of Mississippi, Walter F. George of Georgia, Harry Flood Byrd of Virginia and Russell B. Long of Louisiana from the 75th Congress through the 91st Congress; and

Whereas the Committee on Finance will long remember the commitment, service and leadership of Jesse R. Nichols, Sr., as documented in an oral history posted on the Senate Historian's website: Now, therefore, be it

Resolved, That the United States Senate expresses its deep gratitude and sincere respect for Jesse R. Nichols for his unfailing service and his dedication to the United States Senate. The Senate hereby expresses condolences to the family due to the death of Jesse R. Nichols, Sr., on February 18, 2005.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF THOMAS B. GRIFFITH TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and proceed to the consideration of Calendar No. 66, which the clerk will report.

The assistant legislative clerk read the nomination of Thomas B. Griffith, of Utah, to be United States Circuit Judge for the District of Columbia.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that I be allowed to proceed as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The remarks of Mr. MCCONNELL are printed in today's RECORD under ''Morning Business.'')

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, is the Griffith nomination before the Senate?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. HATCH. Mr. President, I rise in support of the nomination of Thomas B. Griffith to serve as a judge on the United States Court of Appeals for the District of Columbia Circuit.

Because Tom Griffith served as Senate legal counsel from 1995 to 1999, many Members of this body are very familiar with his character, judgment, and record. For the benefit of those new members of this body and those members of the public who are not familiar with Tom Griffith, I want to spend the next few minutes detailing why his education, experience, and expertise make him an excellent nominee for this extremely important Federal court.

As I will set forth, Tom has broad support on both sides of the aisle. In the far too often partisan debate over judicial nominations that has occurred over the last few years, it is refreshing to have before us a nominee whose past record of achievement has resulted in so many current supporters who are firmly convinced that his future service on the bench will be successful.

One of the many reasons why I am particularly proud to support Tom Griffith is because he is a constituent of mine. Mr. Griffith serves as assistant to the president and general counsel of Brigham Young University.

As might be expected, Tom has many supporters at BYU. Here is what associate dean and Professor Constance Lundberg at the J. Reuben Clark School of Law has to say about the nominee:

> [Tom] is also a lawyer of unexcelled ability. He understands the differences between law and policy and has a deep understanding of the powers and prerogatives of each of the three branches of government. He is immensely fair and compassionate. The laws and Constitution of the United States could not be in better hands.

Tom also has his supporters among law school faculty off the BYU campus. For example, please listen to what Harvard Law Professor William Stuntz has said about the qualifications of Tom Griffith:

> I know a great many of talented men and women in America's legal profession; I've taught more than three thousand students at three top law schools, and I have friends scattered across the country in various kinds of law practice and in academics. I do not know anyone whom I would rather see on the federal bench than Tom Griffith. If he is confirmed, he will not just be a good judge. He'll be a great one.

That is certainly strong praise and, as I remember law school, getting praise from law professors is never easy unless you truly earn it.

In order to become the lawyer he is today, Tom received a solid education.

Back in 1978, Mr. Griffith received his Bachelor's degree from BYU. I am proud to say that we both graduated from BYU. I am also proud to tell you that Tom graduated summa cum laude. For those of us who are proud to call Brigham Young University our alma mater, I want to note that BYU is our Nation's largest private university and is recognized by many as one of the finest institutions of higher learning anywhere in the world.

Tom Griffith was the valedictorian of the BYU College of Humanities. He was chosen as the recipient of the prestigious Edward S. Hinckley Scholarship.

Mr. Griffith pursued his legal studies at the University of Virginia School of Law. Once again, he distinguished himself by being selected as a member of the law review at the University of Virginia. This is an honor that very few law students achieve.

Upon graduation from law school in 1985, Tom commenced his legal career as an associate in the Charlotte, NC, law firm of Robinson, Bradshaw and Hinson. During this time, Mr. Griffith was engaged in corporate, commercial, securities and employment litigation.

In late 1989 Tom Griffith joined the well-known and highly regarded Washington, DC, law firm of Wiley, Rein and Fielding, first as an associate. Tom specialized and excelled in complex environmental insurance litigation and regulatory investigations and was made a partner in the firm.

Between March, 1995 and March, 1999, Tom Griffith served as Senate legal counsel. This is a highly demanding job as the Senate legal counsel advises the Senate on all legal matters related to the Senate including Senate investigations, the work of Senate committees, and defending acts of Congress and Senate resolutions.

During his time as Senate legal counsel, Tom faced the many challenges of advising the Senate during the impeachment of President Clinton. If there was ever a circumstance to test the temperament of a lawyer, his ability to ascertain what the law is and what prudence dictates, and to provide objective legal advice in a fair and even-handed manner in a highly charged atmosphere, surely it was the unique circumstances of the impeachment trial. By all accounts, Tom Griffith came through in flying colors.

After the impeachment trial, Tom rejoined the firm of Wiley, Rein and Fielding for about one year before taking his current position in Utah as the general counsel of Brigham Young University.

As you can tell from this thumb nail sketch of Tom Griffith's career, he is an achiever. He has had a terrific education and has done very well at very demanding schools. He has also distinguished himself in the practice of law with one of the great law firms in this country, as Senate legal counsel, and in his current capacity as assistant to the president and general counsel at BYU.

Many have relied upon Tom Griffith for sound legal advice. That is because he is an excellent lawyer who provides excellent advice.

Despite the claims on his time made by the various legal positions Mr. Griffith has held, he still found the time to take on a number of voluntary assignments that demonstrate a commitment to serving those in need. For example, between 1991 and 1995 Mr. Griffith spent several hundred hours of his own time attempting to overturn the sentence of a death row inmate. Ultimately, the strategy devised by Mr. Griffith was successful in obtaining a pardon by then-Governor, now-Senator GEORGE ALLEN on the eve of the scheduled execution.

Tom has volunteered to represent disadvantaged public school students in disciplinary proceedings and has helped operate soup kitchens or people in need.

I would also like to make my colleagues aware of Tom's interest in, and commitment to, the emerging democracies in Central Europe. For the last

10 years, Tom has worked on the American Bar Association's Central Eurasian Law Initiative, serving on the ABA Advisory Board in this area. In this capacity, he has helped train judges and lawyers in Croatia, Serbia, the Czech Republic and Russia. He has been very active in helping establish a regional judicial training center in Prague. Let me just mention what some of his peers in the international legal community have said about Tom Griffith.

Here is what David Tolbert, the Deputy Registrar at the International Criminal Tribunal for the former Yugoslavia has said about Tom Griffith:

> Mr. Griffith is without question one of the best professionals with whom I have worked, given not only his capability as a lawyer but his integrity as a person. He also shows an open-minded approach to legal and other issues, and I have discussed many issues with him, a number of which we come to at somewhat different angles, and his intellectual honesty and integrity are outstanding.

That is indeed high praise. Mr. Tolbert is not alone among those in the international legal community who have come to know Tom and speak highly about him.

Mark Ellis, the executive director of the International Bar Association has made the following comments about Tom.

> The duty of a judge is to administer justice according to the law, without fear or favor, and without regard to the wishes or policy of the governing majority. Tom Griffith will fervently adhere to this principle. As is natural in a democracy, people will not always agree with Tom's decisions from the bench. I will certainly not always agree with those decisions. However, there will never be a question as to the veracity behind them.

I think that Mr. Tolbert and Mr. Ellis have made some important observations about Tom Griffith's competence and character.

In addition to his international work in helping to bring democratic institutions into formerly totalitarian regimes, Mr. Griffith has also served as a Commissioner on the Secretary of Education's Commission on Opportunity in Athletics. There are many difficult issues that universities across the country face in operating balanced athletic programs vis a vis male and female athletes in a era of constrained budgets. Tom has been a constructive voice in this important dialogue and sometimes thankless task. I prepared to speak at further length on his activities in this area but will not do so at this point. I will tell you that—not surprising for a father of five daughters—Tom has worked, consistent with the law, to bring opportunities for women athletes.

In addition to these activities, between 1996 and 2002 Tom Griffith served as vice chairman of the Federalism and Separation of Powers Practice Group of the Federalist Society. As a long time friend and supporter of the Federalist Society and its leader, Leonard Leo, I am pleased that Tom has provide his thinking and energy to the important areas of federalism and separation of powers.

As befitting a man of his experience, Mr. Griffith has also given many speeches in educational settings that cover a wide variety of legal topics including, The Rule of Law; The Line Item Veto Act; Disciplining Congress: The Taxing and Spending Powers, and, of course, The Impeachment of President Clinton.

In addition, Tom has authored several scholarly articles that have appeared in legal periodicals including his law review note, Beyond Process: A Substantive Rationale for the Bill of Attainder Clause and his more recent 2003 article in the Utah Bar Journal entitled, Lawyers and the Rule of Law.

The record is clear that Tom Griffith is an accomplished lawyer and an outstanding member of the bar. Despite the many highlights of academic achievements and professional accomplishments that I have just reviewed, I have no doubt that Tom would describe his greatest joy in life as his 28-year marriage to his wife, Susan, and the six children that their marriage has produced. Tom and Susan have five daughters—Chelsea, Megan, Erin, Victoria and Tanye and a son, Robert. Tom and Susan were recently made grandparents for the first time. They have a month old grandson, William Sawyer Watts. His parents are Chelsea and Eric Watts. I would be remiss if I did not mention that Tom's only other married child, Megan, is married to Ryan Clegg.

I think it is both important and appropriate to note that Tom has pent considerable time in positions of leadership in his church.

Now that I have spent a few minutes describing the basic facts out Tom Griffith's education and experience, I will spend the next few minutes making some qualitative judgments about him.

I am all for Tom Griffith. Everyone knows that. I first became familiar with Tom through his work in the Senate. As Senate legal counsel, he impressed many in this body for being hard-working, fair-minded, and honest. I am aware of no one who believes that he carried out his responsibilities as Senate legal counsel in a partisan manner.

And let's face it, the role of Senate legal counsel is not an easy job. We all know about the challenges and difficulties associated with the impeachment trial. But let me just list a few other significant legal matters that Mr. Griffith handled while in the Senate.

These include representing the Senate in various lawsuits relate to the Line Item Veto Act; advising the Senate of its institutional interests in the Senate campaign finance investigations held by the Committee on Government Affairs with respect to fund raising of the 1996 elections; representing the Senate in the investigations related to the contested 1996 Louisiana Senate election; and, many matters, including a Senate subpoena directed to the White House, related to the Senate Whitewater investigation.

You can see that the inherently controversial issues that the Senate legal counsel is compelled to confront could easily end up in making some particular Senators less than pleased from time to time. Add to that the mother of all contentious issues—a Senate impeachment trial—and I hope you can see why a person like Tom Griffith, who came through the impeachment trial with bipartisan respect, might be exactly the type of individual we need on the D.C. Circuit.

But do not take it just from me. I will spend the next few minutes to tell you what judgments that others—leading Republicans and Democrats alike—have made about Tom Griffith.

