

across the country who carry on normal, productive lives, refusing to be terrorized by terrorism.

President Bush and Congress responded by recognizing that this was a different kind of war with a different kind of enemy. Together we saw that this enemy used as a weapon the freedom and openness that Americans cherish but that it despises. We realized that our efforts to defend our Nation against this unconventional and unprincipled enemy were hampered by the lack of a unified strategy. To revisit a phrase used so often in the aftermath of September 11, we were not connecting the dots. We knew that turf battles, communication gaps, and interagency rivalries could no longer be tolerated. The stakes were too high.

The Department of Homeland Security is perhaps the most significant manifestation of the efforts undertaken by the President and Congress to create that unified strategy, to connect those dots, to coordinate this urgent new mission. The Senate Committee on Governmental Affairs, which I chair, played a key role in creating the department and is helping it to succeed.

My committee swiftly confirmed eight talented and dedicated individuals to lead the department, including Secretary Ridge himself. We have held hearings and investigations on a wide range of homeland security issues, from the President's plan to better coordinate intelligence analysis and sharing, to unraveling the tangled web of international terrorism financing, to protecting American agriculture from sabotage, to securing our seaports. We have approved bills to reform the department's multi-billion dollar State grant program, to provide cutting edge technology to first responders, to help the department attract talented individuals with sought-after skills, and to ensure accountability within DHS's financial system.

Now the department is 1 year old. And in the span of just 1 year, the Department of Homeland Security, under the leadership of Secretary Tom Ridge, has made significant, even remarkable, progress.

The melding of 22 Federal agencies and 180,000 employees has occurred with some of the resistance we all expected but without the widespread turf battles many predicted. The level of cooperation and coordination within this new department, though not perfect, is a vast improvement over the previous, ad hoc structure. The initial focus upon airport security has been expanded to include other vulnerabilities, such as seaport and border security. The department has distributed billions of dollars to our first responders—the local and State emergency personnel on the front lines—for the equipment, training and guidance to carry out their vital missions. And we will continue to work with Secretary Ridge to ensure that a steady stream of funding is available for those efforts.

Of course, challenges lie ahead for this new agency, for the President and for this Congress. As we change, so does our enemy. As we address vulnerabilities, he seeks out new ones to exploit. As we move to protect our most high-profile targets in our major cities, we must always be aware that our small cities, towns and countryside are at risk as well. As we improve security at our borders, we must strive to keep them open to friendship and to commerce. As we defend our Nation against future attacks, we must never sacrifice the liberty that makes our Nation so worthy of being defended.

In an address given February 23 before the Homeland Security Institute, Secretary Ridge offered a first anniversary assessment of his department's accomplishments. He charted an ambitious but necessary course for its second year, and he described his vision for the years ahead.

Secretary Ridge pledge that the department will pursue the development of new technologies to combat terrorism. Analysis tools and detection equipment are keys to thwarting nuclear, chemical and biological attacks before they occur. We must, as he said, button up our lab coats and push the scientific envelope by forging new partnerships among government, the private sector, national laboratories and university research centers.

The Secretary pledged to strengthen information sharing among the public and private sectors and to create standards for communications and equipment. "Interoperability" is a cumbersome word, but it is one we all should add to our vocabularies. Only by improving communications and ensuring that equipment works across jurisdictions will our front-line defenders and our first responders be able to better detect attacks and to coordinate their efforts during an emergency.

Secretary Ridge pledged to integrate our port and border security systems in a way that does not impede the flow of trade and travel across our borders, a critical goal for border States like Maine. The department's first year produced much progress: screeners, air marshals and state-of-the-art technology have made air travel safer. Traffic through our ports and our borders, which nearly ground to a halt after the attacks, is moving with speed, efficiency and greater security: more than 500 million people, 130 million motor vehicles, and millions more railcars and containers are processed at our borders every year. At the same time, container inspection has been expanded from our own shores to 16 key overseas ports.

Borders will always be a point of vulnerability for any free society. In partnership with the private sector and our international allies, we can reduce that vulnerability without unduly impeding the flow of legitimate commerce.

