

the people who are truly middle-income people—the people making around \$100,000 a year, or \$80,000 to \$100,000 a year. This includes teachers, firefighters, and police officers. They are going to pay that tax.

According to MIT, the refundable aspect of this tax provision is going to raise about \$300 billion a year. They are not refunding that. So this is another giant problem the President has with his budget.

A couple other concluding points. We have a situation here where we should sit down together and think about our children, our grandchildren. Instead of giving us what we want today, let us think about the debt we are passing on to them. What is that debt like? It is as though we have taken their credit card and we are running up their credit card and they have to pay the finance charges. That means they have to work harder and they have to pay higher taxes in the future to pay those finance charges. This debt adds trillions of dollars in interest payments on their credit card—trillions of dollars.

This is not the direction our country should be going in today. We should be thinking about being fiscally responsible and thinking about future generations, just as generations before us have done.

Madam President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Under the previous order, morning business is closed.

EXECUTIVE SESSION

NOMINATION OF DAVID W. OGDEN TO BE DEPUTY ATTORNEY GENERAL—Resumed

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 bill clerk read the nomination of David W. Ogden, of Virginia, to be Deputy Attorney General.

The PRESIDING OFFICER. Under the previous order, there will be 2 hours of debate equally divided and controlled between the two leaders or their designees.

The Senator from Vermont is recognized.

Mr. LEAHY. I thank the distinguished presiding officer, a good friend from New Mexico.

Mr. President, before I begin on the David Ogden matter, I have been listening to a couple of days of debate not on Ogden but on the budget, and I see these crocodile tears. Oh, my gosh, we might eliminate some of these special tax breaks given to people making over \$250,000 or \$500,000 or \$1 million or \$2 million. My heart breaks for them, it really does, that they do not get all

kinds of special tax breaks, that they might be unwilling to actually give money to charity. But then I look at the people who make \$25,000 or \$30,000 a year—people I see when I go to mass on Sunday, digging deep and putting money in, a far greater percentage of their pocket—and they are not getting any tax break for that. They are not getting a tax break. They take a standard deduction and they give to charity because it helps the people in this country who are in need. These are people who barely have enough money to pay for food for their own families, yet they give to charity.

Let us stop setting up a straw man that somehow the very wealthy among us won't give anything to charity if we remove some of their tax breaks. You either feel a moral responsibility to give to charity or not. It is not because you are doing it to placate the IRS. You do it because it is the right thing to do. It is like the story in the Gospel of the widow's mite. She gave all she had. And to those wealthy who wanted to denigrate what she gave, the Lord said: She gave more than you did because she gave all she had.

So let us not cry, or pull out the world's smallest violin for this. People will give to charity if they feel they can and should help the least among us, not because they are getting some kind of a tax break.

Now, this idea that we must have tax breaks for the wealthiest here, because, after all, that is how we will pay for the war in Iraq—remember the last administration saying: We will give huge tax breaks and that will pay for the war in Iraq. It gave us the biggest deficit in the Nation's history and it precipitated the problems we are having today.

Let us be honest about this. If we give tax breaks, give them to the hard-working men and women in this country who are paying Social Security taxes, who are getting a weekly, or even hourly salary. They are the ones who need the tax breaks. Warren Buffett, one of the wealthiest people in the world, has argued against these huge tax breaks for people like himself. As he pointed out, he pays a lesser percentage of his income to taxes than people cleaning up his office—to janitors in his office; to secretaries in his office.

So let us be honest about this. People give to charity if they feel it is their moral duty, as my wife and I feel it is to give to charity, not because of any tax exemption. Let us be honest about that.

Now, on the other issue, David Ogden. The Senate is finally ready to stop the delaying tactics we have had to put up with and will conclude its consideration of President Obama's nomination of David Ogden to be Deputy Attorney General. We will finally give the nomination an up-or-down vote that in the past, when George Bush was President, Senate Republicans used to claim was a constitutional right of every nominee.

After all, all four of President Bush's Deputy Attorney General nominees were confirmed without a single dissenting vote by Democrats. Notwithstanding that, Senate Republicans have decided to ignore the national security challenges this country is facing since the attacks of 9/11, and they have returned to their partisan, narrow, ideological, and divisive tactics of the 1990s.

In fact, it was the nomination of Eric Holder to be the Deputy Attorney General in 1997 that was the last time a President's choice for Deputy Attorney General was held up in the Senate. He, of course, was also nominated by a Democrat. Senate Republicans have unfortunately returned to their old, tired playbook. They ought to listen to what is best for the country, not what they are told to do by radio personalities.