Let me start by reciting from the testimony that my colleague from Utah, Senator BENNETT, gave to the Judiciary Committee last fall. Here is what Senator BENNETT said:

> . . . Tom Griffith really needs no introduction to the Senate because he served as Legal Counsel to the Senate in what is perhaps the Senate's most difficult experience, at least the most difficult experience in the time that I have been here. Tom Griffith was Counsel to the Senate when we went through the historic impeachment . . . trial of President Clinton—only the second time in our Republic's history where the Senate has had this kind of challenge. I was involved in that, as were members of this Committee.
>
> The primary burden of dealing with that challenge fell upon the two leaders, Senator Lott as Majority Leader and Senator Daschle as the Minority Leader. I watched with interest and then admiration as Tom Griffith negotiated through that particular mine field, giving very sound, calm, carefully researched and reasoned advice to both sides. He was not a partisan counsel. From my observation, Senator Daschle was as reliant upon Tom Griffith's legal expertise as was Senator Lott.
>
> If I can take us back to the memory of that experience, virtually everyone around us in Washington predicted a melt-down. The comment was made that this case was toxic. It had soiled the House of Representatives and it was going to soil the United States Senate.
>
> . . . the Senate came out of that experience with its reputation enhanced rather than soiled, and to no small degree that fact . . . is due to Tom Griffith.
>
> There are very few nominees for the Federal bench who have had the experience of going through that kind of fire, who have had their judicial temperament tested in that kind of an atmosphere. Tom Griffith therefore comes before this Committee unique in terms of his experience and with the Senate as a whole, and indeed in the national spotlight.

I think that there is much wisdom in Senator BENNETT's reflections. I understand that Senator BENNETT will come to the floor this afternoon and make some remarks about Mr. Griffith. I hope my colleagues will listen carefully to my colleague and friend from Utah.

Unlike the vast majority of the nominees the Senate reviews, judicial and executive branch, many of us have had the chance to know Tom Griffith personally and to see how he acts

under extremely stressful, and sometimes extremely partisan, circumstances. He has more than passed the test. Tom Griffith has been in the crucible of major political and legal events. He performed well under the sometimes scorching heat of the situation and helped all of us get through that unique test.

But do not take it from me and Senator BENNETT alone, after all we are both Republicans and Mr. Griffith is our constituent. Here is what some leading Democrats have said about Tom Griffith.

Let me start with Senator DODD, our colleague from Connecticut. Upon Mr. Griffith's departure from the Senate, Senator DODD made the following remarks on the Senate floor:

> Mr. DODD. As an original cosponsor of the resolution, I rise today to add my remarks in support of, and in gratitude to, our former Senate legal counsel, Mr. Tom Griffith.
>
> It is always with mixed emotions that I speak on occasions such as this. While I am glad for Tom and wish him well in his return to private practice, I know that the Senate will miss the wise counsel and dedication he demonstrated during his nearly 4 years of service to this body.
>
> The ancient Chinese had a curse in which they wished their victim a life ''in interesting times''. For better or for worse, Tom lived such a life as Senate legal counsel. From my place on the Rules Committee—first as a member and now as Ranking Member—I had a unique perspective on the legal counsel's efforts to deal with numerous ''interesting'' issues presenting novel, rare, and in some cases, historic issues, including implementation of the Congressional Accountability Act, resolution of the Louisiana election challenge, and, of course, the recent impeachment trial. Speaking for myself—and, I suspect, most of my colleagues—I must say that Tom handled those difficult responsibilities with great confidence and skill.
>
> A more contemporary observer—and one of Connecticut's most famous residents— Mark Twain, once suggested: ''Always do right—this will gratify some and astonish the rest.'' During his tenure as legal counsel, Tom exemplified this philosophy, impressing all who knew him with his knowledge of the law and never succumbing to the temptation to bend the law to partisan ends. All of us who serve here in the Senate know the importance of the rule of law; but let us never forget that it is individuals like Mr. Thomas Griffith whose calling it is to put that ideal into practice.
>
> Once again, I wish to express my gratitude to Tom for his years of service, and I ask that my colleagues join me in supporting this resolution.

To me, these comments by Senator DODD speak volumes about the precise qualities we should all want in our judiciary.

As an old litigator myself, I can tell you that it is possible for layers arguing against each other, fighting tooth and nail against each other every day, to come out of litigation with mutual respect. Of course it is possible for adversarial advocates to come out of trial with less than admirable feelings towards one another.

Whatever your views on the merits of President Clinton's impeachment, I think that most everyone would agree that David Kendall and Lanny Breuer were zealous advocates in the President's defense.

So was Chuck Ruff. We all miss him. He was a good man and a great lawyer.

As you would imagine, during the course of the impeachment trial both David Kendall and Lanny Breuer got to know Tom Griffith. They came to respect him.

I am prepared to debate more extensively on some concerns that have been raised and may be raised today about Mr. Griffith's bar membership. I might add that the ABA has looked into this matter very carefully and gave Mr. Griffith a qualified rating. And you would think that if the ABA was satisfied on a matter relating to bar membership, that this should put the matter to rest.

Nevertheless, some questions have been raised. This issue has been fully explored and, I think, put to rest in two Judiciary Committee hearings on Tom Griffith. In any event, it has been the subject of a few stories in the press. I might add that one of the newspapers that carried this story, The Washington Post, ultimately editorialized in support of the nomination of Mr. Griffith.

I thought it noteworthy that two leading Democratic lawyers, David Kendall and Lanny Breuer undertook a public act by writing a letter to the editor to the Washington Post that stated as follows:

> For years Tom has been a leader in the bar and has shown dedication to its principles. The Federal bench needs judges like Tom, an excellent lawyer supported across the political spectrum.

Their letter goes on to say: ''We support Tom and believe he has the intellect and judgment to be an excellent judge. ''

I want to emphasize that these are President Clinton's lawyers talking about a Republican judicial nominee—Tom Griffith—whom they got to know during the Senate impeachment trial.

But they are hardly alone. Many other leading Democratic lawyers hold Tom Griffith in high esteem. These include Seth Waxman, solicitor general of the United States in the Clinton Administration. Here is what Mr. Waxman wrote to The Washington Post in the aftermath of its story on Mr. Griffith's bar status:

> I have known Tom since he was Senate legal counsel and I was Solicitor General, and I have the highest regard for his integrity . . . For my own part, I would stake most everything on his word alone. Litigants would be in good hands with a person of Tom Griffith's character as their judge.

That is high praise from one of the most skilled Supreme Court practitioners in this country. And once again, I point out that it is coming from a leading Democratic lawyer in support of one of President Bush's judicial nominees.

Support for Tom Griffith is equally vigorous on the part of leading Republican lawyers. Despite having been recently exposed as not being Deep Throat—after 30 years of speculation to the contrary—Fred Fielding, former White House Counsel to President Reagan, is still properly regarded as one of the best lawyers in Washington, DC, or anywhere else for that matter. Tom Griffith was his law partner so they know each other well.

Mr. Fielding, the former chairman of the American Bar Association's Standing Committee on the Federal Judiciary, has described Mr. Griffith as ''a very special individual and a man possessed of the highest integrity. He is a fine professional who demands of himself the very best of his intellect and energies.''

Speaking of former White House Counsels supportive of Tom Griffith, I would like to point out that Abner Mikva, a leading Democratic attorney, firmly supports Tom Griffith. Abner Mikva was a Democratic Congressman, and a Democratic appointee to the very court to which Mr. Griffith has been nominated to serve. Here is what he says about Mr. Griffith:

> Tom Griffith will be a very good judge. I have worked with him indirectly while he was counsel to the Senate and more directly as a major supporter to the . . . Central and Eastern European Law Institute of the American Bar Association. Tom was an active member of CEELI's advisory board, and he and I participated in many prospects and missions on behalf of CEELI.
>
> I have always found Tom to be diligent, thoughtful and of the greatest integrity. I think that the bar admission problems that have been raised about him do not reflect on his integrity. Rather, they appear to be understandable mistakes and negligence which cannot be raised to the level of ethical behavior. Tom has a good temperament for the bench, is moderate in his views and worthy of confirmation.

I think that Judge Mikva, a leading Democrat got it exactly right. Tom is a man of high integrity and competence. Problems stemming from failure to timely pay bar dues—a problem that besets some 3,000 members of the District of Columbia Bar Association each and every year and was immediately corrected by Mr. Griffith when brought to his attention—should not be artificially magnified. As Judge Mikva has commented on this issue: ''. . . this is a whole lot of nothing.''

And that assessment—a whole lot of nothing—is from the former chief judge of the DC Circuit, former White House counsel to President Clinton and former Congressman. If during this debate somebody tries to make something out of nothing with respect to the bar membership issue, I just want you to remember what Ab Mikva has concluded because he has a lot of experience in making these type of judgments from his time in Congress, at the White House, and on the bench.

Unfortunately—and with apologies to George Gershwin's Porgy and Bess—sometimes in judicial confirmations, nothing's plenty for some.

Those who have known and worked with Tom Griffith praise him. Another name partner of Mr. Griffith's old firm, Richard Wiley, has this to say about

him: ''Tom is an outstanding lawyer, with keen judgment, congenial temperament and impeccable personal integrity. He would bring great expertise and fair-minded impartiality to the bench and, in my judgment, would be a considerable credit to the DC Circuit and the Federal Judiciary as a whole.''

While Dick Wiley is a leading Republican attorney, not all of the attorneys at the firm he founded are Republicans. Here is what Tom Brunner of Wiley, Rein and Fielding has to say about Tom Griffith.

I offer these views from the perspective of a life-long and politically active Democrat. While Tom and I don't always agree on partisan political issues, I have the highest regard for his integrity and for his open-mindedness. As a judge, he would approach each case without prejudice, with a willingness to be educated and considerations he did not previously understand and a rock-solid commitment to fairness.

Last year I received a letter from 13 leading Democratic attorneys, including former Representative Jim Slattery, Bill Idle, President of the ABA in 1993–1994, and Sandy D'Alemberte, President of the ABA in 1991–1992. Here is what this distinguished group of Democratic lawyers had to say about Tom Griffith:

Each of us has had extensive contact with Tom and believes him to be extremely well qualified for service on the D.C. Circuit. For year Tom has been a leader in the bar and has shown dedication to its principles. The Federal bench needs people like him, one of the best lawyers the bar has to offer. We urge the Senate to confirm his nomination.

I must say that I heartily join them in urging the Senate to confirm Tom Griffith to the DC Circuit.

Over the past several years, we have heard many criticize President Bush for nominating individuals that my friends across the aisle find too divisive. As I have just shown, in nominating Tom Griffith, President Bush has made a conscious attempt to submit the name of an individual that has broad bipartisan support.

I just hope that my colleagues across the aisle will recognize the simple fact that President Bush is offering a nominee that he hopes, and I hope and expect, will gain a broad bipartisan vote of support.

I was pleased that despite some concern expressed by some Democrats on the Judiciary Committee that Tom Griffith received the support of many Committee Democrats, including the support of both Senators DURBIN and SCHUMER, both of whom who would acknowledge the fact that they are sometimes among the toughest critics of President Bush's judicial nominees.

The minority leader, Senator REID, has expressed a willingness to bring the Griffith nomination up for a vote and I hope that he supports Mr. Griffith.

Tom Griffith is an extraordinarily qualified nominee. He has the education, experience, judgment, and character to make a fine judge. Those of you who worked with him while he was Senate legal counsel know this to be the case. I ask that those of you who are new to this body or did not work with Mr. Griffith while he was here ask the opinion of those of us who were in the Senate and worked closely with him.

I am old-fashioned enough to believe in the notion of the Senate family. Tom Griffith is part of the Senate family. I, and many of my Senate colleagues, have reputations for helping deserving members of the Senate family because we recognize that some of the most public-spirited individuals in our country choose to work in the Congress, including some of our most energetic, smart and idealistic young people.

