution of domestic terrorism cases. His original answers were largely non-responsive. I sent him further questions to clarify his record and views.

I remain troubled by Mr. Nahmias' answers and uncertain of the extent of his involvement in these matters. During Mr. Nahmias' tenure at the Department, it produced a legal memorandum redefining torture to allow all sorts of brutal treatment—such as mock burial alive, simulated drowning, electrocution, tearing off of fingernails, and other such barbaric treatment—so long as the pain caused is not akin to organ failure, and concluding that, as commander in chief in the war against terror, the President and federal agents are not constrained by anti-terror laws. Since they came to light, these positions have been abandoned by the White House counsel and the administration.

The American people deserve public officials who are fair and will uphold the law. No one is entitled to a high-ranking presidential appointment entrusted with making decisions that affect the lives and futures of millions of Americans. Our freedoms are the fruit of too much sacrifice to give appointments to people who will not fairly interpret the Constitution, enforce Federal protections, and follow previous court rulings on which Americans rely in their daily lives. If there were a separate vote on this nomination, I would oppose it.

#### NOMINATION OF CHRISTOPHER BOYKO

Mr. President, today the Senate voted on the nomination of Judge Christopher Boyko for a lifetime seat on the U.S. District Court for the Northern District of Ohio. He is strongly supported by both of his home-State Senators.

The Senate has already confirmed four of President Bush's district court nominees and two of his circuit court nominees from Ohio, including some

who were problematic. Deborah Cook, now on the Sixth Circuit, is a staunch Republican and Federalist Society member who was one of the Ohio Supreme Court's most prolific and activist dissenters in favor of corporate interests. She was promoted by the Senators from Ohio and was confirmed last year. Another Sixth Circuit confirmation, Jeffrey Sutton, is an active Federalist Society member and one of the most controversial of President Bush's nominees confirmed. Prior to his confirmation to a lifetime appointment on the Nation's second highest court, Judge Sutton sought out opportunities to attack Federal civil rights laws and limit Congress' ability to protect individual rights. He received enough "negative" votes for a potential filibuster, but he was not blocked on the floor. The Senate also confirmed four Ohio district court nominees for President Bush, many of whom were active members of the Republican party in Ohio and whose records were somewhat troubling.

We moved forward with those nominations even though two of President Clinton's nominees to Ohio, Kent Markus and Steve Bell, were blocked by Republicans. Neither received a hearing or a vote. Mr. Markus was nominated to the Sixth Circuit in February 2000, but was told it was just too late. Steven Bell was nominated in August 1999 to the district court in Ohio and waited for more than a year without receiving a hearing. The double standards that the Republican majority has adopted obviously depend upon the occupant of the White House.

In 1996, when a Democratic President was seeking re-election, the Republican-controlled Senate held only one hearing to consider one district court nominee after the August recess, and then never allowed that nominee to have a Committee or Senate vote. Indeed, that nominee, Judge Ann Aiken of Oregon, was obstructed so severely by the Republican majority that she was not confirmed to her position until nearly a year and a half later.

In September 2000, when the vacancy rate on the Federal courts was around 7 percent, Republicans refused to proceed with hearings on nominees so late in the presidential election year. After the August recess work on judicial nominations came to a halt. Although there were over 30 nominees pending, after July 25, 2000, no more judicial nominees were scheduled for hearings or considered by the committee. This year, with the vacancy rate at around 3 percent, less than half what it was in 2000, we expedited consideration of nominees by a Republican President.

In both 1996 and 2000, not a single individual nominated after July 21 was confirmed to the Federal courts—even for seats that were already vacant. When Kent Markus of Ohio was nominated in February 2000 to the Sixth Circuit, he was told by Republicans that it was just too late. Judge Boyko was nominated on July 22, 2004 to fill a

district court seat that will not even be vacant until December 31, 2004.

That said, I note that since 1996, Judge Boyko has served on the Court of Common Pleas for Cuyahoga County. Unlike many of this President's nominees, Judge Boyko has a reputation for fairness. He is being confirmed today for a future vacancy. I congratulate him and his family on his confirmation.