David Ogden will fill the No. 2 position at the Department of Justice. As Deputy Attorney General, Mr. Ogden is going to be responsible for the day-to-day management of the Justice Department, including the Department's critical role in keeping our Nation safe from the threat of terrorism. He is highly qualified to do so. He is leaving a very lucrative and successful career in private practice, taking an enormous cut in pay to return to the Justice Department, where he previously served with great distinction, and having previously served with such distinction at the Department of Defense.

Senators KAUFMAN, KLOBUCHAR, and DURBIN made statements yesterday in support of the nominee, and I was very pleased to hear these three distinguished Senators speak so highly and favorably of him. Senator SPECTER, the Judiciary Committee's ranking member, also spoke yesterday in support of Mr. Ogden's nomination, and I was very pleased to hear Senator SPECTER's statement. I thank them all.

But after that, I was disappointed at the handful of opposition statements that parroted outrageous attacks against Mr. Ogden that had been launched by some on the extreme right. These attacks from extremists distort the record of this excellent lawyer and this good man. They begin by ignoring the truth, the whole truth, and then mischaracterizing a narrow sliver of his diverse practice as a litigator. Those who contend that Mr. Ogden has consistently taken positions against laws to protect children are unwilling to tell the truth. They chose to ignore Mr. Ogden's record and his confirmation testimony.

What these critics leave out of their caricature is the fact that Mr. Ogden aggressively defended the constitutionality of the Child Online Protection Act and the Child Pornography Prevention Act of 1996 when he previously served at the Justice Department. In private practice, he wrote a brief for the American Psychological Association in *Maryland v. Craig* in which he argued for the protection of child victims of sexual abuse.

For those who talk about how one might help out and do charitable works, let me tell you about his personal life. He has volunteered his time at the Chesapeake Institute, a clinic for sexually abused children. I wonder how many of the people who are out here attacking him have given their own time to help children, especially sexually abused children. As a former prosecutor, I know how much help those children need. I ask those who want to willy-nilly attack him: Have you ever given your money or your time to help these children the way Mr. Ogden has?

In his testimony, he demonstrated his commitment to the rule of law and his abhorrence at child pornography and child abuse. Now, these may be inconvenient facts for those who want to perpetuate a fraud, but they are the truth. That truth has led the National Center for Missing and Exploited Children, the Boys and Girls Clubs of America, and the top law enforcement organizations across the country to support this nomination and reject the misconceived effort of character assassination of this public servant and family man.

We have the former Deputy Attorney General under President Bush supporting him, judge advocates general, the Federal Law Enforcement Officers Association, the Fraternal Order of Police, the Major Cities Chiefs Association, the National Center for Missing and Exploited Children, the National Association of Police Organizations, the National District Attorneys Association—an association where I was honored to serve as its vice president before I was in the Senate—the National Narcotic Officers' Associations' Coalition, the National Sheriffs' Association, the Police Executive Research Forum, the National Center for Victims of Crime, and many others.

In fact, Mr. President, I ask unanimous consent to have printed in the RECORD a list of the 53 letters in support the committee received on this nomination.

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

LETTERS OF SUPPORT FOR THE NOMINATION OF DAVID OGDEN TO BE DEPUTY ATTORNEY GENERAL OF THE UNITED STATES, AS OF MARCH 11, 2009

CURRENT & FORMER PUBLIC OFFICIALS

Beth S. Brinkmann; MorrisonForester, LLP; former Assistant to the Solicitor General. Bill Lann Lee, Lewis, Feinberg, Lee, Renaker & Jackson, P.C.; former Assistant Attorney General, Civil Rights Division. Carolyn B. Lamm; White & Case, LLP; former President, District of Columbia Bar. Carter Phillips; SidleyAustin, LLP; former Assistant to the Solicitor General. Christine Gregoire; Governor, State of Washington. Daniel E. Troy; Senior Vice President and General Counsel, GlaxoSmithKline. Daniel Levin; White & Case, LLP; former Acting Assistant Attorney General, Office of Legal Council; former Assistant United States Attorney. Daniel Price; former Assistant to the President and Department of National Security Advisor for Internal Economic Affairs.