I also recognize that given the extraordinary capabilities of staff members, such as Tom Griffith, it is only fitting and natural for Congressional staff to move into positions of great responsibility within the judicial and executive branches of government. So I always try to help along and give the benefit of the doubt to Congressional staffers who are nominated to serve by the President—any President, Republican or Democrat.

I take great pride in lobbying on behalf of a former Democratic Chief Counsel of the Judiciary Committee, Stephen Breyer, to serve on both the 1st Circuit Court of Appeals and the Supreme Court.

I would hope that my colleagues will continue to join me in this approach of recognizing those who have done well for the American public in serving the Senate.

I urge my colleagues to act to send Tom Griffith off to the D.C. Circuit with the type of broad bipartisan confirmation vote that reflects the broad bipartisan support that his nomination has engendered.

For me, this is an easy vote. I know Tom and his record. I hope that after all of my colleagues have considered his qualifications, it will be an easy vote for them as well. Tom Griffith is a good man and has what it takes in terms of education, intelligence, judgment and character, to become a great judge.

I urge my colleagues to vote in favor of Tom Griffith to serve on the D.C. Court Circuit.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The ACTING PRESIDENT pro tempore. Under the previous order, there was 4 hours of debate evenly divided.

Mr. LEAHY. I thank the Chair. I will take such time as I may need.

Mr. LEAHY, Mr. President, I oppose the nomination of Thomas Griffith to the U.S. Court of Appeals for the DC Circuit. Mr. Griffith's decision to practice law without a license for a good part of his career should be disqualifying. Mr. Griffith has foregone at least 10 opportunities to take the bar in Utah, and has continued to refuse during the pendency of his nomination. In this regard he appears to think he is above the law. That is not the kind of person who should be entrusted with a lifetime appointment to a Federal court and, least of all, to such an important court as the DC Circuit, which is entrusted with protecting the rights of all Americans. This is the wrong nomination for this court and I will vote against it.

The DC Circuit is an especially important court in our Nation's judicial system for its broad caseload covering issues as varied as reviews of Federal regulation on the environment, workplace safety, telecommunications, consumer protection, and other critical Federal statutory and constitutional rights. The White House has rejected all Democratic efforts to work together on consensus nominees for this court and refused to engage in consultation. That is too bad and totally unnecessary. This is another in a series of inappropriate nominations this President has made to this court. Last week, Senate Republicans voted in lockstep to confirm Janice Rogers Brown to this court. The takeover of this court is now complete. Mr. Griffith is the third nominee from President Bush to be considered by the Senate. If confirmed the eleven judges on the court will include a majority of seven judges appointed by Republican Presidents.

At Mr. Griffith's hearing last March, I noted that unlike the many anonymous Republican holds and pocket filibusters that kept more than 60 of President Clinton's moderate and qualified judicial nominees from moving forward, the concerns about Mr. Griffith were no secret. Unlike the Republicans' pocket filibusters of Allen Snyder and Elena Kagan, who were each denied consideration and an up-or-down vote when nominated to the DC Circuit, Mr. Griffith knows full well that I think he has not honored the rule of law by his practicing law in Utah for five years without ever bothering to fulfill his obligation to become a member of the Utah Bar.

He has testified that he has obtained a Utah driver's license and pays Utah State taxes, but he is not a member of the bar despite admitting practicing law there since 2000. According to his answers to my questions, he has taken no steps to fulfill the requirements for practicing law in Utah by taking the Utah bar exam and becoming a member of the Utah Bar. He was also derelict in his duty toward the DC Bar, and less than forthcoming with us on questions related to his repeated failures to maintain his D.C. Bar membership and his failures to pay his annual dues on time not just once, not twice, but in 1996, 1997, 1998, 1999, 2000 and 2001. He was twice suspended for his failures, including one suspension that lasted for three years.

As was reported last summer in The Washington Post, and confirmed through committee investigation, Mr. Griffith has spent the last five years

practicing law in Utah as the General Counsel to Brigham Young University. In all that time he has not been licensed to practice law in Utah, nor has he followed through on any serious effort to become licensed. He has hidden behind a curtain of shifting explanations, thrown up smokescreens of letters from various personal friends and political allies, and refused to acknowledge what we all know to be true: Mr. Griffith should have taken the bar.

Mr. Griffith has so far foregone ten opportunities to take the Utah bar exam while applying for and maintaining his position as general counsel at BYU. This conscious and continuous disregard of basic legal obligations is not consistent with the respect for law we should demand of lifetime appointments to the Federal courts. Neither has Mr. Griffith yet satisfactorily explained why he obstinately refuses to take the Utah bar.

This is not Mr. Griffith's first or only bar problem. He was suspended for failing to pay his DC Bar dues and then misled this committee on the facts of that suspension as well as other late payments. Contrary to his misleading testimony at his hearing, it seems that the only year Mr. Griffith actually paid his DC bar dues on time, after coming to the Senate in 1995, was in 1995. Two suspensions from the practice of law in two years, three late or non-existent payments in four years, and an attempt to mischaracterize this embarrassing record are hardly just an single ''administrative oversight'' unless by that Mr. Griffith means to indicate that his single admitted error is that he does not comply with the law.

What may be more disturbing than Mr. Griffith's failure to pay his DC dues, is his lack of concern about the implications of having practiced law in DC without proper licensure. When I asked him if he had notified his clients or law firm from the period he was suspended, he brushed me off, telling me that his membership in good standing was reinstated once he got around to paying his unpaid dues. Of course, that ignored my question, which was about the ramifications of having been suspended for two separate periods over the course of years while he continued to practice. Clients and partners should have been notified and courts should have been informed.

The Department of Justice apparently agrees that suspension for failure to pay bar dues is a serious matter. Recent newspaper reports disclosed that the Department's Office of Professional Responsibility takes such a matter seriously enough to have opened an investigation into the case of a longtime career attorney there who, like Mr. Griffith, was suspended from the DC bar because he did not pay his dues. Unlike Mr. Griffith's case, the Department is concerned enough about such a suspension that they filed notices with the courts in every case this attorney worked on during the period of his suspension, notifying them that he was not authorized to practice at the time. Practicing law without a license is a serious matter.

The facts surrounding Mr. Griffith's nonexistent membership in the Utah bar are even more troubling. He began his service as assistant to the president of the university and general counsel of BYU in 2000. At that time he was not a member of the Utah bar, he was suspended from membership in the bar of the District of Columbia, and he was an inactive member of the North Carolina bar. Mr. Griffith's own testimony is that for the last five years, as part of his responsibilities as BYU general counsel, he has been practicing law in Utah.

So, what made Mr. Griffith think he could practice law without being a member of the Utah bar? Mr. Griffith testified that he relied on an in-house counsel exception that does not exist in Utah statutes and is not recognized by the Utah Supreme Court, as Mr. Griffith was forced to concede. It was a most convenient and self-serving excuse. There is no such ''general counsel'' exception in Utah and there never has been. He could not point to any Utah statute or Utah Supreme Court pronouncement allowing this behavior—because it does not exist as a matter of law. Moreover, his predecessor at BYU and the general counsels of the other universities in Utah are all members of the Utah bar.

Mr. Griffith has never been able to identify who at the Utah bar he claims advised him that he did not need to join the bar. This fundamental refusal to abide by the law is all the more troubling by Mr. Griffith's obstinate behavior in refusing to take the bar in order to cure his failure. This is not complicated: Get licensed. Indeed, during the course of committee consideration he admitted that when he asked a second-year law student to research the matter she came back to him and advised that he should take the bar. Yet here we are, with the Senate being urged to confirm someone to a lifetime appointment as a Federal judge on a court with jurisdiction over important cases that can have nationwide impact and that nominee has adamantly refused to follow legal requirements in his own legal practice.

The general counsel of the Utah bar, Katherine Fox, wrote to Mr. Griffith on May 14, 2003, telling him she was ''surprised'' he thought there was a general counsel exception, and explained that there was no way under his circumstances to waive into the Utah bar without taking the bar exam. This response from a career lawyer in the Utah bar made before political pressure was ratcheted up to defend a Republican nominee seems pretty straightforward to me. In plain, simple to understand words, Ms. Fox instructed Mr. Griffith to take the bar examination at the earliest opportunity. That was more than two years ago. Mr. Griffith refused to comply.

In an interpretation worthy of the Queen of Hearts from Alice in Wonderland, Mr. Griffith and his supporters have defied logic and reason by turning Ms. Fox's letter upside down in an attempt to characterize it as something other than it is and to condone his conduct. If he will make this self-serving interpretation in this case, what makes anyone think that he will not be the same sort of ends-oriented judge that will twist facts and law in cases he rules on from the Federal bench? Ms. Fox's recommendation that he ''closely associate'' himself with a Utah lawyer until he takes the bar and becomes a member of the bar was not offered as an indefinite safe harbor that permits him to violate Utah law. Ms. Fox's letter is being misused and mischaracterized as an invitation to flout the law. This is the kind of reinterpretation in one's own interest that characterizes judicial activism of the worst sort when employed by a judge.

There are more reasons for serious concern about Mr. Griffith's fitness to be a member of the DC Circuit Court. His judgment is brought into serious question by his views on Title IX of our civil rights laws. This charter of fundamental fairness has been the engine for overcoming discrimination against women in education and the growth of women's athletics. I urge all Senators to think about our daughters and granddaughters, the pride we felt when the U.S. women's soccer team began winning gold medals and World Cups, the joy they see in young women with the opportunity to play basketball and ski and compete and grow.

With the recent reinterpretation of title IX being imposed by this administration in ways that will no doubt be challenged through the courts, we may now understand why the Bush administration sees the appointment of Mr. Griffith to the DC Circuit Court as such a priority. His narrow views on title IX were unveiled during his efforts as a member of the Bush administration Secretary of Education's Commission on Opportunity in Athletics, to constrict the impact of title IX. Does anyone doubt that he would rule that the Bush administration's revision through regulations should be upheld?

The United States Supreme Court recently decided that whistleblowers are protected in the title IX context. That was a close, 5–4 decision, in which Justice O'Connor wrote for the majority. Just the other day the Justices refused to hear a challenge to an appellate court decision that essentially found that title IX could not be blamed for cutbacks in men's athletic programs. These recent legal developments regarding Title IX serve to remind us how important each of these lifetime appointments to the Federal courts is. In light of the record on this nomination, I am not prepared to take a chance on it and will vote against it.

I also note that during the Clinton presidency, Senate Republicans ensured that the 11th and 12th judgeships

on the DC Circuit were not filled. They had argued since 1995 that the caseload of the DC Circuit did not justify a full complement on the court. Indeed at a 1995 hearing, they called Judge Laurence H. Silberman of the circuit to so testify. Republicans have argued for years this circuit's caseload per judge is one of the lightest in the country. In a May 9, 2000, letter to Senator KYL, Judge Silberman argued that the DC Circuit's caseload continued to decline from 1995 to 2000 and to oppose confirmation of additional Clinton nominees.

In fact, the DC Circuit caseload has continued to decline and in 2004 was less than it was in 1999, when Senate Republicans refused to consider two highly qualified and moderate nominations by President Clinton to vacancies on the circuit. With the confirmation of Janice Rogers Brown to that court, there are now ten confirmed, active judges for the DC Circuit, which is what Republicans maintained was appropriate since 1999.