#### NOMINATION OF KEITH STARRETT

Mr. LOTT. Mr. President, I am delighted that the Senate has approved Judge Keith Starrett's nomination today to be a U.S. District Court Judge for the Southern District of Mississippi. I was pleased when the President nominated Judge Starrett to be a U.S. District Court Judge because he is one of the most experienced and respected trial court judges in the Mississippi State court system. I know that his lovely wife Barbara and his entire family are very proud of Judge Starrett as he marks this important milestone in his career and prepares to serve our state and nation in this new role.

Judge Starrett is a bright light in the Mississippi legal community. He holds an undergraduate degree from Mississippi State University and a J.D. degree from the University of Mississippi School of Law. Additionally, as a sitting trial court judge he has completed a number of courses at the National Judicial College which have added to the knowledge base which he will bring to the federal bench.

Judge Starrett engaged in the general practice of law for 17 years in Pike County and also served as an Assistant District Attorney, gaining broad experience in the law that such practice areas provide. He was appointed to a vacant State circuit court judgeship in 1992, and he was elected to continue in this position in 1994, 1998, and 2002. During his 12 years on the bench, Judge Starrett has earned a strong reputation as a fair and outstanding trial judge presiding over both civil and criminal cases.

One of Judge Starrett's most important accomplishments in his judicial career is the leadership he provided in establishing the first felony level drug court in Mississippi in his State judicial district. This court was used as a model for the creation of other drug courts in the State. Judge Starrett's expertise and involvement in this area has been a key driving force as Mississippi works to implement a drug court system for the entire State, and he has written and spoken extensively on this topic. These special courts are better able to address the issues of justice and rehabilitation for those charged with crimes involving drugs, and I commend Judge Starrett for the groundbreaking work he has done in this area.

Judge Starrett has also found time to serve his community and profession in many other ways. He helped to found

Mission Pike County, a racial and denominational reconciliation organization and Southwest Mississippi Child Protection, a child advocacy group in Lincoln and Pike Counties. He is a leader in his church and the legal community in Mississippi, and he has been recognized with awards such as the 2003 Judicial Excellence Award given by the Mississippi Bar Association.

It is no surprise that the American Bar Association's Standing Committee on the Federal Judiciary has unanimously found Judge Keith Starrett to be Well-Qualified to serve as a U.S. District Court Judge. The vacant seat which Judge Starrett has been confirmed to fill has been designated a judicial emergency, and I am pleased that the Senate has acted to prevent justice from being delayed any further for the parties whose cases are pending in the Southern District of Mississippi. I congratulate Judge Starrett on his confirmation, and I look forward to his serving as a federal judge for many years to come.

Mr. LEAHY. Mr. President, during the past 4 years, the Senate has confirmed more than 200 of President Bush's choices for the only lifetime jobs in our system of government. Including the judicial nominees scheduled to be confirmed today, Democrats and Republicans in the Senate have confirmed 204 circuit, district and trade court nominees in the past four years. That is more Federal judges than were confirmed for President Reagan during his first term, more than in President George H.W. Bush's presidency, and more than in either of President Clinton's terms. The first 100 were confirmed in the 17 months of Democratic Senate leadership. In the other 31 months, Republicans have led the Senate to confirm another 104.

With this historic number of confirmations, we are at the lowest number of vacant seats on the Federal courts in 16 years. There are more Federal judges serving today than at any time in American history. With today's confirmations, there will be only 26 empty seats on the Federal courts. If retirements and confirmations were to continue at the current pace, President Bush would be poised to name more than 400 lifetime judges on the Federal bench, which contains 879 judges. That would mean he would have appointed more judges than any President in our history.

Democrats in the Senate have taken as bipartisan approach as possible while still preserving the Senate's independence to act as a check against extreme or unfit appointments to these lifetime positions. Some of the nominees this President nominated to appellate courts have been among the most controversial ever proposed. A handful of them, those with records that do not demonstrate that they will be fair judges who will fully enforce our constitutional rights have been denied the consent of the Senate. The Federal courts should not become the

arm of the Republican Party or the Democratic Party. To preserve the independence of the judiciary, the Senate has served its time honored roll as a check on the presidential appointment power. The Constitution says advice and consent, not rubber stamp.

