

made. The bill does not decide the fate of the RRW. That is a decision for a future Congress and a future administration.

The bill also includes a requirement for new nuclear posture review and a sense of the Congress to help frame the nuclear policy debate for the next administration. To ensure that weapons dismantlements continue, the bill includes an increase of \$20 million to the budget request of \$52 million to support nuclear weapons dismantlement.

I would like to note that last night I returned from an extensive 4-day visit to all three of the Department of Energy nuclear weapons laboratories. While I discussed many issues with the laboratory directors and their staff, including nonproliferation issues, we spent a considerable amount of time on the RRW. Most of the discussions were highly classified, and so I cannot go into substantial detail here. But I want to ensure my colleagues that the progress made by the laboratories under the Stockpile Stewardship Program is remarkable and that there are many new opportunities to improve the safety, security, and reliability of nuclear weapons, which in turn should lead to very substantial reductions in the overall size of the stockpile—without a return to nuclear weapons testing.

Wrapping up the balance of the Department of Energy issues, the bill includes two provisions that would task the GAO to review two significant areas of concern at DOE. The first study is on the structure and management of the protective forces at DOE sites, and the second one on the future plans for the environmental restoration programs.

In closing, the Strategic Subcommittee has a broad area of responsibility, much of it controversial, but working with Senator SESSIONS, we have been able to resolve the issues so the national security interests of our country are foremost.

I yield the floor.

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#### EXECUTIVE SESSION

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#### NOMINATION OF LIAM O'GRADY TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination which the clerk will report.

The assistant legislative clerk read the nomination of Liam O'Grady, of Virginia, to be U.S. District Judge for the Eastern District of Virginia.

The PRESIDING OFFICER. Unless the Senator from Virginia wants to modify the pending unanimous consent request to make certain that this nomination is called at 5:30, there is now 1 hour of debate equally divided on the nomination under the previous unani-

mous consent request, which would mean the vote would likely be in the range of 5:40.

Who yields time?

Mr. WARNER. Mr. President, I yield to the distinguished chairman of the committee.

Mr. LEAHY. Mr. President, I am sorry, I was off the floor for a moment. I hesitate to interfere with my Senator away from home. What is the order?

The PRESIDING OFFICER. Under the pending unanimous consent request, the debate was to begin at 4:30, with a vote at 5:30 on the judicial nomination. Senator NELSON asked unanimous consent and received it to proceed to speak and spoke until just a moment ago. So if we project 1 hour from now the debate for the judicial nominee, the vote is likely to occur near 5:40.

Mr. LEAHY. And the distinguished senior Senator from Virginia wishes to take time for the Republican side?

Mr. WARNER. Well, actually, I had hoped to do it on the time of the Defense bill, but I yielded to the request of my colleague.

Mr. LEAHY. We will work out the time.

Mr. WARNER. Mr. President, I need 3 minutes.

Mr. LEAHY. I yield to the Senator from Virginia such time as he needs.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I thank the distinguished chairman of the Judiciary Committee. He is always very courteous to the Senator from Virginia and I am appreciative of that.

I rise with a sense of great pleasure to support an outstanding Virginian, Judge Liam O'Grady, who has been nominated by the President to serve as an article III judge on the United States District Court for the Eastern District of Virginia. I am pleased to note that Judge O'Grady also enjoys the support of my distinguished colleague, Senator WEBB. Senator WEBB, upon joining the Senate, has worked with me, as we do on many things, in a very cooperative spirit to provide nominations to the President with respect to the judicial vacancies as they exist in our United States District Court in Virginia and to the Fourth Circuit, of which Virginia is one of the States served on that distinguished judicial panel, which largely resides in Virginia. I thank my distinguished colleague, Senator WEBB, because he has become a very fast learner about the judicial process and we have worked together, and we now have nominations pending before the President with regard to the vacancies on the Fourth Circuit.

Turning to Judge O'Grady, he has been nominated to fill the seat that was vacated by Judge Claude Hilton. For more than 20 years, Judge Hilton served with distinction as an active judge in the Eastern District of Virginia. We are fortunate he is continuing to serve on the court in senior

status. In my view, we are equally fortunate to have a nominee such as Liam O'Grady who is willing to continue his public service on the bench.

Since joining the Virginia bar in 1978—quite a few years ago—Judge O'Grady has worked as a sole practitioner, as assistant Commonwealth's attorney, as an assistant United States attorney, as a partner in an international law firm, and for the last 4 years, he has worked with the Eastern District of Virginia as a magistrate judge. Magistrate judges perform a very valuable function for our district courts.

His career has provided him with a wide array of experiences. As a solo practitioner, he worked as a court-appointed criminal defense lawyer. As an assistant Commonwealth's attorney, he tried upwards of 100 jury trials. As an assistant United States attorney, he focused on narcotics and organized crime cases. As a partner at a well-known law firm, he worked extensively on patent and trademark cases for a number of major industrial organizations in our country. As a magistrate judge, he has seen firsthand the extraordinary variety and volume of cases that come before a district judge serving not only in Virginia but elsewhere in America.