With all the self-righteous talk from the other side of the aisle about their new-found principle that every judicial nominee is entitled to an up or down vote, the facts are that in 1999 and 2000 the nomination of Elena Kagan to the DC Circuit was pocket filibustered by those same Senate Republicans. Ms. Kagan is now dean of the Harvard Law School. Qualified? Yes. Was she given consideration in a Republican run Senate? Not on your life. Likewise the nomination of Allen Snyder to a vacancy on the DC Circuit was never voted upon. Mr. Snyder is a former clerk to Chief Justice Rehnquist and was a highly respected partner in a prominent DC law firm, the same law firm from which President Bush nominated John Roberts to the same court. Senate Republicans pocket filibustered President Clinton's nomination of Mr. Snyder but unanimously supported the confirmation of Mr. Roberts. Senate Republicans played a cruel joke on Mr. Snyder when they allowed him a hearing but would never list him for a vote before the Judiciary Committee or the Senate.

In September 2002, Senator SESSIONS explained that Clinton nominees Elena Kagan and Allen Snyder were blocked: ''Because the circuit had a caseload about one-fourth the average caseload per judge. And the chief judge of the circuit said 10 judges is enough, instead of 12. And I actually thought that was too many. I thought ten was too many.''

Well, the DC Circuit's caseload per judge is lower now than it was during the Clinton administration. Let us see whether the votes of Republican Senators this time will be based on the same rationale they gave to pocket filibuster Clinton nominees.

Last week we witnessed a Republican Senator, who had voted against the confirmation of a Clinton judicial recess appointment and had explained his vote as opposition to recess appointments, reverse himself to vote for a Bush judicial recess appointment. Last week we witnessed dozens of Republican Senators, who had voted against confirmation of Ronnie White of Missouri in 1999 and explained their vote as compelled by the opposition of his home-state Senators, reverse themselves and vote in favor of Justice Janice Rogers Brown and ignore the strong, consistent and well founded opposition of her two home-state Senators.

Tomorrow we will see whether the many Republican Senators who delayed and opposed the confirmation of Judge Merrick Garland in 1996 and 1997 and who pocket filibustered the nominations of Allen Snyder and Elena Kagan in 1999 and 2000 will vote against a Bush nominee to the DC Circuit because the caseload of the circuit does not justify more judges. Tomorrow we will see if many Republican Senators again retreat from their earlier rationale because today a Republican controls the White House.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. LEAHY. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak as in morning business for as much time as I may consume.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCENTRATION OF MEDIA BROADCASTING

Mr. DORGAN. Mr. President, a couple of things have happened in the last several days that I want to visit. First, I wish to talk for a moment about public broadcasting and, secondly, to talk about a Supreme Court decision that was announced this morning here in Washington, DC, and the relationship between the two.

First, I will talk about public broadcasting. I confess I am a big supporter, a big fan of public broadcasting. I think they are an organization that provides an independent view of a range of issues to the American people. The Corporation for Public Broadcasting, public television, and public radio, I think, provide a significant service to this country.

In a time when there is this enormous concentration in the media, more and more television stations are being bought up by fewer and fewer companies—one company owns over 1,200 radio stations in this country—the Federal Communications Commission writes new rules that get overturned by the courts, frankly, that say you can even buy up more of these properties. In fact, the rules the Federal Communications Commission developed some while ago said it is going to be all right in one of America's major cities for one company to own three television stations, eight radio stations, the dominant newspaper, and the cable company. That is unbelievable. Are they dead from the neck up? What possibly could they be thinking?

Fortunately for us, the Federal courts struck down the new rules and, fortunately for us, this morning the Supreme Court decided that the court had justification in striking down these new ownership rules.

Again, I do not think it makes any sense to have a handful of people in this country determining what the American people see, hear, and read, and that is exactly what is happening.

That brings me back to public broadcasting. It is interesting that at a time of this concentration in the media—one company owning a lot of radio stations, 1,200 of them, one company and several companies owning a lot of television stations—at a time when there is not much room for discord and voices, which, incidentally, I think strengthens a democracy.

There is this old saying when everyone is thinking the same thing, nobody is thinking very much. This democracy of ours, this system of self-government, this country that is full of self-expression is strengthened, in my judgment, by an exchange of views of people who have different views. But that, regrettably, is seen somehow as being disloyal these days.

Oh, I know, someone in the Dixie Chicks said something that was unpopular about the President, and then we had tractors driving over the CDs from the Dixie Chicks and big rallies to burn their music. Just before the last election, one television consortium decided they were going to run a clearly partisan film designed to attack only one Presidential candidate and not allow time for the opposing view. This was a television consortium that nearly every single night was doing editorials against one of the Presidential candidates.

In Minot, ND, late one evening, a train ran the tracks and some cars of anhydrous ammonia spilled a plume over that community of nearly 50,000 people, and that deadly cloud of anhydrous ammonia enveloped that community at about 2 o'clock in the morning. There is some disagreement about the events of that night, but reports are that the telephone calls went to the local radio station, and were not answered. All the radio stations in Minot are owned by one company.

What is happening in these broadcast facilities these days is they are running a broadcast out of a board someplace 1,000 miles away, someone who is homogenizing the music to run it

through the local station. There is no local broadcasting in many cases. What you have is a company 1,000 miles or 1,500 miles away deciding they are going to run some homogenized music through the sound board. You do not even need people around to do that.

The Minot, ND, story is one that has been well repeated. I know there is some dispute about a number of the details, but the fact is, there should not be any dispute about what is happening with this concentration. We now have people who sit in a basement, perhaps 20, 30 miles from here—one of the examples I heard was over in Baltimore, a guy sitting in a basement studio saying: It is sunny in Salt Lake City. What a beautiful morning to wake up in Salt Lake City. He was not in Salt Lake City. He was in a basement in Baltimore.

He was reading off the Internet, pretending he was broadcasting to the local folks over the local station in Salt Lake City. They have a term for that. They also have a term for the kind of homogenized television news that is put out by people who are not in your region to make it look like it is locally produced news.

We have this massive concentration in the media, which I think is awful, the FCC promoted rules that says we will let them concentrate even further. As I said, in a major city, under the FCC rule, one would be able to own eight radio stations, three television stations, the cable company, and buy the dominant newspaper all at the same time. I think it was one of the single most complete cave-ins to the biggest corporate interests in this country I have ever seen: The public interest be damned.

The FCC had three-quarters of a million people write to it to say: Do not do this. It did not matter to them. They just did it. Now they have been enjoined by a court. The Supreme Court says they cannot continue and so now they have to start over. Perhaps when they start over they will understand they also have a responsibility to work for the public interest, which brings me to public television.

A couple of things are kicking around about public television. Last week, I believe on Thursday or Friday, the appropriations subcommittee in the House decided to cut funding for public broadcasting. The cut in funding probably meets the interests of some who would like to abolish it. I do not know. I know we had one of our colleagues some years ago decide to get in a big fight with Big Bird and, frankly, Big Bird won. Public broadcasting is widely supported in this country.

In recent years, we have heard a drumbeat by people who say public broadcasting, public television, public radio, is biased. It has a liberal bias, they say. No evidence of that, to my knowledge. Still, the mantra seems to try to brand it as something that is anathema to fairness or balance.

The other day I called Mr. Tomlinson, who is the Chairman of the Board of the Corporation for Public Broadcasting. He has been in the news a great deal. In fact, as Chairman, he is one who has made the point that he believes that some of the programming is not balanced, is in fact biased towards the liberal view.

I talked to Mr. Tomlinson by telephone the other day. I do not know him. I do not have anything bad to say about him. But I called him because of what I had read in the public domain that he has said as chairman of the board.

I knew he had hired, with public funds, a consultant to come in and take a look at programming, particularly Bill Moyers', called ''NOW,'' I believe it was titled, to see if it was fair. I will not use ''fair and balanced'' because that belongs to another brand.

So I wrote to Mr. Tomlinson and asked: Why do you not send me the work papers, send me the summary. I would like to see this report that you empaneled with public funding. He did. He sent me what he called the raw data. The raw data is here. This is raw, certainly, and I guess it is data, but there is no summary. So I called to ask: Would you please also send me summary.

If one looks through the raw data, it is unusual and strange. I will not enter this into the record. I will not put all of this information into the record. I am not going to read from all of it. I am still awaiting a summary. But I must say that the Chairman of the Board of the Corporation for Public Broadcasting hired a consultant to do an evaluation of programming. Then we have all of these sheets that describe the guests and it says: anti-Bush, anti-Bush, pro-Bush, anti-Bush. It appears to me to be not so much an evaluation of is this slanted, is it liberal, does it have an agenda; it is the evaluation of is this program critical of the President?

Is that why a consultant was employed, to see whether public broadcasting is critical of our President? God forbid that we would be critical of the President of the United States.

I find it interesting that in this evaluation—this one is incidentally conservative/liberal, C or L. This was not anti-Bush but C or L. My colleague, Senator HAGEL from Nebraska, appeared on one of the programs, and he apparently disagreed with a portion of President Bush's strategy with respect to Iraq. So my colleague, Senator HAGEL, is referred to as liberal. He is a liberal contributor to National Public Radio. My guess is that is going to surprise a lot of Nebraskans.

If he were on the floor he would probably say he is a pretty good conservative Republican, someone for whom I have deep admiration, but he kind of claimed the liberal status according to the consultant.

This is pretty unseemly, frankly, spending public money on a consultant who then sits down and looks at all of these programs to see if something is being said that might be critical about a President or Congress.

Well, I guess that is enough to say about this particular report. I will await the summary, but as someone who supports public broadcasting and thinks it contributes a great deal to this country—and by the way, who do my colleagues think has been willing to do programs about the concentration of media ownership in this country, about the fact that one company has gobbled up over 1,200 radio stations and fewer people are involved in what we hear, what we see and what we read in this country because they are gobbling up all the television stations as well? Who do my colleagues think has the guts to do programs on the question of what does the concentration in the media mean in America?

Is it ABC, or CBS, or NBC? Get real. Do my colleagues think they are going to do that? They are involved in the concentration. Public broadcasting did it. Public broadcasting is willing to take this on.

How about a program that describes waste in the Defense Department? I am on the Defense Appropriations Subcommittee. I feel very strongly about our country having a strong defense. I feel passionate about supporting men and women who wear this country's uniform. We need to honor them and support them in every way possible. I also happen to think that the Pentagon is one of the largest bureaucracies in the world, and there is massive waste there. So public television did one program in which they talked about waste over at the Pentagon. Do you know how that is described? Antidefense. God forbid that you should describe waste at the Pentagon because then you will be classified, according to this consultant, as antidefense.

Let me describe something that was going on deep in the bowels of the Pentagon about a year and a half ago. They spent about $8 million, and they were going to create what was called a futures market for terrorism. It was basically supposed to be an online betting parlor.

For example, you would be able to bet on such things as: How many American soldiers would be killed in the next year? Would the King of Jordan be assassinated within the next 12 months?

Yes, that is exactly what the Pentagon was preparing to put up and operate in a real way on the Internet. They were within 3 days of doing it, and they wanted $8 million to continue it for the next fiscal year.

Senator WYDEN and I discovered what they were trying to do. We blew it wide open. We had a press conference, described what they were doing, had on the Internet to show that they were only days away from implementing this crazy strategy, and the next day, the Department of Defense shut it down.

At the press conference, I said this idea of setting up an online betting

parlor to take bets on terrorism was unbelievably stupid. Can you imagine, setting up a futures market by which Americans can buy futures contracts and effectively bet on how many soldiers will be killed in the coming year? That is exactly what was going to happen in the bowels of the Pentagon.