David C. Frederick; Kellogg, Huber, Hansen, Todd, Evans, & Figel, PLLC; former Assistant to the Solicitor General. Deval Patrick; Governor, State of Massachusetts. Douglas F. Gansler; Attorney General, State of Maryland. George Terwilliger; White & Case; former United States Attorney for the District of Vermont; former Deputy Attorney General. H. Thomas Wells, Jr.; Maynard, Cooper, & Gale, PC; President of the American Bar Association. James Robinson; Cadwalader, Wickersham, & Taft, LLP; former Assistant Attorney General, Criminal Division. Jamie S. Gorelick; WilmerHale, LLP; former Deputy Attorney General. Janet Reno; former Attorney General.

Jo Ann Harris; former Assistant Attorney General, Criminal Division. John B. Bellinger, III; former Counsel for National Security Matters, Criminal Division. Kenneth Geller; Mayer Brown, LLP; former Deputy Solicitor General. Larry Thompson; former Deputy Attorney General. Manus M. Cooney; former Chief Counsel, Senate Judiciary Committee. Michael E. Horowitz; Cadwalader, Wickersham, & Taft, LLP; Commissioner of United States Sentencing Commission. Paul T. Cappuccio; Executive Vice President and General Counsel of Time Warner; former Associate Deputy Attorney General. Peter Keisler; SidleyAustin, LLP; former Assistant Attorney General, Civil Division; former Acting Attorney General. Rachel L. Brand; WilmerHale, LLP; Assistant Attorney General for Legal Policy, Department of Justice. Reginald J. Brown; WilmerHale, LLP. Richard Taranto; Farr & Taranto; former Assistant to the Solicitor General. Robert F. Hoyt; former Associate White House Counsel; former General Counsel to the U.S. Treasury Department. Seth Waxman; WilmerHale, LLP; former Solicitor General. Stuart M. Gerson; former Assistant Attorney General, Civil Division. Thomas J. Miller; Attorney General, State of Iowa. Todd Stegerda; WilmerHale, LLP; former Chief Counsel to McCain Presidential Campaign. Todd Zubler; WilmerHale, LLP; former Deputy General Counsel to McCain Presidential Campaign.

Mr. LEAHY. Mr. President, I might say also that some of the Republicans—and they have all been Republicans who have attacked Mr. Ogden—are also applying a double standard. Nominees from both Republican and Democratic administrations and Senators from both sides of the aisle have cautioned against opposing nominees based on their legal representations on behalf of clients. Like many others in this Chamber, I felt privileged to serve as a prosecutor, but I would hate to think I could not have served in that position because, before I was a prosecutor, I defended people who were accused of crimes. I was a lawyer. I wanted to make sure clients were given equal protection of the law. If we start singling out somebody because of their clients, what do you do? Do you say to this person: You defended somebody charged with murder and therefore you are in favor of murder? Come on, let's be honest with where we are.

In fact, when asked about this point in connection with his own nomination, Chief Justice Roberts testified:

... it has not been my general view that I sit in judgment on clients when they come.

... it was my view that lawyers don't stand in the shoes of their clients, and that good lawyers can give advice and argue any side of a case.

Basically, he took the same position David Ogden did. The difference is every single Republican voted for Chief Justice Roberts. Apparently, they do not use the same standard for those nominated by Democrats.

For nominees of Republican Presidents, Republicans demand that their clients and their legal representations not be held against nominees. I have heard this speech in the Judiciary Committee and on the Senate floor by Republicans: You cannot hold their clients against them.

Whoops; screech; stop—the American people elected Barack Obama as President so, suddenly, the Republicans do not want that rule anymore. When the American people elect a Democratic President, they do not want the same rules; they want a double standard.

I will give one example. It is probably the example that stands out the most. Just over a year ago, every Republican in the Senate voted to confirm Michael Mukasey to be Attorney General of the United States. They showed no concern that, according to his own statement, one of his most significant cases in private practice was his representation of Carlin Communications, a company that specialized in what was called "Dial-a-Porn" services.

When a Republican nominee represents someone for Dial-a-Porn, that is just his client. But when a Democratic nominee represents Playboy magazine, oh, that is awful. We are so offended. My gosh, we must have the most delicate sensibilities in America. Talk about a double standard. Where was the outrage then? Where was the debate? Where were the concerns? Where were the questions? Oh, wait just a moment, something just occurred to me. He was nominated by George W. Bush. Mr. Ogden has been nominated by Barack Obama. So when Karl Rove and Rush Limbaugh gave the orders that they were supposed to oppose and hold up Eric Holder, the first African-American Attorney General in this country, they held him up.