The Committee on Governmental Affairs stands ready to assist the Department as it begins its second year. We

will continue to provide the department with the authority it needs to protect our Nation, and we will continue our aggressive oversight of its programs and activities. At times, we may disagree with the department, but our goal is always to improve the department and to recognize the extraordinary progress made by Secretary Ridge and Deputy Security Loy, their talented leadership team, and the dedicated men and women in the department who work each and every day to strengthen our security.

#### PRYOR RECESS APPOINTMENT

Mr. LEAHY. Mr. President, during the Presidents Day break in the Senate session, President Bush chose to act unilaterally to appoint William Pryor to the Eleventh Circuit Court of Appeals. Over the past few weeks, I have shared with the Senate three other divisive developments regarding judicial nominations: The Pickering recess appointment, the renomination of Claude Allen, and the theft of Democratic computer files by Republican staff. In spite of all those affronts, Senate Democrats cooperated in confirming two additional judicial nominees this year and continue to participate in hearings for judicial nominees. We have done so without the kinds of delays and obstruction that Republicans relied upon to stall more than 60 of President Clinton's judicial nominees.

Today, I report upon the President's appointment of William Pryor in what the Democratic leader has properly termed an abuse of power. It was an abuse of the limited constitutional authority of the executive to make necessary recess appointments only when the Senate is unavailable. This is unprecedented.

Actions like this show the American people that this White House will stop at nothing to try to turn the independent Federal judiciary into an arm of the Republican Party. Doing this further erodes the White House's credibility and the respect that the American people have for the courts.

This is an administration that promised to unite the American people but that has chosen time and again to act in ways that divides us, to disrespect the Senate and our representative democracy. This is an administration that squandered the goodwill and good faith that Democrats showed in the aftermath of September 11, 2001.

This is an administration that refused to acknowledge the strides we made in filling 100 judicial vacancies under Democratic Senate leadership during 17 difficult months in 2001 and 2002, while overcoming the September 11 attacks, the subsequent anthrax attacks and in spite of Republican mistreatment of scores of qualified, moderate judicial nominees of President Clinton.

This is an administration that has once again demonstrated its

unilateralism, arrogance and intention to divide the American people and the Senate with its controversial judicial nominations. With this appointment, the President is acting—as he has in so many areas over the past 3 years—unilaterally, overextending and expanding his power, with disregard for past practice and the rule of law.

The recess appointment of Mr. Pryor threatens both the independence of the judiciary and the constitutional balance of power between the legislative and executive branches. We entrust to the stewardship of lifetime judges in our independent Federal judiciary the rights that all of us are guaranteed by our Constitution and laws. That is an awesome responsibility. Accordingly, the Constitution was designed so that it would only be extended after the President and the Senate agreed on the suitability of the nomination.

The President has chosen for the second time in as many months to circumvent this constitutional design.

I have sought in good faith to work with this administration for the last 3 years in filling judicial vacancies, including so many left open by Republican obstruction of President Clinton's qualified nominees. When chairman, I made sure that President Bush's nominees were not treated the way his predecessor's had been. They were treated much better, as I had promised.

Republicans had averaged only 37 confirmations a year while vacancies rose from 65 to 110 and circuit vacancies more than doubled from 16 to 33. Under Democratic leadership, we reversed those trends and opened the system to public accountability and debate by making home-State Senators' objections to proceeding public for the first time and debating and voting on nominations. We were able to confirm 100 judges in just 17 months and virtually doubled the Republican annual average with 72 confirmations in 2002, alone.

I have urged that we work together, that we cooperate, and that the President be what he promised the American people he would be during the last campaign—a uniter and not a divider. I have offered to consult and made sure we explained privately and in the public record why this President's most extreme and controversial nominations were unacceptable. Our efforts at reconciliation continue to be rebuffed.

Both these recess appointments are troubling. The President says that he wants judges who will "follow the law" and complains about what he calls "judicial activism." Yet, he has acted—with disregard for the constitutional balance of powers and the Senate's advice and consent authority—unilaterally to install on the Federal bench two nominees from whom the Senate withheld its consent precisely because they are seen by so many as likely to be judicial activists, who will insert their personal views in decisions and will not follow the law.