Ours has been a good record of both cooperation and independence by the Senate. Even with this historic level of bipartisan cooperation and despite the high number of divisive nominees this President has sent to the Senate, partisans continue to claim that nothing short of 100 percent approval is acceptable. No President has seen 100 percent of his judicial nominees approved. Not even George Washington got all of his appointments confirmed. Shortly after the Judiciary Committee was created, nominees of President James Madison were defeated in the Committee. More recently Republicans defeated the nominations of more than 60 of President Clinton's judicial nominees and more than 200 of his executive branch nominees in Senate committees.

President Bush refused to address the unfair way President Clinton's nominees were treated by Senate Republicans through anonymous holds and other tactics. Objection from even one Republican Senator was allowed to defeat President Clinton's judicial nominees. Republicans worked to preserve vacancies in the Clinton years, especially vacancies on the circuit courts like the 6th Circuit and the D.C. Circuit. Two dozen circuit court nominees and more than 40 district court nominees were denied Senate votes of any kind. They are now exploiting their success. Unfortunately, President Bush decided in his first term to seek confrontation and politicization of the process rather than consensus. There were opportunities to find common ground that were squandered.

During the Clinton administration, leading Republicans claimed that as many as 100 vacant seats in the Federal courts did not create any crisis. Some even boasted that they allowed too many judges to be confirmed. There was a dramatic shift when a Republican moved into the White House when suddenly any number of vacancies became a crisis to them. The rules and Senate procedures Republicans used to stall President Clinton's nominees were no longer acceptable to them and were jettisoned with a Republican in the White House.

When I became chairman of the Judiciary Committee and the Committee was reorganized back in July 2001, we inherited 110 vacant seats in the federal courts. During my 17 months as chairman, we evaluated the President's nominees, and confirmed 100 judges. That represented a tremendous effort in that short time, especially amid the dramatic crises facing our nation in the wake of the September 11 attacks and the anthrax attacks directed at Senate Democrats. Rather than adopt Republican methods by which they blocked scores of mainstream nomi-

nees by President Clinton, we made the process fairer and more open while preserving the longstanding rules and precedents of the Judiciary Committee and the Senate.

Over 17 months, we proceeded to give hearings to 103 of President Bush's judicial nominees, some of whom proved to be quite controversial and divisive, even though the President had promised the American people that he was a "uniter not a divider." The President's controversial nominations divided us by politicizing the federal courts. They included nominees with records of extremism and in an effort to stack the courts unfairly.

In this the 108th Congress, Republicans assumed Senate leadership and proceeded to bend, break or reinterpret the rules and precedents in their efforts to ram through the Senate every nominee and turn the Senate into a rubber stamp for lifetime appointments.

It was in the face of these partisan actions that the only option left to the Senate to protect the independence and fairness of the courts was extended debate. Democrats acted sparingly to withhold consent from the most extreme choices of this President and the most egregious partisan acts of Senate Republicans. I will not restate the specific concerns with each of those nominees. Those reasons are stated publicly in the RECORD during debate by many Senators. Unlike Republican obstruction which took place most often in secret and without open and honest debate, when we oppose a nominee we said so and explained why in public.

Republicans have held hearings for 120 judicial nominees in the past 2 years, including hearings for 33 circuit court nominees. Republicans doubled the pace they were willing to maintain from 1997 through 2000 when it took them 4 years to hold hearings for 33 of President Clinton's circuit court nominees, despite the fact that President Bush's nominees have been much more controversial.

Two weeks after the session began in January 2003, Republicans insisted on holding a hearing for three controversial circuit court nominees on a single panel. This hearing was noticed in less than the time required under the rules and in spite of a bipartisan written agreement that had been adhered to since 1987 that only one controversial judicial nominee would be scheduled at a time. Over the objections of several Members of the Judiciary Committee, that hearing proceeded on the nominations of Jeffrey Sutton, Deborah Cook, and John Roberts to three circuit courts that had been held hostage by Republicans during President Clinton's second term.