Every one of them voted unanimously for Alberto Gonzales, who was finally forced out of office for incompetence. But, oh my goodness, Mr. Ogden has been nominated by a Democrat. What a tough double standard.

If you were going to write something like this for a novel or story, your editor would reject it because it seems to be so far-fetched.

Let's stop the game playing. We had an election last November. If you are going to apply one standard under a Republican President and a different one under a Democratic President, stand up and say: This had nothing to do with what he did, it is just that we want a double standard. We want a different standard.

I have served in the Senate for 35 years. I was honored by my colleagues on both sides of this aisle earlier this week when I cast my 13,000th vote. I worked with both Democrats and Republicans and voted for nominees of

both parties. I like to think I have never applied a double standard.

In Mr. Ogden's case, it is not as though he is only supported by Democrats. His nomination received dozens of letters of support, drawing strong endorsements from both Democratic and Republican former officials and high-ranking veterans of the Justice Department. Larry Thompson, a former Deputy Attorney General himself, who is highly respected in this body, certainly highly respected by me—a Republican nominee—wrote that "David will be a superb Deputy Attorney General."

Chuck Canterbury, the national president of the Fraternal Order of Police, wrote that Mr. Ogden "possesses the leadership and experience the Justice Department will need to meet the challenges which lay before us."

A dozen retired military offices who served as Judge Advocates General endorsed Mr. Ogden's nomination. These are military persons who have been Judge Advocates General. I have no idea whether they are Republicans or Democrats. I just know they served with distinction in our Armed Forces to protect the rights of Americans. Here is what they wrote, that he is "a person of wisdom, fairness and integrity, a public servant vigilant to protect the national security of the United States and a civilian official who values the perspective of uniformed lawyers in matters within their particular expertise."

Mr. Ogden's nomination was reported by a bipartisan majority of the Senate Judiciary Committee 2 weeks ago, having been delayed for several weeks. The vote by the Senate Judiciary Committee was 14 to 5. The senior Senator from Minnesota who is now on the Senate floor was also there. The Assistant Republican leader voted for Mr. Ogden. The ranking Republican on the committee voted for Mr. Ogden. The senior Senator from South Carolina, who served in the Judge Advocate General Corps, voted for him.

I don't know what more you can say. You have these former high-ranking officials, both in the Defense Department and the Justice Department, of both parties, saying he is the kind of serious lawyer and experienced government servant who understands the special role the Department of Justice must fill in our democracy.

We are the Senate. We are supposed to be the conscience of the United States. One hundred of us men and women in this body are privileged to represent 300 million Americans. We not only represent them, we ought to set an example. We ought to say it is time for the slurs and the vicious rightwing attacks to stop. The problems and threats confronting the country are too serious. The problems and threats confronting this country are not problems and threats to just Democrats or just Republicans, they are threats to all Americans.

In the Department of Justice, the Attorney General needs a deputy to help

run and manage that Department, not for the personal needs of the Attorney General but for the needs of 300 million Americans, to help protect every one of us.

Senators should join in voting to confirm this highly qualified nominee, this good man, to be Deputy Attorney General of the United States. Our country will benefit and we in the Senate will show that we actually do know how to do the right thing.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Ms. KLOBUCHAR. Mr. President, I want to acknowledge the great leadership of Chairman LEAHY in his work in getting this very important nomination to the floor of the Senate. I rise once again in support of David Ogden to be the next Deputy Attorney General of the United States of America.

When I drove in to work today, I heard on the news about new developments in the Madoff case, about how some people had thought \$50 billion had been lost in this country, lost to investors, lost to people who had nothing left, lost to some of the charities and charitable organizations in this country who, during this difficult time, are trying to help people in need. They thought it was \$50 billion, but now it was likely \$65 billion was lost because of one man, one man who committed such fraud—one man. That is what is going on in this country today—\$65 billion went through the fingers of the Securities and Exchange Commission, and now it is being prosecuted under the jurisdiction of the Justice Department of the United States.

Look at the other things going on in this country. We have billions of dollars coming out of very important investments in infrastructure and broadband and jobs in new energy in this country. But it is an unprecedented investment in this country. It is something like \$700 billion or \$800 billion going out there, and you have the funds being used to help some of the credit markets get going again. We all know when you put money like that out on the market, there are going to be people who try to do bad things. There are going to be people who will try to steal that money, and we need a Justice Department that will hold accountable these people who are getting the money; a Justice Department that will watch over the taxpayers' money, make sure people like Madoff get prosecuted. That is what we need in this country.