In the case of Mr. Pryor, he is among the most extreme and ideologically

committed and opinionated nominees ever sent to the Senate. Mr. Pryor's nomination to a lifetime appointment on the Federal bench was opposed by every Democrat on the Senate Judiciary Committee after hearings and debate.

It was opposed on the Senate floor because he appears to have extreme—some might say, "radical"—ideas about what the Constitution should provide with regard to federalism, criminal justice and the death penalty, violence against women, the Americans with Disabilities Act, and the Government's ability to protect the environment on behalf of the American people. He has been a crusader for the federalist revolution. He has urged that Federal laws on behalf of the disabled, the aged, women, minorities, and the environment all be limited.

His comments have revealed insensitivity to the barriers that disadvantaged persons and members of minority groups and women continue to face in the criminal justice system. He has testified before Congress in support of dropping a crucial part of the Voting Rights Act and has repeatedly described the Supreme Court and certain justices in overtly political terms. He received the lowest possible qualified rating from the American Bar Association—a partial rating of "Not Qualified"—underscoring his unfitness for the bench.

In sum, Mr. Pryor has demonstrated that he is committed to an ideological agenda that puts corporate interests over the public's interests and that he would roll back the hard-won rights of consumers, minorities, women, and others.

Mr. Pryor's nomination was considered in committee and on the Senate floor. The Senate debated his nomination, and had enough concerns about his fitness for a lifetime appointment that two motions to end debate on his nomination failed. That is the constitutional right of the Senate.

But President Bush has decided to use the recess appointment clause of the Constitution to end-run the Senate. As far as I know, this power has never been used this way before this President. Of course, this is the first President in our Nation's history to renominate someone rejected after hearings, debate and a fair vote by the Senate Judiciary Committee. He did that twice. He has now twice overridden the Senate's withholding of its consent after hearings and debate on judicial nominees. This demonstrates contempt for the Constitution and the Senate.

The New York Times opined over the weekend about "President Bush . . . stacking the courts with right-wing judges of dubious judicial qualifications" and even the Washington Post editorialized that recess appointments of judges "should never be used to mint judges who cannot be confirmed on their merits."

The recess appointments clause of the Constitution was not intended to

change the balance of power between the Senate and the President that is established as part of the fundamental set of checks and balances in our government. Indeed, the appointments clause in the Constitution requires the consent of the Senate as just such a fundamental check on the executive. This was meant to protect against the "aggrandizement of one branch at the expense of the other."

The clause was debated at the Constitutional Convention, and the final language—with shared power—is intended to be a check upon favoritism of the President and prevent the appointment of unfit characters.

The President's claimed power to make a unilateral appointment of a nominee, Mr. Pryor, who the Senate considered and effectively rejected, slights the Framers' deliberate and considered decision to share the appointing power equally between the President and the Senate.

This President's appointment of Mr. Pryor to the Eleventh Circuit—after he was considered by the full Senate—seems irreconcilable with the original purpose of the appointments and recess appointment clauses in the Constitution. Perhaps that explains why the Pryor and Pickering recess appointments by this President are the first times in our centuries-long history that the recess appointment power has been so abused. No other President so acted. No other President sought such unilateral authority without balance from the Senate.

The President chose to sully the Martin Luther King Jr. weekend with his unilateral appointment of Judge Pickering. Sadly, he chose the Presidents Day congressional break unilaterally to appoint Mr. Pryor. We resumed our proceedings in the Senate this week with the traditional reading of President George Washington's farewell address. The Senate proceeds in this way every year. I urge this President and those in his administration to recall the wisdom of our first President. George Washington instructs us on the importance of not abusing the power each branch is given by the Constitution. He urges the three branches of our government to "confine themselves within their respective constitutional spheres."

He said more than 200 years ago words that ring true to this day:

The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. . . . The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositaries, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern. . . . To preserve them must be as necessary as to institute them.

The current occupant of the White House might do well to take this wisdom to heart and respect the constitutional allocations of shared authority that have protected our nation and our

rights for more than 200 years so brilliantly and effectively.