The day after that unprecedented hearing in violation of the Thurmond-Biden guideline, Republicans forced a vote on the nomination of Miguel Estrada, even though he had failed to answer the questions of many members of the Committee and the White House



had refused to honor past precedent for information sharing. Republican partisans then took to calling Senate Democrats anti-Hispanic. Such false claims marked a new low. Despite the efforts of some, like Senator BENNETT of Utah, to reach a compromise to allow the Senate to review the work of the nominee, the White House refused. No reasonable employer would hire someone who refused to answer basic questions or provide needed documents. Republicans demanded the Senate proceed with regard to a lifetime appointment without such information.

Republicans began to list judicial nominees for committee consideration even before they had answered the written questions of Senators, let alone answered them responsively. With President Clinton, Republicans refused to list a judicial nominee for a committee vote for weeks and often months and sometimes forever. Suddenly, with a Republican in the White House, Republicans decided that Senators did not really need their questions answered before scheduling a vote. Republican effort to limit the time and quality of the review of these lifetime appointees was disappointing and wrong. Editorial cartoons noted that the Committee was becoming nothing more than a rubber stamp at a conveyor belt factory for judges. This approach undermined advice and consent.

In the final Judiciary Committee meeting in February, Republicans broke another longstanding rule of the Judiciary Committee, rule IV, which had been respected for nearly a quarter of a century. Rule IV requires a member of the minority of the Judiciary Committee to consent to end debate in order to force a vote on a nomination or any other matter. Without consent, Republicans called debate at an end. The claim that the Senate Parliamentarian approved this reading of the rule was undercut when the Parliamentarian advised that his position was that he had no authority to enforce committee rules. The committee that should respect the rule of law chose instead to do away with any rule or precedent Republicans found inconvenient.

In March, Republicans began claiming that filibusters of nominees were "unprecedented" and argued that it was unconstitutional to deny a nominee a vote. These claims were another reversal from the party that had blocked votes on more than 60 of President Clinton's judicial nominees and more than 200 of his executive nominees through a variety of procedures. Republicans not only ignored their own recent history in which they unsuccessfully filibustered the nominations of Judge Rosemary Barkett and Judge H. Lee Sarokin, and successfully filibustered the nominations of Dr. Henry Foster and Sam Brown, they sought to rewrite the history of the filibuster of the nomination of Abe Fortas to be Chief Justice of the Supreme Court.

The Senate's cloture rule is a departure not from majority rule but from the unanimous consent that has been essential to the character of the Senate. Now that they are in the majority, Republicans have no use for rules protecting the minority or for the historic role of the Senate.

Republicans turned their practices upside down when the very people who insisted on recognition of their prerogatives as home State Senators with regard to judicial nominees chose with a Republican in the White House to disregard the lack of home State Senator support and proceed with hearings and Committee consideration of the nominations of Carolyn Kuhl, Janice Rogers Brown, Henry Saad, Richard Griffin, David McKeague, and Susan Nielson.

Requiring home State Senator support can and often has led to consultation and cooperation between the Senate and the White House. This White House and Senate Republicans who insisted on it without exception during the Clinton years, dispensed with it when it became inconvenient to their goal of stacking the courts and moving them sharply in one direction. To do so, they proceeded in the face of opposition from both home State Senators.

When Republicans were being asked to consider the nominations of a Democratic President, one negative blue slip from just one home State Senator was enough to doom a nomination and prevent a hearing on that nomination. This included all nominations, including those to the circuit courts. How else to explain the failure to schedule hearings for such qualified and noncontroversial nominees such as James Beatty and James Wynn, African American nominees from North Carolina? What other reason could plausibly be found for what happened to the nominations of Enrique Moreno and Jorge Rangel—both Latino, both Harvard graduates, both highly rated by the ABA, both denied hearings in the Judiciary Committee? Republicans used to excuse their refusal to proceed on President Clinton's nominees because of the absence of home State Senator support. Indeed, in those days, so long as a Republican Senator had an objection, it appeared to be honored, whether that was Senator Helms objecting to an African American nominee from Virginia or Senator Gorton objecting to nominees from California.