When you see the difficult economic time we are in—people without jobs, people who are desperate—it is no surprise oftentimes you see an increase in economic crimes. We see that happening today.

We look at all those factors—Government taxpayer money going out on the street, the discovery of cases of people who have been ripping people off so long that it is only when economic times get bad that you actually see

there is embezzlement going on, and then the natural, sad, and unfortunate increase in crime because of difficult economic times. All that is going on, and that is why I say we need a fully functioning Justice Department. That means we need a Deputy Attorney General for that Justice Department.

Yesterday, at our Judiciary Committee, the chairman himself said Eric Holder, the Attorney General, is all alone up there. He needs help. It is time to move these nominees.

That is why I question why people at this point would be wanting to delay his process, would want to not put someone who is clearly qualified to do this job into the Justice Department. We need to fill this post right now, and I have full confidence David Ogden is the right man at the right time. Why do I know this?

As I said yesterday, we had a great attorney general's office in Minnesota for years and years under both Republican and Democratic administrations, and then something happened. A Republican-appointed U.S. attorney, Tom Heffelfinger, was a friend of mine, U.S. attorney under George Bush I and II, who left of his own accord. When he left he found out his name was on a list to be fired. He was replaced with someone who didn't have management experience, and that office nearly blew up over a 2-year period with one person in charge.

Now under Attorney General Mukasey we at least have some peace in that office; things have improved. But I saw firsthand, when you put someone who is not necessarily qualified in a job, when you put someone in who is not putting the interests of the State first, I can see what happened. So Eric Holder and his deputies and those who work for him have a big job on their hands.

They not only have these white-collar crimes and these enormous issues to deal with, they also have a morale issue in the Justice Department. And no one, no one says that is not true.

The way you fix morale in an institution as big as the Justice Department is you put people in place who have the respect of those who are working for them. Look at the numbers. The Department of Justice has more than 100,000 employees and a budget exceeding \$25 billion.

Every single Federal law enforcement reports to the Deputy Attorney General, the nomination we are considering today, including the FBI, the Drug Enforcement Administration, including the Bureau of Prisons, and all 93 U.S. Attorneys Offices in this country.

So what do we have here in David Ogden? Well, we have someone who has broad experience in law and in government: went to Harvard Law School, clerked for Justice Harry Blackmun—a Minnesotan, may I add—he has been in the public sector as a key person in the Justice Department under Attorney General Reno. He is someone who also

has had private sector experience. I personally like that, when someone has been in Government and they have also had some private sector experience representing private clients as well. He is an openminded and moderate lawyer with broad support from lawyers of all political and judicial philosophies. So here you have someone with 6 years of leadership in the Department when the Department's morale was, by all accounts, good. We need to put him back in that Department.

I know that people on the other side of the aisle—there are a few of them—have raised issues about clients he had in the past. I can tell you as a lawyer, I think any lawyer—and there are plenty of lawyers in this Chamber—has, in fact, represented clients they might not quite agree with, and they need to make sure the ethical rules are followed.

I know as a prosecutor I chose to represent the State. But there was no one I admired more than those defense lawyers who were representing people who were charged with crimes. I did not choose to do that side, but many people did. In our system in the United States of America, when someone gets in trouble or someone needs a lawyer, that is your job as a lawyer. I think that if we use some kind of standard that we are going to throw people out of this Chamber because of clients they had represented whom we did not agree with or things they personally had done, it would be a very different Chamber.

I think people should be very careful about charges they make and decisions they make about reasons. They can oppose a nomination of someone if they want, but it better be for the right reasons. I believe we have the right reasons here.

I know Chairman LEAHY just quoted this, but it is very important to remember. At his own confirmation hearing, Chief Justice Roberts said:

The principle that you don't identify the lawyer with the particular views of the client, or the views that the lawyer advances on behalf of a client, is critical to the fair administration of justice.

He went on to say:

It was my view that lawyers don't stand in the shoes of their clients, and that good lawyers can give advice and argue any side of a case. It has not been my general view that I sit in judgment on clients when they come to me. I viewed that as the job of the Court when I was a lawyer. And just as someone once said, you know, it's the guilty people who really need a good lawyer, I also view that I don't evaluate whether I as a judge would agree with a particular position when somebody comes to me for what I did, which was provide legal advice and assistance.

So that is what we are talking about here. We have someone in this candidate who has broad support from people who have served in his role under both Democratic and Republican Attorneys General. We have someone who has the endorsement of the Fraternal Order of Police, a major law enforcement organization, and someone who

has the endorsement of the Center for Missing and Exploited Children.