The recess appointments power was intended as a means to fill vacancies when the Senate was not available to give its consent; it was intended to ensure effective functioning of the government when the Senate adjourned for months at a time. It was never intended as an alternative means of appointment by the executive when the President chose to serve some partisan short-term goal by simply overriding the will of the Senate especially with respect to our third branch of government, the Federal judiciary.

This administration and its partisan enablers in the Senate have again demonstrated their disdain for the constitutional system of checks and balances and for shared power among the three branches of our Federal Government. By such actions, this administration shows that it seeks all power consolidated in the executive and that it wants a Judiciary that will serve its narrow ideological purposes.

Such overreaching by this administration hurts the courts and the country. President Bush and his partisans have disrespected the Senate, its constitutional role of advice and consent on lifetime appointments to the Federal courts, the Federal courts, and the representative democracy that is so important to the American people. It is indicative of the confrontational and "by any means necessary" attitude that underlies so many actions by this administration and that created the atmosphere on this Committee in which Republican staff felt justified in spying upon their counterparts and stealing computer files.

After 8 years in office in which more than 60 judicial nominees had been stalled from consideration by Republican partisans, President Clinton made his one and only recess appointment of a judge. Contrast that appointment with the actions of the current President.

President Clinton acted to bring diversity to the Fourth Circuit, the last Federal circuit court not to have had an African-American member. Judge Roger Gregory was subsequently approved by the Senate for a lifetime appointment under Democratic Senate leadership in the summer of 2001. This was made possible by the steadfast support of Senator John Warner, the senior Senator from Virginia, and I have commended my friend for his actions in this regard. When Judge Gregory's nomination was finally considered by the Senate it passed by consensus and with only one negative vote. Senator LOTT explained his vote as a protest vote against President Clinton's use of the recess appointment power. How ironic then that Judge Pickering now serves based on President Bush's abuse of that power.

Judge Gregory was one of scores of highly qualified judicial nominations stalled under Republican Senate leadership. Indeed, Judge Gregory and so

many others were prevented from having a hearing, from ever being considered by the Judiciary Committee and from ever being considered by the Senate. Sadly, others, such as the nominations of Bonnie Campbell, Christine Arguello, Allen Snyder, Kent Markus, Kathleen McCree Lewis, Jorge Rangel, Carlos Moreno, and so many more, have not been reinstated and considered. But President Clinton did not abuse his recess appointment power. Instead, his appointment of Judge Gregory was in keeping with traditional practices and his use of that power with respect to judicial appointments was limited to that one occasion.

By contrast, the current President has made two circuit recess appointments in 2 months and his White House threatens that more are on the way. These appointments are from among the most controversial and contentious nominations this administration has sent the Senate. After reviewing their records and debating at length, the Senate withheld its consent. The reasons for opposing these nominations were discussed in hearings and open debate during which the case was made that these nominees were among the handful that a significant number of Senators determined had not demonstrated their fairness and impartiality to serve as judges.

Contrast Roger Gregory's recess appointment, which fit squarely in the tradition of President's exercising such authority in order to expand civil rights and to bring diversity to the courts, with that of Mr. PRYOR. Four of the five first African American appellate judges were recess-appointed to their first Article III position, including Judge William Hastie in 1949, Judge Thurgood Marshall in 1961, Judge Spottswood Robinson in 1961, and Judge Leon Higginbotham in 1964.

The recent appointments of Judge Pickering and Mr. Pryor stand in sharp contrast to these outstanding nominees and the public purposes served by their appointments.

The nominations of Judge Pickering and Mr. Pryor were opposed by individuals, organizations and editorial pages across the nation. Organizations and individuals concerned about justice before the Federal courts, such as Log Cabin Republicans, the Leadership Conference on Civil Rights, and many others opposed the Pryor nomination. The opposition extended to include organizations that rarely take positions on nominations but felt so strongly about Mr. Pryor that they were compelled to write, such as the National Senior Citizens Law Center, Anti-Defamation League, and Sierra Club. Rather than bring people together and move the country forward, this President's recess appointment is another example of unnecessarily divisive action.