Equally impressive is that despite the rigors of his career, he always found time to give back to his community. He has helped shape young legal minds through the instruction of law at both George Washington University and George Mason University. Moreover, while in private practice, he set up a pro bono legal clinic in his law firm and took court-appointed cases serving those in need.

It is clear to me that this outstanding nominee, now to be voted on shortly by the Senate, is eminently qualified to serve on this prestigious court. In addition to having the support of his home State Senators, Judge O'Grady received the highest—I repeat, the highest—recommendation of the American Bar Association and was equally recommended by a number of the bar associations of the Commonwealth of Virginia.

I thank the distinguished chairman, Senator LEAHY, and Senator SPECTER for providing the Virginia Senators an opportunity to present Liam O'Grady to the committee and for the committee to act in a very expeditious way and now to bring this nomination to the floor.

Mr. WARNER. I yield the floor and thank the distinguished chairman.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the Presiding Officer. I want the distinguished senior Senator from Virginia to know that, of course, I will be supporting his nominee, Judge O'Grady. This is an example of how quickly we can move judges when Senators work together. In this case, one of the most distinguished Republican Senators,

combined with a distinguished Democratic Member, helped move Judge O'Grady to the top of the list. I predict within the next hour or so he will be confirmed.

Mr. WARNER. Mr. President, I thank my colleague for the kind remarks.

Mr. LEAHY. Mr. President, the Senate continues to make progress today with what I anticipate will be the confirmation of four more lifetime appointments to the Federal bench. Along with Judge O'Grady's nomination to the District Court for the Eastern District of Virginia, we consider three nominations for lifetime appointments to the District Court for the Western District of Michigan, those of Janet T. Neff, Paul Lewis Maloney, and Robert James Jonker. All four nominations are for judicial emergency vacancies, and they all have the support of their home State Senators.

I thank Senators LEVIN, STABENOW, WARNER and WEBB for their work in connection with these nominations.

It is unfortunate that the three nominees for the Western District of Michigan are not already on the bench helping to ease the backlog of cases in that district. All three were reported out of committee last fall, but were left pending on the Senate's Executive Calendar when some on the other side of the aisle blocked their nominations. All three are for vacancies that are judicial emergency vacancies—three emergencies in one Federal district.

The Senators from Michigan had worked with the White House on the President's nomination of three nominees to fill those emergency vacancies.

Working with then-Chairman SPECTER, the Democratic members of the committee cooperated to expedite their consideration and reported them to the Senate last year.

But last year Republicans were objecting to Senate votes on some of President Bush's judicial nominees. According to press accounts, Senator BROWNBACH had placed a hold on Judge Neff's nomination, apparently related to her attendance at a commitment ceremony held by some family friends several years ago in Massachusetts.

The Michigan nominations were not returned to the Senate by the President at the beginning of this year. Instead, their renominations were inexplicably delayed for months.

When they were renominated, Senator BROWNBACH sought another hearing on the nomination of Judge Neff. As chairman, I honored his request. At that second hearing in May, Senator BROWNBACH again questioned Judge Neff extensively about her attending the commitment ceremony of a family friend. I then placed the nomination on our agenda and the Judiciary Committee reported it favorably for a second time.

It is time to act on the group of Michigan nominations at long last. There is a dire situation in the Western District of Michigan. Judge Robert Holmes Bell, Chief Judge of the West-

ern District, wrote to us about the situation in that district, where several judges on senior status—one over 90 years old—continue to carry heavy caseloads to ensure that justice is administered in that district. Judge Bell is the only active judge.

The four nominations before us will bring this year's judicial confirmations total to 25. It is our first day back after the Fourth of July recess, and we have already confirmed one and a half times as many judges as were confirmed during the entire 1996 session when President Clinton's nominees were being reviewed by a Republican Senate majority. That was the session in which not a single circuit court nominee was confirmed.

We have already confirmed three circuit court judges in the early months of this session. As I have previously noted, that also puts us well ahead of the pace established by the Republican majority in 1999 when to this date not a single circuit court nomination had yet been confirmed. This also exceeds the total of 22 judges confirmed in all of 2005.

With these confirmations, the Senate will have confirmed 125 judges while I have served as Judiciary chairman. During the more than 6 years of the Bush Presidency, more circuit court judges, more district court judges, and more total judges have been confirmed while I served as Judiciary chairman than during the tenures of either of the two Republican chairmen working with Republican Senate majorities.

I have listed another four judicial nominations on the agenda for our business meeting later this week and will be noticing another hearing on judicial nominations on July 19. I do not intend to follow the Republican example and pocket filibuster more than 60 of this President's nominees as they did President Clinton's nominees.

The Administrative Office of the U.S. Courts lists 47 judicial vacancies after these nominations are confirmed, yet the President has sent us only 22 nominations for these vacancies. Twenty-five of these vacancies—over-half have no nominee. Of the 13 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for 8 of them. That means over half of the judicial emergency vacancies are without a nominee.

Of the 15 circuit court vacancies, two-thirds are without a nominee. If the President had worked with the Senators from Rhode Island, New Jersey, Maryland, California, Michigan, and the other States with the remaining circuit vacancies, we could be in position to make even more progress.