While at the Department of Justice, David Ogden also led the Government's defense of various antipornography statutes against constitutional attack, even arguing forcefully against the positions taken by some of those people he had formerly represented.

For example, while at the Civil Division, David Ogden defended the Child Online Protection Act of 1998, which aimed to protect children from harmful material on the Internet by requiring pushers of obscene material to restrict their sites from access by minors. Under David Ogden, the Civil Division of the Justice Department aggressively defended that statute.

While he was head of the Civil Division, David Ogden also defended the Child Pornography Prevention Act, which expanded the ban on child pornography to cover virtual child pornography. I know this as a prosecutor. I know how damaging this is. We had cases where people who were preying on children would actually see their images on the Internet, would figure out who they are. We had one case where we went after someone who met a kid at the mall whom he met on the Internet. Then the police looked at all of those images that were on that guy's Internet site, and they actually traced them to another kid who did not even know her picture was on that Internet site. That is what we are talking about—explicit images that appear to depict minors but were produced without using any real children, or perhaps using a real child and putting them in the imagery, computer-generated imagery. That is what David Ogden did, he protected these statutes. He defended these statutes, and he will continue to do that at the Department of Justice.

This strong support for families and children is why David Ogden received the National Center for Missing and Exploited Children's endorsement, the Boys and Girls Club of America's endorsement, and, of course, because of his work with law enforcement, the Fraternal Order of Police and the Partnership for a Drug-Free America. You think these organizations just come and willy-nilly put their names on an endorsement, those organizations, venerable organizations that have been here for so long? No. They would not put their name on the endorsement of anyone who did not consider the protection of children as one of their paramount goals. They know David Ogden will do that. They know what I know: David Ogden is a man of integrity and commitment to the rule of law. He is someone who will work with our Attorney General, Eric Holder, to restore credibility to the Justice Department, to restore morale, to make it the kind of place where lawyers, the kids coming out of law school, say: That is where I want to work. I want to go work for Eric Holder and David Ogden.

That is what we need restored in our Justice Department. That is why we

need to move this along the Senate floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I thank the Senator from Minnesota. She is one of the newest additions to the Senate Judiciary Committee. She has already improved the quality of our committee by just being there.

Obviously, having former prosecutors on the committee is something I have searched for and am happy to have. I appreciate what she has brought to us. She was in an era when as a prosecutor she faced things I did not have to, such as the online threats to young people, and she understands what she is saying.

I see my good friend from Tennessee on the floor.

I yield the floor.

Mrs. FEINSTEIN. Mr. President, I rise to speak in support of the nomination of David Ogden to be Deputy Attorney General of the United States.

There is simply no excuse for the delay in confirming Mr. Ogden.

In 2004, when the 9/11 Commission issued its report on national security issues, it specifically recommended that the Deputy Attorney General and other national security nominees be confirmed without delay.

Let me quote from the Commission's report:

Since a catastrophic attack could occur with little or no notice, we should minimize as much as possible the disruption of national security policymaking . . . by accelerating the process for national security appointments.

The report said the President-elect should make his nomination by January 20—which President Obama did, he nominated Ogden on January 5—and the Senate should finish considering the nominee within 30 days.

But 66 days later, this nomination is still pending.

It is time to get Mr. Ogden in his post so the Department of Justice can get to the important work ahead.

David Ogden is an extremely strong nominee, and the Deputy Attorney General is a critical official in the Justice Department.

The Deputy Attorney General is the second-ranking position in the Department and plays a large role in national security issues.

His responsibilities include overseeing the closing of the detention facility at Guantanamo Bay and the transfer of the remaining 245 detainees to new locations, signing FISA intelligence applications, and coordinating responses to terrorist attacks.

He is also responsible for the day-to-day management of the Justice Department's more than 100,000 employees and its budget of over \$25 billion. And he manages the criminal division, the FBI, and the over 90 U.S. attorney's offices nationwide.

This is a critical position both for the enforcement of our criminal laws

and for keeping Americans safe from harm.

President Obama has chosen David Ogden to be the Deputy Attorney General, and his record shows why:

Ogden is a Harvard Law School graduate, and a former clerk to a U.S. Supreme Court Justice.

He is a nationally recognized litigator with over 25 years of experience and the cochair of the Government and Regulatory Group at one of DC's top law firms.