Further, the legality of this use of the recess appointments power, without precedent and during such a short Senate break, is itself now a source of

division and dispute. Recent Attorneys General have all opined that a recess of 10 days or less does not justify the President's use of the recess appointments power and would be considered unconstitutional. Starting in 1921, Attorney General Daugherty advised the President that he could make recess appointments during a mid-session adjournment of approximately four weeks but that 2 days was not sufficient "nor do I think an adjournment for 5 or even 10 days can be said to constitute the recess intended by the Constitution." More recently, a memo from the Reagan administration Justice Department concluded: "Under no circumstances should the President attempt to make recess appointment during intrasession recess of less than 10 days." This year, a Federalist Society paper noted the dubious constitutionality of appointments during short intrasession breaks.

We will not resolve the question of legality of these recess appointments here today, but we can all anticipate challenges to rulings in which Mr. Pryor participates. Thus, we can expect this audacious action by the administration will serve to spawn litigation and uncertainty for months and years to come.

I thank the Democratic leader for the statements he made this week in connection with the abuse of the recess appointment power by this President. I remind the Senate that a few years ago when President Clinton used his recess appointment power with regard to a short-term executive appointment of James Hormel to serve as ambassador to Luxembourg, Senator INHOFE responded by saying that President Clinton had "shown contempt for Congress and the Constitution" and declared that he would place "holds on every single Presidential nomination." Republicans continued to block nominations until President Clinton agreed to make recess appointments only after Congress was notified in advance. On November 10, 1999, 17 Republican Senators sent a letter to President Clinton telling him that if he violated the agreement, they would "put holds for the remaining of the term of your Presidency on all of the judicial nominees."

In November 1999, President Clinton sent a list of 13 positions to the Senate that he planned to fill through recess appointments. In response, Senator INHOFE denounced 5 of the 13 civilian nominees with a threat that if they went forward, he would personally place a hold on every one of President Clinton's judicial nominees for the remainder of his term. That led to more delays and to the need for a floor vote on a motion to proceed to consider the next judicial nomination, in order to override Republican objections.

When President Clinton appointed Judge Gregory at the end of 2000, Senator INHOFE called it "outrageously inappropriate for any President to fill a federal judgeship through a recess appointment in a deliberate way to bypass the Senate." When the Gregory

nomination was confirmed with near unanimity under Senate Democratic leadership in 2001, Senator LOTT's spokesperson indicated that Senator LOTT's solitary opposition was to underscore his position that "any appointment of federal judges during a recess should be opposed."

#### PROGRESS OF FILLING JUDICIAL VACANCIES

The American people understand that Democrats in the Senate have shown great restraint and extensive cooperation in the confirmation of 171 of this President's judicial nominations. Republicans are loath to acknowledge that cooperation but with it this President has been achieving record numbers of judicial confirmations and we have reduced judicial vacancies to the lowest level in decades. Despite the unprecedented political upheavals and the aftermath of September 11, as of today, the Senate has already confirmed more judges than were confirmed during President Reagan's entire first 4-year term. Indeed, at this point in President Clinton's last term, only 140 judges had been confirmed, as compared to the 171 confirmed and two recess appointed by this President.

The President's recent actions are unnecessarily divisive and harmful. We have already achieved much. If the President would work with the Senate, we could achieve so much more.

#### LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to 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.

One such crime occurred in Tillamook, a small town on the Oregon coast. On February 11, 1999, James Ash, 48, and Kevin Hawthorn, 25, were charged with intimidation and assault for allegedly beating a man because of his sexual orientation.

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. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

#### ADDITIONAL STATEMENTS

##### IN MEMORY OF MARY FRANCES DIAZ

• Mr. CARPER. Mr. President, I would like to set aside a moment to reflect on the life of Ms. Mary Frances Diaz upon her passing in February. Mary was a woman who made a remarkable contribution toward improving the lives of

refugee women, children, and adolescents around the world. She was a truly selfless woman who dedicated her life to others.

Mary was born in Newport News, VA. She spent her childhood in Pottstown, PA, before going to Brown University, where she graduated with a major in international relations in 1982. After working for several years at WPVI television news station in Philadelphia, she returned to school and received a master's degree in international education from Harvard University in 1988.