As it is, we have cut the circuit vacancies nearly in half, from 26 to 15. Contrast that with the way the Republican-led Senate's lack of action on President Clinton's moderate and qualified nominees resulted in circuit court vacancies increasing from 17 to 26 and beyond. During most of the Clin-

ton years, the Republican-led Senate engaged in strenuous efforts to keep circuit judgeships vacant in anticipation of a Republican President. To a great extent they succeeded.

The Judiciary Committee has been working hard to make progress on those nominations the President has sent to us. Of course, when he sends us well-qualified, consensus nominees with the support of his home-State Senators like those before us today, we can have success.

Judge O'Grady is a Magistrate Judge in the U.S. District Court for the Eastern District of Virginia, where he has sat since 2003. Previously, he was a partner in the intellectual property law firm of Finnegan, Henderson, Farabow, Garrett, & Dunner, LLP, an assistant U.S. attorney in the Eastern District of Virginia, an assistant commonwealth attorney for the Commonwealth of Virginia, and a sole practitioner.

Judge Neff has been a judge on the Michigan Court of Appeals, Michigan's intermediate appeals court, since January 1989. Previously, she worked in private practice for several law firms and served as an assistant U.S. attorney for the Western District of Michigan, a commissioner for the Michigan Supreme Court, and an assistant city attorney for the city of Grand Rapids.

Judge Maloney has been a circuit judge on the Berrien County Trial Court in Saint Joseph, MI, since 1996 and previously served as a district judge in the same county. Before taking the bench, he served as special assistant to the director at the Michigan Department of Corrections, a deputy assistant attorney general in the criminal division of the U.S. Department of Justice, and a prosecuting attorney at the Berrien County Prosecutor's Office in Michigan.

Robert James Jonker is a partner at the Grand Rapids, MI, law firm of Warner Norcross & Judd LLP where he has worked since serving as a law clerk to Judge John F. Feikens in the U.S. District Court for the Eastern District of Michigan from 1995–1997. I congratulate Judge O'Grady, Judge Neff, Judge Maloney, Mr. Jonker, and their families, on their confirmations today.

#### EXECUTIVE PRIVILEGE

Mr. LEAHY. Mr. President, I have a very serious matter that I will discuss at this time in my capacity as chairman of the Judiciary Committee. The Presiding Officer is one of the most distinguished members of the Judiciary Committee.

Today, House Judiciary Committee Chairman CONYERS and I received another letter from White House Counsel Fred Fielding responding to duly authorized subpoenas with a blanket assertion of executive privilege.

I had hoped that the Judiciary Committee subpoenas would be met with compliance, not with confrontation. But instead they have been met, yet again, with Nixonian stonewalling that shows this White House's disdain for

our system of checks and balances. This is more stonewalling for a White House that believes it can unilaterally control the other coequal branches of Government. It raises this question: What is the White House trying to hide by refusing to turn over this evidence?

From the outset of this scandal, the President spoke about the firing of U.S. attorneys as if it were a matter handled and decided by the Attorney General, and something Mr. Gonzales would have to explain to Congress and the American people. The President was hands off and arms' length. He had to ask others whether anything was improperly done and relied on a review by White House lawyers for his assertion that nothing improper was done.

This President and the Attorney General have both from time to time expressed confidence that the Congress would get to the bottom of this as if they themselves had no idea what had transpired.

Are we now to understand from the White House claims of executive privilege that, contrary to what the President said, these were decisions made by the President? Is he taking responsibility for this scandal, for the firing of such well-regarded and well-performing U.S. attorneys?

When we had the Attorney General testify under oath, he didn't know who added U.S. attorneys to the list of those to be fired, or the reasons they were added. Somehow they mysteriously arrived on the Attorney General's list. You know, it occurred to me when I flew down from Vermont today and I was looking in the paper, the latest Harry Potter movie is coming out. These mysterious lists sound like something would you see in that movie, not in the White House or the Attorney General's Office.

Indeed, the bottom line of the sworn testimony from the Attorney General, the Deputy Attorney General, the Attorney General's former Chief of Staff, the White House liaison, and other senior Justice Department officials was that while the President was not involved in the decisionmaking that led to the unprecedented firings of several well-performing prosecutors, these people were not responsible either. So I ask, who made these decisions? Was it the political operatives at the White House who set out to severely damage the careers of well-performing U.S. attorneys?

Even this White House cannot dispute the evidence we have gathered to date showing that White House officials were heavily involved in these firings—not only heavily involved in these firings and in the Justice Department's responses to inquiries that I made, the distinguished Presiding Officer made, and others, Republicans and Democrats alike made, about them.

The White House continues to try to have it both ways, but at the end of the day it cannot. The White House cannot block Congress from obtaining the relevant evidence and credibly assert that

nothing improper occurred. They are just saying: Trust us, we did nothing wrong.

Trust us? With the revelations that come out almost every single day of things that tell the American people they should not trust them. What is the White House hiding? Was the President involved, were his earlier statements to the American people therefore misleading and inaccurate? Is this an effort by the White House legal team to protect the White House political operatives whose partisan machinations have been discovered in a new set of White House horrors?