Mr. Ogden is also a former Deputy General Counsel and legal counsel at the U.S. Department of Defense, where he received the highest civilian honor you can receive—the Department of Defense Medal for Distinguished Public Service.

And he is a former Associate Deputy Attorney General, chief of staff and counselor to the Attorney General, and Assistant Attorney General for the Civil Division at the Department of Justice.

David Ogden knows the Department of Justice inside and out, and he has already proven that he can be an effective leader.

In fact, over 50 individuals and groups have written in to support this nomination.

Ogden has the endorsements of:

the Federal Law Enforcement Officers Association, the Fraternal Order of Police, the Major Cities Chiefs Association, the National Association of Police Organizations, the National District Attorneys' Association, the National Narcotic Officers' Association Coalition, the National Sheriffs' Association, the Community Anti-Drug Coalitions for America, the National Center for Missing and Exploited Children, the National Center for Victims of Crime, the Judge Advocates General, the Boys and Girls Club of America, and the Partnership for a Drug-Free America.

The letters state again and again that Ogden was a standout public servant before and that he is highly qualified for the position of Deputy Attorney General.

Let me read just a few remarks from officials who served in Republican administrations: Paul Cappuccio, the Associate Deputy Attorney General under George H.W. Bush, has written:

I consider myself a judicial and legal conservative, and believe it is important to appoint high-quality individuals who will uphold the rule of law. In my view, David Ogden is . . . a person of the highest talent, diligence, and integrity. He is, in my view, an excellent pick.

Larry Thompson, who was Deputy Attorney General under George W. Bush, has said that Ogden is "a person of honor who will, at all times, do the right thing for the Department of Justice and our great country."

And from Richard Taranto, a high-ranking DOJ lawyer under President Reagan: "The country could not do better."

This is very strong support for Ogden. I also hope that my colleagues will look closely at his track record as a public servant.

During the Clinton administration, Ogden proved himself at every turn. In addition to being promoted three times to high level positions—from Associate Deputy Attorney General to Chief of Staff to Assistant Attorney General—he also received the Attorney General's Medal in 1999 and the Edmund J. Randolph Award for Outstanding Service in 2001. He took the lead on a landmark lawsuit against the cigarette companies for lying to the American people about the health risks of smoking. Under his guidance, the Civil Division recovered more than \$1.5 billion in taxpayer money from Government contractors in the health care industry and elsewhere that had overbilled the government and defrauded the American people. And he vigorously defended the Child Pornography Prevention Act of 1996 and the Child Online Protection Act of 1998.

This is a nominee who has proven himself in Government.

In his confirmation hearing, Ogden also laid out his priorities for the future. He said his top priorities will be protecting the national security, restoring the rule of law, and restoring nonpartisan law enforcement at DOJ.

He told us that he is committed to making sure that DOJ fights financial, mortgage and securities fraud effectively.

And he pledged in no uncertain terms that if confirmed he would "recommend that protecting children and families should be a top priority, including through the prosecution of those who violate federal obscenity laws."

In a 2001 speech at Northwestern Law School, Ogden explained to a group of students that a government lawyer's client is not "the President, the Congress, or any agency, although the views of each may be extremely relevant," his client is the people of the "United States."

The American people will be well served by having David Ogden on our side. He is an outstanding lawyer and a dedicated public servant.

It has been 66 days since President Obama nominated David Ogden to be the Deputy Attorney General.

He is a good nominee that should not be held up. Let's let him get to work without any further delay.

Mr. COBURN. Mr. President, I would like to take a minute to briefly discuss my opposition to the nomination of David Ogden to be Deputy Attorney General of the United States.

First, however, I would like to take a minute to respond to allegations made yesterday by Senator LEAHY, who criticized the "undue delay" of David Ogden's nomination and further stated that "It was disturbing to see that the president's nominee of Mr. Ogden to this critical national security post was held up this long by Senate Republicans apparently on some kind of a partisan whim." There was no such delay. I would like to set the record straight on the Senate's prompt consideration of this nominee.

President Obama announced Mr. Ogden's nomination on January 5, but the Judiciary Committee did not receive his nomination materials until January 23, and he was not officially nominated until January 26. The committee promptly held a hearing on his nomination on February 5, just 13 days after receiving his nomination materials. His hearing record was open for written questions for 1 week, until February 12, and Mr. Ogden returned his responses on February 18 and 19.