But Mary's passion and life mission was refugees. While she was still at Harvard she began working for Catholic Charities in Boston, and upon graduation became director of refugee and immigration services there.

In 1994, at the age of 33, Mary became executive director of the Women's Commission for Refugee Women and Children, an organization that helps some of the most vulnerable people on Earth. For 10 years, Mary traveled to the world's trouble spots, dodging minefields, tsetse flies, and wars on her mission to help refugee women and children reclaim their lives. She went on fact-finding missions to places such as Serbia, Angola, Rwanda, Nepal, Pakistan, Haiti, and Colombia to talk to uprooted women and children firsthand.

Back in the United States and in Geneva, she would plead their cases before the United Nations and lobby lawmakers and relief agencies to improve their conditions. She also fought for the rights of people claiming asylum in the United States.

Her advocacy led to concrete results. After she reported on the situation in Bosnia, the Clinton administration provided a fund to help refugee women rebuild their lives. During a visit to Tanzania, she got the rules changed to allow Burundian women as well as men to distribute food to fellow refugees. As a result, many more women and their children got their food rations. After a visit to Afghanistan in 2002, Mary initiated a fund for programs for Afghan women.

Under Mary's leadership, the Women's Commission grew from a small organization with a staff of 4 and a budget of \$425,000 to one with more than 20 staff and a budget of \$4 million. She believed the international community had a responsibility to help women and children who had been uprooted by war and persecution, and in her quiet, elegant way, used her eloquence and strong persuasive powers to persuade policy makers to change policies and programs.

Mary, who was 43 years old, died of pancreatic cancer. She leaves behind her longtime partner, Tom Ferguson of New York City; her mother, Bertha Diaz of Pottstown, PA; two brothers, Dr. Philip Diaz of Columbus, OH, and Dr. Joseph Diaz of Barrington, RI; and two sisters, Theresa Diaz of Reading, PA, and Bernadette Diaz of Oak Park, IL. She also leaves behind innumerable friends and colleagues.

Mary's legacy will live on in the lives of the refugees around the world whose lives she helped improve and in the work of the Women's Commission for Refugee Women and Children. I rise today to commemorate Mary Diaz, to celebrate her too-short life and to offer her family, friends, and colleagues our support. She will be sorely missed.●

#### IN HONOR OF RITA DOLAN SELLAR

• Mr. REED. Mr. President, on Tuesday, February 24, 2004, an extraordinary resident of Newport, RI celebrated a monumental achievement, her 100th birthday.

Rita Dolan Sellar has led a full and exceptional life. She was born February 24, 1904, to Clarence Dolan and Rosalie Brown Dolan. She had two sisters, Rose and Alexandra.

As a young lady, Rita attended Foxcroft School in Virginia, where she is now the oldest living alumna. Later she married Norrie Sellar, and they traveled extensively throughout the world.

Rita and Norrie had five children: Daphne, Norrie, Rosalie, Owen, and Alexandra.

Rita was an accomplished and bold horsewoman, who in the 1930s founded and played on the first women's polo team, in Aiken, SC, and rode in fox hunts, steeplechase races, and jumping contests.

She was also an active sailor, who kept sailboats in Newport Harbor, and often sailed with her sister—one of America's first and most capable women sailors.

Her home in Newport, "Seaweed," has hosted five generations of the family, innumerable cheerful parties and dinners, and an extensive array of friends, cousins, in-laws, and visitors. She is the oldest member of Newport's Spouting Rock Beach Association.

In addition to her 5 children, she has 15 grandchildren and 13 great-grandchildren, as well as 3 step-grandchildren and 6 step-great-grandchildren, of which she is the beloved, affectionate, and patient matriarch.

Rita Dolan Sellar has led a successful and remarkable life as evident by her many achievements and, more importantly, her large, loving and successful family which includes former Rhode Island Attorney General Sheldon Whitehouse.

I would like to congratulate Rita on her 100th birthday. This extraordinary moment is not about the number of years she has lived but the accomplishments she has made during those years and the excitement, pride, love, and joy she has brought to her many family and friends through her life. I wish Rita a happy birthday and many more.●

#### MEASURES REFERRED

The Committee on Energy and Natural Resources was discharged from