Several weeks ago, after Mr. Fielding first conveyed the President's blank executive claim—and I have yet to hear directly from the President—Chairman CONYERS and I sent a letter to the White House asking for a specific factual basis regarding each document withheld and the normal privilege log that would be shown at the time. I asked the White House to provide this information so that it could substantiate its claim.

For months—and I have not done so precipitously but carefully—I have been giving the White House every opportunity to provide voluntarily the information we have sought. For months the only answer we have received is the same unacceptable "take it or leave it" offer. I have tried to give the White House every opportunity to explain its claims. A serious assertion of privilege—one they honestly believed in—would include an effort to demonstrate to the committee which documents and which parts of those documents are covered by any privilege that is asserted and why. But it is apparent this White House is contemptuous of the Congress and believes it doesn't have to explain itself to anyone—not to the people's Representatives in Congress, but worse yet not to the American people.

The White House's refusal to provide a listing of those documents on which it asserts privilege, and a specific factual and legal basis for the assertion of executive privilege claims, raises even more questions. What is the White House so intent on hiding? What is it they are so afraid of becoming public that they cannot even identify the documents or the dates, authors, and recipients? Would we see the early and consistent involvement of the White House political operatives in what should be independent and neutral law enforcement decisions? Would we see early and consistent involvement of White House political operatives who are trying to manipulate law enforcement?

Nor is the White House content with blanket assertions of privilege regarding matters in its control. It has now reached outside the White House to direct the Republican National Committee not to provide information it has to Congress and has today instructed a former White House official, Sara Taylor, not to cooperate with the

investigation by testifying to the best of her knowledge.

Mr. President, let me explain our attempts to procure the e-mails that White House officials sent using Republican National Committee accounts. At first, they gave the impression that we would be happy to give you those 60,000 of her e-mails, or 130,000 of Karl Rove's but, of course, they were all erased, so we cannot give them to you. When I and others suggested that you cannot erase e-mails like that and that they are in a backup system somewhere else, they sent somebody who works in the White House Press Secretary's Office out to tell the American people that this is a ridiculous claim and that we now have Senators pretending to be computer experts. Actually, no, that is an answer any 12-year-old could have given. What happened? Suddenly, they found, yes, they do have the e-mails. And as we had said, and as any 12-year-old would have said, they weren't erased.

Ms. Taylor is scheduled to testify on Wednesday to comply with a subpoena authorized by the committee. It is unfortunate that the White House is trying to interfere with Ms. Taylor's testimony before the Senate, and they are trying to interfere with Congress's responsibility to get to the truth behind the unprecedented firings of several U.S. attorneys.

Let's review the facts. Sometimes it is good to get outside the hyperbole of politics and just talk about the facts. There is clear evidence that Sara Taylor is one of several White House officials who played a key role in these firings and the administration's response to cover up the reasons behind them when questions first arose. The question I have is this: Why were they so eager to cover up what they did?

There is also clear evidence that Ms. Taylor was part of 66,000 RNC e-mails being kept from the public as part of a White House effort to avoid oversight by ignoring the laws meant to ensure a public record of official Government business. Basically, they are saying the law applies to everybody else, but they are above the law.

I am willing to discuss the matter in good faith with the White House. I have been trying to engage the White House for months in discussions to come to some sort of accommodation. I hope we can do that. I am reluctant to agree to anything, though, that prevents Congress from doing our oversight job effectively. I have been here with six administrations, with Republicans and Democrats alike, and we found ways to work with Congress. Ultimately, even the Nixon administration—the administration that was here before I arrived—found ways.

This administration, unlike all those others, wants to obstruct and obfuscate. We should not lose sight of the fact that this is a serious matter. This is about improper political influence on our justice system. It is about the White House manipulating the Justice

Department into its own political arm. It is about manipulating our justice system to pursue a partisan political agenda. It is about pressuring prosecutors to bring cases of voter fraud to try to influence elections—of sending a partisan operative like Bradley Schlozman to Missouri to file charges on the eve of an election, in direct violation of their own Justice Department guidelines.

It is about high-ranking officials misleading Congress and misleading the American people about their political manipulation of justice. It is about the unprecedented and improper reach of politics into the Department's professional ranks, such as the admission by the Department's White House Liaison, Monica Goodling, that she improperly screened career employees for political loyalty and wielded undue political influence over key law enforcement decisions and policies.

It is about political operatives pressuring prosecutors to bring partisan cases and seeking retribution against those who refused to bend to their political will, such as the example of New Mexico's U.S. attorney, David Iglesias, who was fired a few weeks after Karl Rove complained to the Attorney General about the lack of purported "voter fraud" enforcement cases in Mr. Iglesias's jurisdiction.

Along the way, this subversion of the justice system has included lying, misleading, stonewalling, and ignoring the Congress in our attempts to find out what happened. We know White House officials are involved, but it is difficult to get the facts when the White House, even as of today, refuses to provide even a single witness or a single document.

This administration has instituted an abusive policy of secrecy aimed at protecting themselves from embarrassment and accountability. Apparently, the President and Vice President think they are above the law. In America, nobody is above the law, not even George Bush or DICK CHENEY.