Just as an aside, one of my staff people, about 4 months later, used a Google search and typed in the words ''unbelievably stupid,'' and my name came up. That is the danger of Google, I suppose.

But the fact is, what was happening in the bowels of the Pentagon was, in fact, unbelievably stupid and a tragic waste of the taxpayers' money and very unseemly, so we shut it down. Would that be called antidefense? I guess so. I guess, according to this consultant, that is antidefense. It may even be anti-Bush, I don't know.

On top of all this, the attack on public broadcasting by cutting the funding in the U.S. House, by hiring a consultant—unknown to the Board, by the way—with public funding to try to determine what is anti-Bush and pro-Bush or liberal or conservative—on top of all that, last week, the Washington Post reports that the search for the new president of the Corporation for Public Broadcasting has narrowed. I don't know whether it is true. I am just telling you what was in the papers last week. It has narrowed to two candidates, and the leading candidate is a former co-chair of the Republican National Committee. A former co-chair of the Republican National Committee they are going to make head, the president of the Corporation for Public Broadcasting? I don't think so. At least those who worry about bias, those who worry about objectivity, ought not be thinking about presenting to this Congress something as unprecedented as that.

I want public broadcasting in this country to be what it has always been: a proud symbol of independence, willing to search for the truth wherever it exists and willing to take on tough subjects. I mentioned that it falls to the Public Broadcasting System to air the programs about concentration in the media. Do you know why? Because FOX News is not going to do it, CBS is not going to do it, NBC and ABC won't do it. So the American people will be spoon-fed this intellectual pabulum that says: All this is really good. If one company owns all the radio stations in your town, good for you.

It is not good for you. Who is going to broadcast the local baseball games? Who is going to broadcast the local parade? Who is going to report on local issues, when someone in a basement in a city not far from here is broadcasting over a radio station in Salt Lake City and pretending to be living there when, in fact, they have never set foot in the town?

Enough about that—only to say that some of us in this Chamber and some of us in Congress care very deeply about the Corporation for Public Broadcasting, about public television and public radio. I happen to listen to NPR, National Public Radio, on the way in the mornings, in to work in the Capitol. I think it is some of the best news you can find.

Let me say I listen in the evening, when I can, to Jim Lehrer. I challenge you to find a better newscast than that which exists on public television. There are those who believe they want to abolish funding for it. If there are those who believe they want to have a former co-chair of the Republican National Committee now assume the presidency at a time when they themselves have raised all these questions and hired consultants about objectivity, I want them to know they are in for a fight because some of us care deeply about the future of public broadcasting in this country.

I wish to talk just for a moment about an announcement last week. Coming in, listening to the radio this morning, I heard a report that the dollar had strengthened just a bit recently. It has strengthened on the news that last Friday, at 8:30 in the morning, our trade deficit was announced, and our trade deficit last Friday was announced to be only $57 billion. It actually went up to $57 billion, a significant increase from the month before, but a bit less than had been expected. On the strength of that, the dollar improved a little bit because the currency market, which is probably on medication of some type, believes that is marginally good news.

This is the fourth highest monthly trade deficit in the history of this country, the fourth highest trade deficit ever. What it means is we are drowning in a sea of red ink. Going back to 1998, these are our monthly trade deficits on this chart. It means we are buying more from abroad than they are selling, importing much more than we are exporting. So each day, we sell about $2 billion worth of America. Each and every day, 7 days a week, we sell about $2 billion worth of our country.

This is what we expect. If we take a look at the first 4 months of trade deficits this year, it is 22 percent higher than last year. You see, last year was a big record. This year, we are probably headed toward $750 billion in the annual trade deficit.

To a lot of people, the trade deficit doesn't matter; it is just a term. There is nobody in this Chamber wearing a dark-blue suit who is ever going to lose his job because of a trade deficit. It is just folks working on production lines and working for American companies who discover that this trade deficit means we are buying from abroad what we used to buy at home and sending American jobs abroad. We are firing the workers at home and doing it relentlessly, day after day after day.

There are some who say, ''I know you are using these statistics and this data, but what really matters is how it relates to the entire economy.'' You can see how it relates to the economy. It is going up, up as a percent of our GDP.

Finally, while our trade deficit is a serious problem with Japan, with Canada, with Mexico, with Europe, this is the 500 pound gorilla—China. It is a dramatic problem.

I have spoken at length. Some do not want to hear it anymore, but it is worth saying again because, you know, repetition is important, at least for slow learners. For others, it is important just to remember. Let me describe some specific examples.

Incidentally, I notice the Presiding Officer smiled a bit. I am not speaking about anyone in this Chamber being a slow learner. These are all advanced learners who serve in the Senate, I am sure. But let me describe some stories, if I might. I have used them all.

Huffy bicycles. In fact, I got a letter from Huffy bicycles. They didn't like what I said. Huffy bicycles used to be made in Ohio. It was 20 percent of the bicycle market in the United States. You buy them all at Wal-Mart, Kmart, Sears. The people in Ohio who made Huffy bicycles actually put a little decal between the handle bar and the front fender. The decal was the American flag.

The workers in Ohio who made Huffy bicycles were fired because they were making $11 an hour plus benefits, and their jobs went to China for 30 cents an hour by people who work 7 days a week, 12 to 14 hours a day.

The last job performed by those folks in Ohio was to take off the little flag decal on the Huffy bicycle and replace it with a decal of the globe. Huffy bicycles are not American any more. They are Chinese. Why? Because American workers were making $11 an hour plus benefits. They were paid too much money.

Radio Flyer, the little red wagon that all the children in this country played with, was an American company for 110 years. It is gone now. Little red wagons are made elsewhere. Why? Because the American workers cost too much.

Levis? There is not one pair of Levis made in the United States. None. It is an all American company. Levis are gone.

Fig Newton cookies. Want to buy some Mexican food? Fig Newton cookies are made in Monterey, Mexico. They left this country to be made in Mexico.

Fruit of the Loom underwear, shorts, shirts—gone.

I could go on and on at great length. But these are companies who took their jobs elsewhere. Why? Because you can find labor dirt cheap, you can instantly move technology and capital, and then you can produce that product—yes, bicycles, wagons, underwear, shirts, shoes, trousers, trinkets, you name it—you can produce it elsewhere. Then you can ship it to Toledo, Fargo, to Los Angeles, Boston, New York, and sell it to the American consumer.

It is a brilliant strategy, if you are a big corporation that wants to maximize your profits. It is a devastating strategy, if you have worked all your life in a factory, proud of what you produce, and have just been told your job is gone.

Thirty years ago, the largest American corporation was General Motors. People frequently worked for that corporation for a lifetime, generally were paid a pretty good wage, were paid health care and also retirement benefits. Now, the largest corporation is Wal-Mart. I don't have to tell you what the average wage is, what the turnover is. The fact is, it is dramatically different, with less stability, fewer benefits, lower wages.

This country is in a race to the bottom, and what we ought to be doing with the strategy on international trade is lifting others up. Instead, we are pushing American workers down.

The other day, I found out that Lama boots, Tony Lama boots—I talk about Levis being all American, when you spot someone with Tony Lama boots, you think that is all American. Tony Lama boots has now moved to China.

The list goes on and on and on.

So the question is, when will this country stand up for its own economic interests? Not build walls around America, but at least develop a straight strategy that tries to lift others up rather than push us down. There is a feeling among some that workers do not matter very much, workers are like wrenches, like screwdrivers and pliers. Use them, use them up, and you throw them away. And throwing them away is as easy as saying, sayonara, so long, we are off to China, off to Sri Lanka, off to Bangladesh.

The thing is, none of this works. Henry Ford used to believe that he wanted his workers to earn a sufficient income so they could buy the product they produce. He wanted the workers at Ford Motor to have enough in wages to be able to buy Ford cars. Very simple. Simple economics.

This is an unsustainable course. We cannot continue this course of trade deficit after trade deficit, $50, $60 billion a month, month after month after month.

There is a lot of discussion about crisis around here. The President says Social Security is in crisis. It is not. Social Security, if nothing is done, will be wholly solvent until George W. Bush is 106. Clearly, it is not a crisis. Do we have to make some adjustments because people are living longer? Yes, and we will, and we should. But it is not a crisis. The trade deficit is a crisis. In a presidential campaign, some time ago, this issue was described as that giant sucking sound, that giant sucking sound that sucks American jobs out of this country.

People say, well, more people are working. But what is happening in this country? What is happening is good American jobs are leaving. And, no, it is not just the manufacturing jobs. It is now all too often engineering jobs, programming jobs, system design jobs, and others as well. What are the American workers replacing the lost jobs with? Jobs that pay less. Jobs with less security. Jobs without health care. Jobs without retirement capability. That is what is happening in our country.

Again, this town will snore through it. Last Friday, at 8:30 in the morning, we get an announcement that in the previous month we had a $57-billion trade deficit. What was the reaction to this town? Just roll over and continue laying down and taking another long nap because nothing much like this matters. This is not a crisis. This is not urgent, they say.

This country has an identity crisis. It has to decide what it wants for its future, and who will stand up for it. We fought for 100 years on these issues. We had people die on the streets of this country for the right to organize as workers. People literally died in the streets for the right to organize. Now a company can shut down their U.S. operation, ship the jobs to China, and if those workers, at 30 cents an hour, try to organize, they are fired like that. Just that quick.

We had people fighting in the streets over child labor laws, over safe workplaces, the right to work in a safe plant, the right to expect that a plant is not going to dump its chemicals into the air and into the water. Nowadays, corporations can instantly decide to pole-vault over that. We will just fire the American workers and move the jobs to another country.

The other day, I saw a report about the 470 workers laid off at a General Electric plant making refrigerators. They were told on April Fool's Day of this year, April 1, it would be the last day for 470 workers. G.E. was going to discontinue the production of midline, side-by-side refrigerator models that supposedly are not competitive or do not have the right product features, but a very similar new line of refrigerators will be started up in the G.E. Plant in Celaya, Mexico. And that plant will be funded with a loan from the Export Import Bank, which is to say U.S. taxpayers.

This may not matter much to someone around here who wears a white shirt and a blue suit to work and who is never going to lose their job to cheap foreign labor. I don't know of one journalist or one politician in this country that has ever lost their job to cheap foreign labor. It is just the folks on the assembly line, folks that work for a living in the plant, often the folks that have to come back in the evening and at suppertime and tell their family, I lost my job today. It wasn't because I did a bad job. I have worked for that company for 15, or 20, or 25 years. I love that job. I love it, but I cannot compete with 30 cents an hour.

This country has to try to figure out what is going on in how it deals with it. This country really needs to understand that this is a crisis and this requires action and an urgent response by this President and by this Congress.

There is so much to say about trade. I am tempted to continue to talk about the 600,000 cars we get from Korea every year. We get the opportunity to send 3,000 cars back into the Korean marketplace. Unbelievable to me. Just unbelievable. There are 600,000 vehicles coming our way from Korea, and we do not get cars into Korea.

I could talk about automobiles in China, talk about beef to Japan, I could talk about potato flakes to Korea. The length of the presentation could be nearly endless.