Republicans continued to hold hearings on controversial judicial nominees following the party nominating conventions and with the Presidential election just weeks away. Whether they acknowledge it as the Thurmond Rule, or something else, it is a well established practice that in Presidential election years there comes a point when judicial confirmation hearings are not continued without agreement. Republicans used to insist that absent the consent of the minority, we await the results of the election and the inauguration of a new President before moving additional nominees. Repub-

licans lived by this precedent when they ran this Committee in 1996 and later, in 2000. In 1996, when a Democratic President was seeking re-election, the Republican-controlled committee held only one hearing to consider one district court nominee after the August recess, and then never allowed that nominee to have a committee vote. In 2000, the Republican-controlled committee followed the Thurmond Rule to the letter. After the August recess work on judicial nominations came to a halt. Although there were over 30 nominees pending, after July 25 2000, no more judicial nominees were scheduled for hearings or considered by the committee.

Republicans have gone so far as to reverse their practice with President Clinton by holding hearings for nominees for positions in the courts that would not even become vacancies until after the Presidential election. As with everything else, there appears to be one rule for Democrats and no rules or precedents for Republicans.

Little did we know that through most of the time, Republican staff had been stealing Democratic computer files and using them for partisan purposes. When *The Wall Street Journal* and *The Washington Times* wrote that they were furnished internal documents, the investigation began. The Capitol Police seized the Judiciary computer hard drives and servers and the Senate Sergeant at Arms began an internal investigation. Staff of the Republican leader and the chairman of the Judiciary Committee resigned and confirmed their involvement. This year, the Sergeant at Arms reported that thousands of files had been stolen over a period of years and found that this partisan spying and stealing may have violated numerous criminal laws. It is a shameful chapter in the history of the Judiciary Committee and the Senate. A Federal criminal investigation is ongoing into this matter, and I look forward to the Justice Department completing that inquiry in the coming year.

The President took the unprecedented steps of renominating controversial nominees on whom the Judiciary Committee had withheld consent and then recess appointed controversial nominees on whom the Senate had withheld its consent. This President has utilized the constitutional recess appointment power as an end-run around the Constitution's advice and consent requirement. This undermines the Senate's institutional role as a check on unfit or unfair nominees to our independent court system. Just as Senate Republicans viewed longstanding rules and precedent as inconvenient, the President treated the Constitution's requirement of Senate consent as an inconvenience and an opportunity for partisan political gain. The President went so far as to try to steal a circuit seat from one State and over objection to award it to another by



nominating a Virginian to fill a traditional Maryland vacancy on the Fourth Circuit.

Most regrettably as well, the White House fanned the flames and refused to tamp down hateful and unfounded claims that amounted to religious McCarthyism. Senate Democrats refused to be cowed by Republican's false charges that they were anti-Hispanic, anti-African American, anti-Christian, antiwoman or antiman. We were none of these things. The fact of the matter is that Democrats were antijudicial zealot, period. Democrats stood up for the independence of the Federal courts and fair, nonpartisan judges for the American people.

These past 2 years we have witnessed the Senate Judiciary Committee and the Senate break with longstanding precedent and Senate tradition. With the Senate and the White House under control of the same political party we have witnessed rule after rule broken or misinterpreted away. The Framers of the Constitution warned against the dangers of such factionalism, undermining the structural separations of power. Republicans in the Senate have failed to defend the institutional role of this branch as a check on the President in the area of nominations. It weakens our Constitution to have such collusion and forfeits the strength and protections of our separation of powers that was designed to protect all Americans.

From the way that home State Senators are treated to the way hearings are scheduled, to the way the Committee questionnaire was altered unilaterally, to the way our Committee's historic protection of the minority by Committee Rule IV has been violated, to the theft of computer files, Republicans destroyed virtually every rule, precedent, custom and courtesy that used to help create and enforce co-operation and civility in the confirmation process. Their approach to our rules and precedents follows their own partisan version of the golden rule, which is that "he with the gold, rules." It is as if those currently in power believe that they are above our constitutional checks and balances and that they can reinterpret any treaty, law, rule, custom or practice they do not like or they find inconvenient.

Some of these interpretations are so contrary to well-established understandings that it is like we have fallen down the rabbit hole in Alice in Wonderland. I am reminded that the imperious Queen of Hearts rebuked Alice for having insufficient imagination to believe contradictory things, saying that some days she had believed six impossible things before breakfast. I have seen things I thought impossible on the Judiciary Committee and in the Senate, things impossible to square with the past practices of Committee and the history of the Senate.