The President has sought to make the Vice President's former Chief of Staff above the law when he granted him a form of amnesty last week. The President chose to override a prosecution, jury trial, conviction, and prison sentence and to excuse his lying to Federal investigators and a grand jury and his perjury, and to reward his silence by giving Mr. Libby what commentators have called a "get out of jail free" card.

The lack of accountability for anyone in the Bush administration has reached new heights—or lows. It is not often that the New York Times and the Washington Times editorial boards agree, but they did about this President's abrupt commutation of Mr. Libby's 30-month prison term for perjury and obstruction of justice. The Washington Times opined that President Bush's action is "neither wise nor just," and it continued in its Independence Day editorial by saying:

Perjury is a serious crime. . . . The integrity of the judicial process depends on fact-finding and truth-telling. A jury found Libby guilty of not only perjury but also obstruction of justice and lying to a grand jury.

I would add that the widely respected trial judge, who was nominated by President Bush and confirmed by the Senate at the time I chaired the committee in 2001, imposed a reasonable sentence which was actually at the lower end of what the prosecutor recommended, and the DC Circuit refused to stay the sentence pending appeal in accordance with the law.

The New York Times in a July 3 editorial entitled "Soft on Crime" called the President's action a "baldly political act," noting that "[a]s president, he has repeatedly put himself and those on his team, especially Mr. CHENEY, above the law." They noted that the President "sounded like a man worried about what a former loyalist might say when actually staring into a prison cell."

That Presidential act sent the message that silence, bad memory, and abject loyalty would be rewarded, just as the mass firings of U.S. attorneys sent the message that all remaining Federal prosecutors and law enforcement had better knuckle under to the political agenda of the administration.

Untoward White House interference with Federal law enforcement is a serious matter. It corrupts Federal law enforcement, threatens our elections, and has seriously undercut the American people's confidence in the independence and evenhandedness of law enforcement.

Despite the attitude of the current administration, our Constitution does not include the phrase "executive privilege" or "unitary executive." What the U.S. Constitution does provide in the oath of office is that the President has to swear to "faithfully execute the Office of President of the United States" and "preserve, protect and defend the Constitution of the United States." His essential duties require him to "take care that the Laws be faithfully executed." I have grave concern with regard to how this administration is fulfilling these sworn and essential duties. The political intrusion into the law enforcement functions of the Government through the scheme to fire and replace our U.S. attorneys is a key part of that concern.

Congress will continue to pursue the truth behind this matter not only because it is our constitutional responsibility but because it is the right thing to do.

I hope the White House stops the stonewalling. I hope they accept my offer to negotiate a workable solution to the committee's oversight needs so we can effectively get to the bottom of what was done wrong and what has gone wrong.

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

The PRESIDING OFFICER (Ms. STABENOW). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, the existing order is to have consideration of four nominees for the U.S. district court. I urge my colleagues to confirm all of them.

The first is Liam O'Grady for the Eastern District of Virginia. I am pleased to see that there are substantial Pennsylvania connections with these nominees. Liam O'Grady received a bachelor's degree from Franklin & Marshall College in Lancaster. I am interested to see his diversification of employment. He was a pension examiner for the United Mine Workers of America, Welfare and Retirement Fund, as well as other outstanding credentials, and was rated unanimously "well qualified" by the American Bar Association.

I ask unanimous consent to have the full records of these nominees printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. SPECTER. Madam President, I think it is unnecessary to speak at length about any of these nominees because they all passed unanimously from the Judiciary Committee, and it would be my expectation, based on prior practices, that they would all be confirmed. I would be surprised if there were any negative votes at all. It may be even possible to abbreviate the proceedings today with some voice votes. That is the decision for the distinguished chairman. We will come to that later.

Mr. LEAHY. I am sorry, what was the question?

Mr. SPECTER. I was commenting that all were passed out unanimously by the Judiciary Committee. I said it was my expectation from prior practice that they would probably be confirmed unanimously. I would be surprised if we have a dissenting vote among the four. And I said I am not going to speak long. I am putting their records into the RECORD. I said it might even be possible to abbreviate the rollcalls. That is the chairman's call.

Mr. LEAHY. Madam President, I will be very happy to do that. I think there are a lot of people who have stacks of paper since we have been gone who would probably be happy to have one or two rollcalls.

Mr. SPECTER. I am sorry, I didn't understand.

Mr. LEAHY. Some may be happy to have one or two rollcall votes and get out of here.

Mr. SPECTER. In accordance with the practice Chairman LEAHY and I adopted in the good old days.

The second nominee, Janet Neff, in the court of the Western District of

Michigan, was born in Wilkinsburg, PA, is a University of Pittsburgh graduate, and is rated “majority qualified,” and others rated “well qualified.” She has an outstanding academic and professional record.

The third nominee is Paul Lewis Maloney, again for the Western District of Michigan, again a Pennsylvania connection. He received a bachelor’s degree from Lehigh University. His ABA rating was unanimously “well qualified.”