But for now let me say last Friday's announcement of one more trade deficit sells just a bit more of this country in a way that Warren Buffet, a fellow I greatly admire, says will one day put us in the position of being sharecroppers because we are selling part of America with these dramatic trade deficits. And it is not just selling part of our country when you are buying more than you are selling. Not only are your jobs leaving—and in this case they are leaving for much lower wages—but in addition to that, you end up, unlike the budget deficit, which you can argue as an economist we owe to ourselves, you end up providing, in the hands of foreign governments, currency, stock, or real estate claims against our country. That affects foreign policies, virtually everything else we do.

I will have more to say about this. But I did not want Friday's moment to pass, despite the rather sleepy attitude here in Washington, DC. In the hot, lazy months of summer, I did not want it to pass without some people understanding that some of us think what is happening is nuts. And some of us believe it is time—long past the time—for Congress and the President to have the backbone, the nerve, and the will to stand up for this country's economic interests and say: We represent this country. We represent the United States.

The next time there is a trade agreement negotiated, they ought to wear a jersey that says ''USA.'' And maybe they could just look down briefly to see who they represent and say: I stand for this country and this country's long-term interests. Without that—and we have not had that for a long while—this country, in my judgment, is consigned to a future of lower wages and a lower standard of living.

You will not, in my judgment, long remain a world economic power without addressing this issue directly. My hope is sooner, rather than later, my colleagues will join me.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HAGEL. Mr. President, I ask unanimous consent that I be allowed to speak for 5 minutes as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The remarks of Mr. HAGEL are printed in today's RECORD under ''Morning business.'')

Mr. HAGEL. Mr. President, thank you. I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TOBACCO SETTLEMENT

Mr. DURBIN. Mr. President, I rise to speak on an issue that appeared in the newspapers last week. Last week a client was sold out by his lawyer. It happens across America on a regular basis. It is unfortunate. It is unethical, unprofessional, and basically wrong, but it happens.

The reason why this caught my attention, and the attention of many, was that the lawyer in this case was the Attorney General of the United States; the client, the American people. At issue was a lawsuit brought against the tobacco industry by the Department of Justice. It was a lawsuit started under President Clinton and carried on under President Bush. The case was made that the tobacco industry in America over 50 years deceived and deliberately misinformed the people about the dangers of the product they were selling.

Last week our lawyers, the Attorney General of the United States and the Department of Justice, the people who are supposed to be working endlessly every day to protect the best interests of America, basically walked away from their own case. The Department of Justice chose to dismiss credible testimony from its own witnesses, people it had brought into this lawsuit.

A few months ago, Michael Fiore, who spent his entire career in public health and the study of tobacco use and cessation, recommended a comprehensive smoking cessation program across America, funded at $5.2 billion a year for at least 25 years. Mr. Fiore's testimony was that we would take the money and profits the tobacco companies had made by deceiving the American people about the danger of tobacco and cigarettes and use it so that Americans currently smoking, addicted, or who might be tempted to smoke would have a chance to be spared from the disease and death which follows from that addiction.

Last week, the Justice Department's lawyer, a gentleman working for Attorney General Gonzales by the name of Stephen Brody, shocked the court and the American people by announcing that the Justice Department would only seek a fraction of the money which his own witness had said should be recovered by the people. This Assistant Attorney General, Stephen Brody, walked into a courtroom and said that instead of the $130 billion the tobacco companies would owe to the people to help them avoid tobacco addictions, he would only seek $10 billion.

Before I was elected to Congress, I used to be a trial lawyer. I used to go through this routine. But it certainly didn't involve billions or even millions of dollars. They were much smaller cases. If I was being sued and someone had said, Listen, we need $100,000 and that is it, come up with $100,000 or we are going to trial, I would have to make an assessment. Is this case one that I am likely to win or lose, if I am being sued, $110,000, $100,000 on the line? But if a few days before the trial they walked in and said, No, we are wrong. It isn't $100,000, it is only $10,000, I would think to myself, They don't have much of a lawsuit, on one day to ask for $100,000 and the next to ask for $10,000.

In this case, our Attorney General, through Mr. Brody, was asking the court for $130 billion. And then last week, to the surprise of everybody, he walked in and said, No, only $10 billion.

Does this administration really believe the people of the United States won't notice the Government is willing to leave $120 billion on the table and walk away from it?

Well, they did notice. Newspapers across the country have run editorials and articles criticizing the Department of Justice for what appears to be bad representation of the American people, the fact that the American people were cheated by their lawyer, newspapers are from all over the country: Houston, TX; Lowell, MS; Lakeland, OH; Harrisburg, PA; Tacoma, WA; Albuquerque; Denver; Racine, WI; Los Angeles; New York; and the Washington Post. The country has noticed that a lawyer sold out his client because it is a big sell-out.

The Albany Times Union wrote:

So, why the sudden about face? Yes, it's routine for attorneys to suddenly change a client's demand if it appears that the merits of the case are weak, or that a judge or jury appears likely to rule against them. But most legal experts had widely believed the government would win this case because it was based on the same evidence used successfully by state attorneys general to win $246 billion. That evidence . . . showed they knew cigarettes were addictive even as they conducted campaigns to get young people to smoke.

The Denver Post editorial was headlined, ''What Are the Feds Smoking?'' Good question.

The Lowell Sun says:

The dramatic change [in government strategy] was both shocking and outrageous. Allowing political pressure to interfere in any trial—particularly one of such importance—is beyond unacceptable, it's unconscionable.

Finally, the Houston Chronicle, from the President's own home State of Texas, quotes a civil attorney who says he would be ''thrilled'' if he were representing a tobacco company in this case. The lawyer said:

I've never seen anything like this happen unless there's political pressure.

It is obvious something happened in this case, and it wasn't about law. It was clearly about politics.

The Chronicle concludes:

If this illustrates the compassion [Attorney General] Alberto Gonzales promised to bring to the job, then he is feeling sorry for the wrong people.

I agree. This administration has never demonstrated much enthusiasm for this tobacco case, which it inherited from the Clinton administration.

To its credit, though, the Department has avoided public discussion of settlement, prosecuted a strong case, brought in the witnesses, until last week. I have joined several of my colleagues in the House and Senate asking the Attorney General to initiate an investigation surrounding this decision last week to basically sell out the American people when it comes to this tobacco lawsuit. I call on the Attorney General, through his inspector general or directly, to answer the question: Why did you walk away from the American people in this tobacco lawsuit?

This Government has signaled to the tobacco industry that the settlement will be cheap. While the American people deserve more, the people's lawyers appear to be winking at the other side. It is hard to imagine a settlement after last week that would be a good deal for the American people. I encourage the Department to hold off any settlement discussions until we replace the DOJ officials who sold us out last week. Those who put pressure on Stephen Brody have to go. If The Department of Justice can walk into that courtroom and sell out the American people, the American people need a new lawyer.

The purpose of this lawsuit was to hold accountable the promoters of tobacco use for what has become the leading cause of preventable death in America. An early settlement in this case will miss that point entirely. The Department of Justice set out a detailed case establishing the tobacco industry's role in misleading America. This is a rare opportunity to hold tobacco companies accountable for the preventable deaths tobacco causes and to reach those who are addicted to tobacco today.

The Department of Justice chose to walk away, leaving $120 billion and 43 million American lives behind.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I rise to speak on behalf of Mr. Thomas B. Griffith for confirmation to the U.S. Court of Appeals for the District of Columbia. I could not be here in my capacity as chairman of the Judiciary Committee to open the debate this afternoon because we had a field hearing on juvenile crime in Philadelphia. But I am here now because I want to express my views as to why I believe Mr. Griffith is preeminently well qualified to take on the important job of circuit judge in the District of Columbia.

Mr. Griffith has an extraordinary academic background. He graduated from Brigham Young University with his bachelor's degree in 1978, with a summa cum laude rating and high honors. He also was valedictorian of his college. He earned his law degree from the University of Virginia. During law school, Mr. Griffith was a member of the Editorial and Articles Review Board of the Virginia Law Review, which is a very high position at a prestigious law school.

Following law school, Mr. Griffith worked at the Charleston, NC, law firm of Robinson, Bradshaw & Hinson. He then continued his very distinguished professional career as a partner at Wiley, Rein & Fielding. In 1995, by unanimous resolution, the Senate, sponsored by the Republican and Democratic leaders, appointed him to the nonpartisan position of Senate legal counsel.

During his tenure as Senate legal counsel, Mr. Griffith tackled a very tough issue relating to the impeachment of President Clinton. He did an outstanding job. He also argued, on behalf of the Senate, two very important matters involving committee investigations and the line item veto litigation, which resulted in two landmark decisions by the Supreme Court of the United States, At the conclusion of his tenure, Mr. Griffith was unanimously endorsed by a bipartisan resolution, cosponsored by Senator Daschle, Senator LOTT, Senator DODD, and Senator MCCONNELL, expressing the Senate's gratitude for his services as Senate legal counsel.

There were especially complimentary remarks made by Senator DODD, who said, ''Mark Twain once suggested, 'Always do right. This will gratify some people and astonish the rest.' During his tenure as legal counsel, Tom exemplified this philosophy, impressing all who knew him with his knowledge of the law and never succumbing to the temptation to bend the law to partisan ends. All of us who serve here in the Senate know the importance of the rule of law; but let us never forget that it is individuals like Mr. Thomas Griffith whose calling it is to put that ideal into practice.''

Senator Thurmond also expressed high praise for Mr. Griffith, as did Senator LOTT.

Beyond his work in the profession, Mr. Griffith has found time to give back to the community. He serves as an advisory board member to the ABA Central European and Eurasian Law Initiative. Furthermore, while in private practice, Mr. Griffith took on a significant pro bono representation of a death row inmate, which led to the commutation of the inmate's sentence by the Governor of Virginia.

Mr. President, I ask unanimous consent to have printed in the CONGRESSIONAL RECORD, statements of support on behalf of Mr. Griffith.

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

SUPPORT

Seth Waxman said of Mr. Griffith's nomination, ''I have known Tom since he was Senate Legal Counsel and I was Solicitor General, and I have the highest regard for his integrity. For my own part, I would stake most everything on his word alone. Litigants would be in good hands with a person of Tom Griffith's character as their judge.''

Glen Ivey, former counsel to Former Senate Democratic Leader Tom Daschle, wrote to this Committee, stating, ''I believe Mr. Griffith is an exceptional nominee and would make an excellent judge. Although Mr. Griffith and have different party affiliations and do not agree on all political matters, I learned during the Senate's Whitewater and Campaign Finance Reform investigations that Mr. Griffith took seriously his oath of office. Even when we were handling sensitive and politically charged issues, he acted in a non-partisan and objective manner. I believe Mr. Griffith has the intellect and the temperament to make an outstanding jurist.''

According to David Kendall, personal counsel to President and Senator Clinton, ''For years Tom has been a leader in the bar and has shown dedication to its principles. The federal bench needs judges like Tom, an excellent lawyer who is supported across the political spectrum. . . . [W]e support Tom and believe he has the intellect and judgment to be an excellent judge.''

Harvard Law Professor William Stuntz has known Mr. Griffith for over twenty years. He wrote, ''Few people I know deserve to be called wise; very few deserve to be called both wise and good. Tom is a wise and good man. I believe he will be one of this nation's finest judges.''

Abner Mikva, a former White House Counsel for President Clinton and a former Chief Judge of the U.S. Court of Appeals for the D.C. Circuit, wrote to Senator Leahy, ''I write as an enthusiastic supporter. . . . I have known Tom Griffith in the public sector and in the private sector, and I have never heard a whisper against his integrity or responsibility. Tom Griffith will be a very good judge. I have always found Tom to be diligent, thoughtful, and of the greatest integrity . . . Tom has a good temperament for the bench, is moderate in his views and worthy of confirmation.''