Under our Constitution, the Senate has a vital role in the selection of our judiciary. The brilliant design of our

Founders established that the first two branches of government would work together to equip the third branch to serve as an independent arbiter of justice. The structure of our Constitution and our own Senate rules of self-governance are designed to protect minority rights and to encourage consensus. Despite the razor-thin margin of recent elections, Republicans are not acting in a measured way but in complete disregard for the traditions of bipartisanship that are the hallmark of the Senate. Theirs is a practice of might makes right is wrong. One of the great strengths of the Senate is its role as a continuing body with continuing rules that have, until the 108th Congress, been respected and followed under either Democratic leadership or Republican control. Our rules must not change to give whoever is in the majority the power to jerry rig whatever result is desired.

As the Rev. Martin Luther King wrote in his famous Letter from a Birmingham Jail, "Let us consider a more concrete example of just and unjust laws. An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is sameness made legal."

Fair process is a fundamental component of the American system of law. If we cannot have a fair process in these halls or in our courts, how will the resulting decisions be viewed? If the rule of law is to mean anything it must mean that it applies to all equally.

No man and no party should be above the law. That has been one of the strengths of our democracy. Our country was born in reaction to the autocracy and corruption of King George, and we must not forget our roots as a nation of both law and liberty. The best guarantee of liberty is the rule of law, meaning that the decisions of government are not arbitrary and that rules are not discretionary or enforced to help one side and then ignored to aid another. James Madison, one of the Framers of our Constitution, warned in Federalist No. 47 of the very danger that has threatened our great nation during the 108th Congress, a threat to our freedoms from within: "[The] accumulation of all powers legislative, executive and judiciary in the same hands . . . may justly be pronounced the very definition of tyranny."

The American people deserve better governance than we have seen with the destruction of rule after rule by a majority willing to sacrifice the power and precedents of the Senate. Our freedoms as Americans are the fruit of too much sacrifice to have the rules ignored in the United States Senate by partisans colluding with the White House to try to appoint unfit loyalists to courts who have been chosen with the hope that they will re-interpret our

great precedents and overturn the very laws that have protected our most fundamental rights as Americans.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

#### INTERNATIONAL GRANT PROGRAM

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to immediate consideration of Calendar No. 818, S. 2635.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant bill clerk read as follows:

A bill (S. 2635) to establish an intergovernmental grant program to identify and develop homeland security information, equipment, capabilities, technologies, and services to further the homeland security needs of the United States and to address the homeland security needs of Federal, State, and local governments.

There being no objection, the Senate proceeded to consider the bill which was reported from the Committee on Governmental Affairs with an amendment.

(Strike the parts shown in black brackets and insert the part printed in italic.)

S. 2635

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. TECHNOLOGY CLEARINGHOUSE.

[Section 430 of the Homeland Security Act of 2002 (6 U.S.C. 238) is amended—

[(1) in subsection (c)—

[(A) by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively; and

[(B) by inserting after paragraph (6) the following:

["(7) establishing a program to identify, develop, or modify existing or near term homeland security information, equipment, capabilities, technologies, and services to further the homeland security of the United States and to address the homeland security needs of Federal, State, and local governments;";

[(2) by redesignating subsection (d) as subsection (e); and

[(3) by inserting after subsection (c) the following:

["(d) HOMELAND SECURITY INFORMATION, EQUIPMENT, CAPABILITIES, TECHNOLOGIES, AND SERVICES GRANT PROGRAM.—

["(1) IN GENERAL.—In developing the program established under subsection (c)(7), the Secretary, acting through the Director of the Office for Domestic Preparedness and in consultation with the Under Secretary for Science and Technology, shall—

["(A) conduct a needs assessment of Federal, State, and local governments and first responders to identify—

["(i) the homeland security needs of Federal, State, and local governments and first responders; and

["(ii) areas where specific homeland security information, equipment, capabilities, technologies, and services could address those needs;

["(B) survey near term and existing homeland security information, equipment, capabilities, technologies, and services developed