The fourth nominee is Robert James Jonker, again from the Western District of Michigan. I am not distressed, but I note no Pennsylvania connection here. But I know the distinguished presiding Senator from Michigan will be relieved to have these three nominees confirmed because there has been a judicial emergency, and on occasion the Congressman from the area has been on the Senate floor urging us to confirm these nominees. I think we will get there today.

#### EXHIBIT 1

##### LIAM O’GRADY

###### UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

###### *Birth*

September 24, 1950; Newark, New Jersey.

###### *Legal Residence*

Virginia.

###### *Education*

B.A., Franklin & Marshall College, 1973.

J.D., George Mason University School of Law, 1977.

###### *Employment*

Pension Examiner, United Mine Workers of America, Welfare & Retirement Fund, 1973-1975.

Attorney Advisor and Law Clerk, Administrative Law Judge George Kourtras, Departments of Interior and Labor, 1976-1979.

Sole Practitioner, Private Practice, 1979-1982.

Assistant Commonwealth’s Attorney, Office of the Virginia Commonwealth’s Attorney, 1982-1986.

Assistant U.S. Attorney, Department of Justice, 1986-1992—Chief of the Narcotics Section (four years); Acting Chief of the Criminal Division (one year).

Adjunct Professor, George Washington University, Columbia Graduate School for Forensic Sciences, 1986-1994.

Partner, Finnegan, Henderson, Farabow, Garrett, & Dunner, LLP, 1992-2003.

U.S. Magistrate Judge, U.S. District Court, Eastern District of Virginia, 2003-Present.

###### *Selected Activities*

Member, Virginia State Bar.

Member, American Bar Association.

Member, George Mason Inns of Court.

Member, American Intellectual Property Law Association.

Member, Arlington County Bar Association.

Coach, McLean Youth Soccer.

###### *ABA Rating*

Unanimous “well qualified.”

###### LIAM O’GRADY—U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

Magistrate Judge Liam O’Grady was initially nominated to be a U.S. District Judge for the Eastern District of Virginia on August 2, 2006. No further action was taken on his nomination in the 109th Congress. Judge O’Grady was re-nominated on January 9,

2007. He received a committee hearing on May 10, 2007, and was favorably reported on May 24, 2007.

He comes before the committee with an impressive resume.

He received a B.A. from Franklin & Marshall College in 1973 and a J.D. from George Mason University School of Law in 1977.

After graduating from law school, Judge O’Grady briefly worked as an attorney advisor to Administrative Law Judge George Kourtras in the Departments of Interior and Labor.

In 1979, Judge O’Grady entered private practice as a sole practitioner. His focus was on domestic relations cases, real estate closings, bankruptcy proceedings, criminal cases, and general civil disputes.

After three years of private practice, Judge O’Grady became an Assistant Commonwealth’s Attorney for the Commonwealth of Virginia. He was the liaison to robbery homicide squad at the police department, and handled many of the homicide cases.

From 1986 to 1992, Judge O’Grady served as an Assistant United States Attorney for the Eastern District of Virginia. In that capacity, he focused on drug conspiracies, drug related homicides, and organized crime. For a one-year stint, as Acting Chief of the Criminal Division, he supervised the criminal cases for the whole district.

Meanwhile, from 1986 to 1994, Judge O’Grady was an adjunct professor at George Washington University’s forensic sciences graduate school, teaching courses in criminal law, evidence, and trial advocacy.

In 1992, Judge O’Grady returned to private practice as a partner for Finnegan, Henderson, Farabow, Garrett & Dunner LLP. As chief litigator, he handled patent, trademark, copyright, and trade secret cases for Fortune 500 clients in courts around the country and the world.

In 2003, Judge O’Grady became a Magistrate Judge for the United States District Court for the Eastern District of Virginia.

The ABA has unanimously rated Judge O’Grady “well qualified.”

#### JANET T. NEFF

###### UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

###### *Birth*

April 8, 1945, Wilkinsburg, Pennsylvania.

###### *Legal residence*

Michigan.

###### *Education*

B.A., cum laude, University of Pittsburgh, 1967.

Omicron Delta Epsilon, National Economics Honor Society.

J.D., Wayne State University Law School, 1970.

###### *Employment*

Tax Examiner, Internal Revenue Service, 1970.

Research Attorney, Michigan Court of Appeals, 1970-1971.

Assistant City Attorney, City of Grand Rapids, 1971-1973.

Associate/Partner, VanderVeen, Freihofer & Cook, 1973-1978.

Commissioner, Michigan Supreme Court, 1978-1980.

Assistant United States Attorney, Western District of Michigan, 1980.

Associate, William G. Reamon, P.C., 1980-1988.

Judge, Michigan Court of Appeals, 1989-Present.

###### *Selected Activities*

Member, U.S. District Court Professional Review Committee.

Member, Michigan Bar Association.

Member, Grand Rapids Bar Association.

Member, Michigan Trial Lawyers Association.

Member, Women Lawyers Association of Michigan.

Member, Association of Trial Lawyers of America.

Member, American Bar Association.

###### *ABA Rating*

Majority “qualified”/minority “well qualified.”