Finally, Senator Dodd of Connecticut noted that Mr. Griffith handled his difficult responsibilities as Senate Legal Counsel with great confidence and skill . . . impressing all who knew him with his knowledge of the law and never succumbing to the temptation to bend the law to partisan ends.''

Mr. SPECTER. There has been a challenge against Mr. Griffith, with respect to his Utah bar membership. Because he serves as general counsel to Brigham Young University, there were some questions raised as to whether he should have been a member of the Utah bar. I think that issue has been clarified, although some are still contesting it. I ask unanimous consent to have printed in the RECORD a full explanation of the Utah bar membership issue.

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

TOM GRIFFITH: UTAH BAR MEMBERSHIP FACTS

As soon a Mr. Griffith accepted the position of Assistant to the President and General Counsel of Brigham Young University (''BYU''), he sought to determine what Utah's requirements were for in-house counsel by consulting with Utah attorneys.

Mr. Griffith always has complied with the advice he received—when his responsibilities require that he provide legal advice to the University, he does so only in close association with active members of the Utah Bar.

Mr. Griffith was told that, as in-house counsel, he need not become a member of the Utah Bar provided that when he gives legal advice, he does so in close association with active members of the Utah Bar.

Mr. Griffith has always provided legal advice in conjunction with one of four attorneys in his office who are licensed with the Utah Bar, or an outside counsel who is licensed with the Utah Bar. As BYU's General Counsel, he has made no court appearances, nor has he signed any pleadings, motions, or briefs.

Mr. Griffith communicated with Utah State Bar officials who were aware that he had not sat for the Utah Bar exam. These officials advised Mr. Griffith to associate himself closely with a Utah Bar member whenever giving legal advice pending his admission to the Utah Bar—which he did. Not once did Utah Bar officials warn Mr. Griffith that his arrangements were contrary to accepted practice—because they weren't. The Utah Bar has affirmed that such arrangements do not constitute practicing law without a license.

Numerous former and current Utah Bar officials have written letters affirming that the precautions taken by Mr. Griffith were appropriate and in accordance with the Utah Bar rules.

Five former Presidents of the Utah Bar: ''While there is no formal 'general counsel' exception to the requirement that Utah lawyers must be members of the Utah bar, it has been our experience that a general counsel working in the state of Utah need not be a member of the Utah Bar provided that when giving legal advice to his or her employer that he or she does so in conjunction with an associated attorney who is an active member of the Utah Bar and that said general counsel makes no Utah court appearances and signs no Utah pleadings, motions, or briefs.''—John Adams, Charles Brown, Scott Daniels, Randy Dryer, Dennis Haslam, Letter to Chairman Hatch, June 28, 2004.

John Baldwin, Executive Director of the Utah Bar: ''To those general counsel who cannot avoid circumstances which approach or may cross that line, we have consistently advised that under such circumstances they should directly associate with lawyers who are licensed in the state and on active status. Our policy has also consistently been that of those who follow that advice are not engaged in the unauthorized practice of law.''—Letter to Chairman Hatch, July 2, 2004.

Ethics experts have explained that Mr. Griffith has at all times been in compliance with rules of ethical professional conduct.

''[T]he requirement of membership in a particular bar is not in itself a rule of ethical professional conduct, but a lawyers' 'guild rule' (like minimum fee schedules and restrictions on advertising) designed to restrict competition.—Monroe Freedman, Law Professor at Hofstra University and Thomas Morgan, Law Professor at GW Law School, Letter to the Editor, New York Times, July 4, 2004.

''At best, the requirement of a license is intended to assure that one who holds himself out to the public as a lawyer is indeed competent to serve as a lawyer. In that regard, there is no question about Mr. Griffith's competence, which is the only ethical issue that is material.'' Id.

The ABA and the American Law Institute Restatement both support a policy of not requiring in-house counsel to be license in state, as long as the attorney is licensed in at least one state.

ALI Restatement: ''States have permitted practice within the jurisdiction by inside legal counsel for a corporation or similar organization, even if the lawyer is not locally admitted and even if the lawyer's work consists entirely of in-state activities, when all of the lawyer's work is for the employer-client and does not involve appearances in court. Leniency is appropriate because the only concern is with the client-employer, who is presumably in a good position to assess the quality and fitness of the lawyer's work.''—ALI Restatement, Section 3, Comment f.

ABA Model Rules: ''(d) A lawyer admitted in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.''—Model Rule 5.5(d)(1).

Mr. Griffith's sole employer, BYU, was aware that Mr. Griffith was not a member of the Utah Bar and did not require him to be a member. BYU is the largest private university in the U.S., with campuses and programs throughout the world—much like a multinational corporation.

Former Dean of BYU Law and Chair of BYU General Counsel Search Committee, Professor H. Reese Hansen: ''The fact that Mr. Griffith was not a member of the Utah Bar was, of course, well known to all relevant decision makers when he was recommended for and hired as Assistant to the President and General Counsel to BYU.''—Letter to Chairman Hatch, June 29, 2004.

Dean Hansen: ''A lawyer who is employed as General Counsel to a [multinational corporation] and who provides legal and other services only to his or her employer is obviously not licensed to practice in every jurisdiction where the entity has suppliers, customers, or shareholders or where its advertisements may reach. I view BYU's Assistant to the President and General Counsel in exactly the same situation in regard to his bard membership. . . . I believe that Mr. Griffith has conducted his professional service to his sole client, Brigham Young University, in a completely appropriate manner in all regards and consistent with common practices of general counsel to large U.S. entities who conduct multi-state and international activities.'' Id.

Mr. SPECTER. Similarly, there had been an issue regarding Mr. Griffith's lapsed membership in the District of Columbia bar, which occurred because of an administrative oversight.

Excuse me; nothing is as troublesome as a pesky summer cold. Without this cold, my speech would be considerably longer, Mr. President, so there are some advantages, at least, for anyone who may be watching on C–SPAN—if anyone watches C–SPAN during these late afternoon proceedings of the Senate. I ask unanimous consent that a full explanation of the DC Bar membership issue also be printed in the RECORD.

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

TOM GRIFFITH: D.C. BAR MEMBERSHIP

FACTS

In 2001, Mr. Griffith discovered that his D.C. Bar membership had been suspended for failing to pay his annual dues. As soon as he became aware of the problem, he paid the dues and was reinstated as a bar member in good standing.

Mr. Griffith accepts full responsibility for the oversight, and he brought the lapse in his membership to the attention of the Senate Judiciary Committee in his questionnaire.

Having worked as an attorney at a large D.C. law firm from 1991–1995, Mr. Griffith became accustomed to the firm's practice of paying its attorney's bar dues.

When Mr. Griffith became Senate Legal Counsel, he was late in paying his 1997 D.C. Bar dues, and as a result, was suspended from the D.C. Bar for approximately five weeks. As soon as Mr. Griffith became aware of the problem in January 1998, he paid the dues and was reinstated as a member in good standing.

In 1998, while still serving as Senate Legal Counsel, Mr. Griffith unintentionally failed to pay his 1998 D.C. Bar dues and was suspended as a result. He was unaware of his suspension at the time.

When Mr. Griffith returned to his former law firm in March 1999, he wrongly assumed, based on his prior experience at the firm, that the firm was paying dues on his behalf. He continued to have no knowledge of suspension.

Mr. Griffith paid his back dues as soon as he discovered the problem in 2001. He was promptly reinstated as a member in good standing of the D.C. Bar. Since then, he has paid his D.C. Bar dues in a timely manner and remains a D.C. Bar member in good standing.

Mr. Griffith's situation is not at all unusual. D.C. Bar counsel quotes that every year over 3,000 D.C. lawyers (and a number of sitting judges) are ''administratively suspended'' for late payment of dues.

An inadvertent failure to pay bar dues does not reflect poorly on Mr. Griffith's character or ability to serve as a judge on the U.S. Circuit Court of Appeals.

Abner Mikva, former Chief Judge, U.S. Court of Appeals for the D.C. Circuit: ''I cannot believe the [the Washington Post] or anyone else thinks that the inadvertent failure to pay bar dues because no bill was sent is a mark of a lawyer's character. I have known Tom Griffith in the public sector and in the private sector, and I have never heard a whisper against his integrity or responsibility.''—Letter to the Editor, Washington Post, June 8, 2004.

David Kendall, private attorney to former President Clinton, and Lanny Breuer, former Associate Counsel to President Clinton: ''Contrary to the Post's implication, Tom is an outstanding attorney who takes his responsibilities as a member of the bar seriously. . . . As soon as he realized that bills were unpaid, he paid them. Tom took the common and proper course of action under the circumstances. This innocent oversight has no bearing on his ability to serve as a judge.''—Letter to the Editor, Washington Post, June 11, 2004.

Former ABA Presidents Bill Ide and Sandy D'Alemberte, along with 11 other attorneys: ''By immediately paying his dues when he became aware of the oversight, Tom took the proper course of action. According to D.C. Bar counsel, such an oversight is entirely common and of no major concern, particularly where no reminder notice is sent out. In fact, Tom was promptly reinstalled after he paid his accrued dues, without any questions raised about possible sanctions.''—Letter to Chairman Hatch, June 14, 2004.

Ethics Expert, Professor Monroe H. Freedman, Hofstra University Law School: ''In the District of Columbia, Mr. Griffith had in fact been a member of the bar in good standing; the only problem was a temporary lapse in the payment of dues, which he promptly remedied when he became aware of it. He thereby once again became, and remains, a member of the D.C. Bar in good standing. Neither the bar nor anyone else has ever questioned Mr. Griffith's competence to practice law.''—Letter to Chairman Hatch, June 29, 2004.

Mr. Griffith was ''administratively suspended'' from the D.C. Bar for failure to pay his bar dues. No disciplinary action was ever taken against him.

*Former ABA Presidents Bill Ide and Sandy D'Alemberte, along with 11 other attorneys: ''The Post improperly equated Tom's situation to 'disciplinary suspension,' a rare sanction imposed only when a lawyer knowingly refuses to pay bar dues. It was nothing of the kind. When advised of the problem, Tom promptly paid his dues in full.''—Letter to Chairman Hatch, June 14, 2004.

Mr. SPECTER. We had a second hearing for Mr. Griffith this year, after I became chairman, because his original hearing was not well attended. It was held at the end of the last session. At the hearing this year, I think we explored in considerable detail the issue of his D.C. bar membership.

It is always a difficult matter when a lawyer is a member of one bar and seeks to become a member of another. I know I went through a similar issue when I took the New Jersey bar, 23 years after I attended law school. It is an experience, but I went through it. However, I think this by no means disqualifies Mr. Griffith, and I think the issue has been adequately explained on the record.

Tom Griffith is well known in the Senate, perhaps better known than virtually any other judicial nominee who comes here, because he had been legal counsel to the Senate. I think many people who know Mr. Griffith on a personal, intimate basis know of his high ethical standards, his scholarship, and his legal ability. He is soft spoken. He is mature. He is knowledgeable. I think he will make a fine circuit judge.

Mr. Griffith comes with an especially strong recommendation from the former chairman of the Judiciary Committee, Senator HATCH, who has known Mr. Griffith personally for many years, and speaks very highly of him.