###### JANET T. NEFF—U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

Janet T. Neff was nominated to be a U.S. District Judge for the Western District of Michigan on June 28, 2006. A hearing was held on her nomination on September 19, 2006, and it was reported out of Committee on September 29 by voice vote. The Senate was unable to act on her nomination before the end of the 109th Congress.

President Bush re-nominated Judge Neff on March 19, 2007. A second hearing was held on her nomination on May 10, 2007, and she was favorably reported on May 24, 2007.

She comes before this Committee with a distinguished record of public service.

Judge Neff received a B.A., cum laude, from the University of Pittsburgh in 1967 and a J.D. from Wayne State University Law School in 1970.

Following law school, Judge Neff worked briefly as an estate and gift tax examiner for the Internal Revenue Service (IRS). This position involved review and audit of Federal estate and gift tax returns.

In 1970, Judge Neff accepted a position as a research attorney for the Michigan Court of Appeals, where she reviewed briefs and lower court records.

Beginning in 1971, Judge Neff served as an Assistant City Attorney for the City of Grand Rapids. As Assistant City Attorney, she prosecuted offenses ranging from drunk driving to assaults.

Judge Neff entered private practice in 1973, when she worked as an associate and then a partner at Vander Veen, Freihofer & Cook. She had a broad and varied practice that included insurance, products liability, criminal defense, domestic relations, commercial litigation, bankruptcies, and the representation of numerous municipal governments.

In 1978, Judge Neff became a Commissioner of the Michigan Supreme Court. In that capacity she worked as a staff attorney to the court, conducting research and reviewing applications for leave to appeal, motions, and other matters.

She served as an Assistant U.S. Attorney for the Western District of Michigan in 1980.

From 1980 until 1988, Judge Neff was as an associate with William G. Reamon, P.C., where she handled personal injury cases.

In 1988, Judge Neff was elected as a Judge of the Michigan Court of Appeals where she continues to serve today.

A substantial majority of the American Bar Association Standing Committee rated Judge Neff “qualified,” and a minority rated her “well qualified” for service on the Federal bench.

The seat to which Judge Neff is nominated has been designated a “judicial emergency” by the nonpartisan Administrative Office of the Courts.

The Chief Judge of the U.S. District Court for the Western District of Michigan, Judge Robert Bell, has written the Committee to impress upon us the need to provide his court with another judge. According to the Chief Judge, “with the present three vacancies [he] is the sole active judge.” The Western District of Michigan has the heaviest docket per authorized judgeship in the Sixth Circuit.

## PAUL LEWIS MALONEY

UNITED STATES DISTRICT JUDGE FOR THE  
WESTERN DISTRICT OF MICHIGAN

## Birth

December 15, 1949; Cleveland, Ohio.

## Legal Residence

Michigan.

## Education

B.A., Lehigh University, 1972.

J.D., University of Detroit School of Law, 1975.

## Employment

Assistant Prosecutor, Berrien County Prosecutor's Office, 1975-1981; Prosecuting Attorney, 1981-1989.

Deputy Assistant Attorney General, Criminal Division, United States Department of Justice, 1989-1993.

Special Assistant to the Director, State of Michigan, Department of Corrections, 1993-1995.

District Judge, Berrien County, Michigan, 1995-1996.

Circuit Judge, Berrien County, Michigan, 1996-Present.

## Selected Activities

Member, Michigan Prosecuting Attorneys Association.

Member, Michigan District Judges Association.

Member, Michigan Judges Association (Board of Directors Member for one year).

Member, Michigan Bar Association.

Member, American Bar Association.

Member, Berrien County Bar Association.

Member, Knights of Columbus.

President, Catholic Community Education Commission.

## ABA Rating

Unanimous "well qualified".

PAUL LEWIS MALONEY—U.S. DISTRICT JUDGE  
FOR THE WESTERN DISTRICT OF MICHIGAN

Paul Lewis Maloney was initially nominated to be a U.S. District Court Judge for the Western District of Michigan on June 28, 2006. A hearing was held on his nomination on September 19, 2006, and he was reported out favorably on September 29, 2006, by a voice vote. No further action was taken on the nomination before the 109th Congress adjourned.

Judge Maloney was re-nominated by the President on March 19, 2007, and reported favorably by the Committee on May 24, 2007.

Judge Maloney has an impressive resume reflecting a devotion to public service.

He received a B.A. from Lehigh University in 1972 and a J.D. from the University of Detroit School of Law in 1975.

Following law school, Judge Maloney began working as an assistant prosecutor for the Berrien County Prosecutor's Office. In 1981, he was appointed the county's Prosecuting Attorney and was re-elected in 1982, 1984, and 1988.

In 1989, Judge Maloney left the Berrien County Prosecutor's Office to serve as a Deputy Assistant Attorney General for the Criminal Division of the United States Department of Justice.

Following his work at the Department of Justice, Judge Maloney returned to Michigan to serve as Special Assistant to the Director of Michigan's Department of Corrections.

In 1995, Judge Maloney was appointed District Judge for Berrien County. He held this position for a year, before he was appointed to be Circuit Judge of Berrien County, where he continues to serve.

The American Bar Association rated Judge Maloney unanimously well-qualified, its highest rating.