Regrettably, I cannot be here tomorrow to speak again, as is the practice for the chairman to speak immediately before leadership, because I will be

traveling in Pennsylvania with President Bush. Tom Griffith is an outstanding candidate, and I urge my colleagues to vote to confirm him.

Mr. President, in the absence of any Senator seeking recognition, in fact, in the absence of any other Senator on the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BENNETT. Mr. President, I understand the debate is on the qualifications of Thomas Griffith.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. BENNETT. I wish to make a few comments with respect to Mr. Griffith. I ask all Members of the Senate to think back on what for many of us will be the most dramatic experience we had as Members of this body. It was an unprecedented situation, certainly in this, the last century. You had to go all the way back to Abraham Lincoln's time to find anything similar to it, when we met in this body with the Chief Justice of the United States, William Rehnquist, sitting in the chair, and held an impeachment trial of the President of the United States.

I doubt very much that will ever happen again. It was a very different kind of trial than the one that occurred with Andrew Johnson the first time this happened. That was purely political with Andrew Johnson, and everybody recognized that. I remember a Member of this body saying that we had actually had three impeachment situations in our history: The first, Andrew Johnson; the second that never got to the Senate, which was Richard Nixon; and the third, President Clinton. The Senator said Andrew Johnson, clearly not guilty, clearly a political vendetta; Richard Nixon, clearly guilty, clearly should have been removed—he stopped that by resigning; and then he said the Clinton one was in between. It was a close case that could have gone one way or the other.

Some of my friends on the Democratic side of the aisle said it is not a question of whether he did it. It is not a question of whether it was a high crime and a misdemeanor. The only question was whether it was a serious enough high crime and misdemeanor on the part of the President of the United States to justify removing him from office. I think that was a thoughtful summary of where things were.

Why am I saying all of this with respect to Thomas Griffith? Because during the period that the Senate went through that very difficult and historic debate, the counsel to the Senate of the United States was Thomas Griffith. In that position, he served both sides. He was not counsel to the majority, he was not counsel to the minority, he was the Senate's counsel.

I remember very well the conversations that took place here, both formally and informally.

I remember the time when we were in a quorum call where the then minority leader, Tom Daschle, and the then majority leader, TRENT LOTT, met in the well of the Senate, other Senators pressed forward, and pretty soon we had about 30 Senators gathered around talking: What can we do, how can we resolve this, where can we go?

The decision was made, as a result of that, the Senate would go into the old Senate Chamber in executive session, where there were no television cameras, there were no reporters, there was no staff, other than the absolutely essential one or two. We talked about how we could get through this difficult time.

One of the speeches given in that chamber made this comment about the impeachment proceedings with respect to President Clinton. He said: This case is toxic. It has sullied the Presidency. It has stained the House of Representatives. It is about to do the same thing to us.

Unfortunately, the Senator made that prediction, with which I agree, but had no solution. He was just short of explaining how difficult that was going to be out of a sense almost of resignation that this particular case was going to end up besmirching the Senate as badly as it had stained the Presidency and the House of Representatives.

When it was all over, some 30 days later, that particular prediction had not come true. The Senate had not been stained. Indeed, it was one of the Senate's finest hours. We had come together in a civil way, with a deliberate understanding of our responsibility. We had acted responsibly. Every Member of the Senate had voted his or her own conscience, and we had disposed of the case in a manner that reflected well upon the Senate.

In that situation, the legal mind that was counselling both Senator Daschle and Senator LOTT was Tom Griffith, the Senate's counsel who would sit down with the Republicans and describe to Senators the precedent, outline what the consequences would be if we did this, that, or the other. He would then sit down with the Democrats and do exactly the same thing from a standpoint of evenhandedness, fairness, great respect for the law, and through documentation and examination, thorough scholarship and research.

The Senate counsel who did all of those things and helped the Senate through, arguably, one of its most difficult times in the last 100 years, is the man now before the Senate to be a circuit judge.

I am very surprised people have such short memories. People who were complaining about Tom Griffith not being qualified for the circuit court bench, where were they when he was qualified and performing magnificently on their behalf as the counsel of this body? Have they no memory of the professionalism, the deep research, the evenhanded fairness that Tom Griffith showed on that occasion? Don't they remember how he served, regardless of party, the law, the precedent, and the institution?

We can talk about opinions. We can talk about papers written. We can talk about positions taken. All of these are important in deciding what we should do with respect to a circuit court judge. But I cannot think of any place where we could duplicate the crucible in which a potential judge's capabilities are tried that would approach the crucible through which Tom Griffith has come.

I intend to support him. I urge my colleagues to support him. He will make an outstanding circuit court judge.

I, ultimately, come to a very personal kind of test. If I were on trial for some very complicated situation, some very Byzantine kind of charge that required a great legal mind to cut through to the real issues, would I want that case to be tried before Tom Griffith sitting on the bench? My answer, as I have thought about it, is clearly, yes. If I were on trial, and I needed a judge who had the capacity to cut through all the extraneous matter and get to the heart and render an accurate decision, I would want Tom Griffith to be the judge in that kind of case.

I hope I am never on trial in a case that goes before the circuit court. But there are those who will be. There are those who will have that challenge and have that experience. The best thing I can do for them is to vote to put Tom Griffith on the court so he will be there to render that kind of service and that kind of expertise on their behalf.

I hope he is confirmed. I will vote for his confirmation. I urge all of my colleagues to do the same.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The remarks of Mr. VOINOVICH are printed in today's RECORD under ''Morning Business.'')

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I ask unanimous consent to speak as in morning business for what time is required.

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

A FAILING OF THE SENATE

Mr. FRIST. Mr. President, in 45 minutes or so, we will be turning to an important issue which people have spoken to over the course of the day, an issue we will be spending the evening on. It is an issue that is one of the worst failings of this institution in our history, a failing surrounding a refusal to act on our part against lynching, against vigilantism, against mob murder. It has been a shame in many ways. We have to be careful when we use that word, but when we look at the reality of missed opportunities to act, we can, with justification, use the word ''shame'' on the institution and a shame on Senators who didn't just fail to act but deliberately kept the Senate and the whole of the Federal Government from acting and from acting proactively.

Although deep scars will always remain, I am hopeful we will begin to heal and help close the wounds caused by lynching. Four out of five lynch mob victims were African American. The practice followed slavery as an ugly expression of racism and prejudice. In the history of lynching, mobs murdered more than 4,700 people. Nearly 250 of those victims were from my State of Tennessee. Very few had committed any sort of crime whatsoever. Lynching was a way to humiliate, to repress, to dehumanize.

The Senate disgracefully bears some of the responsibility. Between 1890 and 1952, seven Presidents petitioned Congress to ban lynching. In those same 62 years, the House of Representatives passed three antilynching bills. Each bill died in the Senate, and the Senate made a terrible mistake.

The tyranny of lynch mobs created an environment of fear throughout the American South. Lynching took innocent lives. It divided society, and it thwarted the aspirations of African Americans. Lynching was nothing less than a form of racial terrorism.

It took the vision and courage of men and women such as Mary White Ovington, W.E.B. DuBois, George H. White, Jane Adams and, of course, fellow Tennessean Ida Wells-Barnett to pass Federal laws against lynching and put an end to the despicable practice.

Ida Wells-Barnett, indeed, may have done more than any other person to expose the terrible evils of lynching. A school teacher from Memphis who put herself through college, she became one of the Nation's first female newspaper editors. A civil rights crusader from her teens, Ida Wells committed herself to the fight against lynching after a mob murdered her friends—Thomas Moss, Calvin McDowell, and Henry Stewart.

These three men, driven by their entrepreneurial energy, opened a small grocery store that catered primarily to African Americans. They took business away from nearby White business owners. Driven by hatred and jealousy, by rage and prejudice, an angry White mob stormed their store. Acting in self-defense, Wells' three friends fired on the rioters. The police arrested the grocers for defending themselves. The mob kidnapped all three from jail, and all three were murdered in the Memphis streets.

These brutal murders galvanized Wells into action. Her righteous anger, blistering editorials, and strong sense of justice further enraged Memphis bigots. They burned her newspaper presses and threatened to murder her. Wells moved to Chicago and became one of that city's leading social crusaders. Wells' book ''Southern Horrors: Lynch Law in All Its Phases'' and her dogged investigative reporting exposed millions of Americans to the brutality of lynching. In a nation rife with racism and prejudice, Ida Wells and her colleagues began the civil rights movement. They helped bring us integration. They paved the way for equality. And they taught all of us that racism is a terrible evil.

After many years of struggle, after many setbacks, and after much heartache, they won. From President Truman's Executive order ending segregation in the Armed Forces to the 1964 Civil Rights Act, a series of civil rights laws moved the Nation toward legal equality.

But no civil rights law is as important to our Nation's political process as the 1965 Voting Rights Act.

It enfranchised millions of African-American voters and it brought many black politicians into office.

Section 4 of the Voting Rights Act will be up for reauthorization in 2007. President Reagan signed into law a 25-year reauthorization in 1982.

Section 4 contains a temporary preclearance provision that applies to Alabama, Georgia, Louisiana, Mississippi, South Carolina, Texas, Virginia, and parts of Alaska, Arizona, Hawaii, Idaho, and North Carolina.

These States must submit any voting changes to the U.S. Department of Justice for preclearance. If the Department of Justice concludes that the change weakens the voting strength of minority voters, it can refuse to approve the change.

While I recognize that this can impose a bureaucratic burden on States acting in good faith, we must continue our Nation's work to protect voting rights. That is why we need to extend the Voting Rights Act.

Quite simply, we owe civil rights pioneers such as Ida Wells nothing less.

I hope the day will come when racism and prejudice are relegated completely to our past. This resolution is a positive step in the right direction.

Transforming our Nation requires that we recall our history—all of it. We can become a better people by celebrating the glories of our past—but also our imperfections. That includes continuing to do our utmost to protect voting rights for all Americans.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

Ms. LANDRIEU. I ask unanimous consent that the debate time on the Griffith nomination be yielded back and the Senate proceed to legislative session in order to consider S. Res. 39.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

APOLOGIZING TO LYNCHING VICTIMS AND THEIR DESCENDANTS

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

The bill clerk read as follows:

A resolution (S. Res. 39) apologizing to the victims of lynching and the descendants of those victims for the failure of the Senate to enact anti-lynching legislation.

Ms. LANDRIEU. Mr. President, I ask unanimous consent that the clerk proceed with the reading of the resolution.

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

The bill clerk read as follows:

Whereas the crime of lynching succeeded slavery as the ultimate expression of racism in the United States following Reconstruction;

Whereas lynching was a widely acknowledged practice in the United States until the middle of the 20th century;

Whereas lynching was a crime that occurred throughout the United States, with documented incidents in all but 4 States;

Whereas at least 4,742 people, predominantly African-Americans, were reported lynched in the United States between 1882 and 1968;

Whereas 99 percent of all perpetrators of lynching escaped from punishment by State or local officials;

Whereas lynching prompted African-Americans to form the National Association for the Advancement of Colored People (NAACP) and prompted members of B'nai B'rith to found the Anti-Defamation League;

Whereas nearly 200 anti-lynching bills were introduced in Congress during the first half of the 20th century;

Whereas, between 1890 and 1952, 7 Presidents petitioned Congress to end lynching;

Whereas, between 1920 and 1940, the House of Representatives passed 3 strong anti-lynching measures;

Whereas protection against lynching was the minimum and most basic of Federal responsibilities, and the Senate considered but