This vacancy has been designated a "judicial emergency," and, indeed, the Western District of Michigan is in dire need of judges. Currently, there is only one active judge—Chief Judge Bell—out of the four judgeships authorized for the district. Chief Judge Bell wrote letters on December 28, 2006, and April 18, 2007, explaining that he and the senior judges are "exhausted."

ROBERT JAMES JONKER  
UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MICHIGAN

## Birth

March 9, 1960, Holland, Michigan.

## Legal Residence

Michigan.

## Education

B.A., with honors, Calvin College, 1982. J.D., summa cum laude, University of Michigan Law School, 1985; Order of the Coif; Robert S. Feldman Labor Law Award.

## Employment

Law Clerk, Honorable John F. Feikens, U.S. District Court for the Eastern District of Michigan, 1985-1987.

Associate, Warner Norcross & Judd LLP, 1987-1993; Partner, 1994-Present.

## Selected Activities

Fellow, Michigan State Bar Foundation.

Member, Federal Bar Association, Western District Chapter; President-Elect, October 2006; Vice President—Operations, 2 years; Treasurer, 2 years; Executive Board Member, 1999-2006.

Chairperson, Judicial Code Committee of the Christian Reformed Church.

Listed in Best Lawyers in America for Business Litigation.

Member, Grand Rapids Bar Association.

Member, Michigan Bar Association.

Member, American Bar Association.

## ABA Rating

Unanimous "well qualified".

ROBERT JAMES JONKER—U.S. DISTRICT JUDGE  
FOR THE WESTERN DISTRICT OF MICHIGAN

Robert James Jonker was nominated to be a United States District Judge on June 29, 2006. A hearing was held on his nomination on September 19, 2006. His nomination was favorably reported out of the Judiciary Committee on September 29, 2006; however, the Senate failed to act on his nomination prior to the adjournment of the 109th Congress. President Bush renominated Mr. Jonker on March 19, 2007, and the committee favorably reported him on June 7, 2007.

Mr. Jonker received his B.A. with honors, from Calvin College in 1982 and his J.D., summa cum laude, from the University of Michigan Law School in 1985, where he was elected Order of the Coif.

Upon graduation from law school, Mr. Jonker served as a law clerk to the Honorable John F. Feikens of the U.S. District Court for the Eastern District of Michigan. His clerkship lasted from 1985 to 1987.

Following his clerkship, Mr. Jonker accepted an associate position with the Michigan law firm, Warner Norcross & Judd, where he focuses on complex business and environmental litigation.

In 1994, Warner Norcross made him a partner, a position he holds today.

For 6 years, Mr. Jonker has served as chair of the professional staff committee of Warner Norcross, which is responsible for the recruitment, development, retention and review of associate attorneys.

Mr. Jonker was recognized in the Best Lawyers in America for his business litigation expertise.

The American Bar Association has unanimously rated Mr. Jonker "Well Qualified" to serve as a Federal district court judge.

This vacancy has been designated a "judicial emergency." In fact, the Western District of Michigan has the highest weighted case filings in the Sixth Circuit. Currently, there is only one active judge—Chief Judge Bell—out of the four judgeships authorized for the district. Chief Judge Bell wrote letters on December 28, 2006, and again on April 18, 2007, explaining the dire need for judges in the Western District and that he and the senior judges are "exhausted."

## EXECUTIVE PRIVILEGE

Mr. SPECTER. Madam President, I wish to make a comment or two on the subject broached by the distinguished chairman of the committee on the current issue with the challenge on executive privilege where letters were received today from the White House Counsel indicating that executive privilege would be asserted. It is my hope that we will yet be able to resolve this controversy because of the importance of getting the information which the Judiciary Committee has sought in its oversight capacity.

We are dealing with a Department of Justice which I think, fairly stated, is dysfunctional. We have seen the Attorney General of the United States come before the Judiciary Committee and say he was not involved in discussions, not involved in deliberations, and then was contradicted by three of his top deputies, contradicted by documentary evidence in the e-mails.

I think it is generally conceded that the President of the United States has the authority to remove U.S. attorneys for no reason, just as President Clinton did when he took office in 1993, but you cannot remove a U.S. attorney for a bad reason.

There have been questions raised as to the request for the resignation from the U.S. attorney from San Diego, that she perhaps was hot on the trail of confederates of former Congressman Duke Cunningham, who is serving 8 years in jail. I do not know whether that is true. We have yet not had an explanation from the Department of Justice as to why her resignation was requested.

Similarly, a cloud has existed over the reasons for the requested resignation for the U.S. attorney from New Mexico, with some suggestions that he was asked to resign because he would not bring prosecutions for vote fraud when he thought there was no basis, and some of us thought there was a basis. That has not yet been explained, and the request for resignations generally has not been explained.

The Department of Justice is second only to the Department of Defense in importance to the United States. The Department of Justice has the responsibility for investigating terrorism, has the responsibility for investigating and prosecuting drug dealers in international cartels, the responsibility for investigating and prosecuting organized crime and violent crime. Yet it is pretty hard to make a more conclusive description than to say that the Department of Justice is dysfunctional, and the Attorney General insists on