Following Mr. Ogden's hearing, the Judiciary Committee received an unprecedented number of opposition phone calls and letters for a Department of Justice nominee. In total, the committee has received over 11,000 contacts in opposition to his nomination. Despite this overwhelming opposition, the committee promptly voted on Mr. Ogden's nomination on February 26.

I would note that the week prior to the committee's vote on Mr. Ogden's nomination was a recess week and was the same week the committee received Mr. Ogden's answers to his written questions. Per standard practice, the committee could not have voted on him prior to February 26 because the record was not complete.

Rather than hold this controversial nomination over for a week in committee, which is any Senator's right, Republicans voted on Mr. Ogden's nomination the first time he was listed, on February 26. Five of the eight committee Republicans voted against his nomination, a strong showing of the concern over Mr. Ogden's nomination.

And now, just 45 days after Mr. Ogden was nominated and despite significant opposition, the Senate is poised to vote on his confirmation.

Even giving Democrats the benefit of the doubt and allowing that Mr. Ogden's nomination was announced on January 5, 66 days ago, the Senate is still acting as quickly as it has on past Deputy Attorney General, DAG, nominees. On average since 1980, Senators have been afforded 65 days to evaluate DAG nominees. Further, Senators were afforded 85 days to evaluate the nomination of Larry Thompson, President Bush's first DAG nominee and 110 days to evaluate the nomination of Mark Filip. Yesterday, Senator Leahy said he had "urged" the "fast and complete confirmation" of Mark Filip and that "he was." If 110 days was a "fast" confirmation, then how is 66 days an "undue delay?" In short, I take issue with the chairman's characterization of any "undue delay" on this nomination.

As a member who shares the concerns of the thousands of individuals who have called the committee, I would now like to explain my opposition to David Ogden's nomination to be Deputy Attorney General.

If confirmed, Mr. Ogden would be the second-highest ranking official in the Department of Justice. The Deputy Attorney General possesses "all the power and authority of the Attorney

General, unless any such power or authority is required by law to be exercised by the Attorney General personally.” He supervises and directs all organizational units of the Department, and aides the Attorney General in developing and implementing Departmental policies and programs. To say the least, this is an important position.

America is entitled to the most qualified and judicious person to fill such a crucial role. My concern is that David Ogden falls short of those expectations.

Mr. Ogden is undoubtedly a bright and accomplished attorney. Although he lacks criminal trial experience that would be helpful in overseeing DOJ components such as the Criminal Division, National Security Division, U.S. Attorneys’ Offices, FBI, and DEA, it appears he is fit to serve as Deputy Attorney General.

My concern is with his views on some of the most important issues within the Department’s purview. During Mr. Ogden’s time as an attorney in private practice, he vigorously defended very sensitive and controversial issues such as abortion, pornography, the incorporation of international law in Constitutional interpretation, and the unconstitutionality of the death penalty for minors.

While I recognize that lawyers should not necessarily be impugned for the views of their clients, I am particularly concerned about a pattern in Mr. Ogden’s representations, namely his work on obscenity and pornography litigation. In these cases, Mr. Ogden has consistently argued the side of the pornography producers, opposing legislation designed to ban child pornography, including the Children’s Internet Protection Act of 2000 and the Child Protection and Obscenity Enforcement Act of 1998.

At his hearing and in response to written questions, Mr. Ogden maintained that the views he advocated in these cases were those of his client, and not necessarily his own. While I accept this as plausible, I am unsatisfied with Mr. Ogden’s unwillingness to answer my specific questions about his own personal beliefs. Discerning such personal views is crucial to adequately evaluating a nominee who may be charged with enforcing the very laws he has opposed in the past.

It would not have been hard for Mr. Ogden to distance himself from some of the extreme views he advanced on behalf of his clients. For example, in his brief for the American Psychological Association in *Casey v. Planned Parenthood*, he wrote:

it is grossly misleading to tell a woman that abortion imposes possible detrimental psychological effects when the risks are negligible in most cases, when the evidence shows that she is more likely to experience feelings of relief and happiness, and when child-birth and child-rearing or adoption may pose concomitant (if not greater) risks of adverse psychological effects for some women depending on their individual circumstances.

I was disappointed—and somewhat shocked—that, given an opportunity to respond to such a statement, the best Mr. Ogden could offer was further clarification that he was representing the views of client. When pressed for his personal views on the matter, he refused to answer. As a result, I am left to guess at what this nominee’s views are on a matter of critical importance.

Similarly, I asked Mr. Ogden whether he believes that adult obscenity contributes to the sexual exploitation of children in any way. Further, I asked him whether he personally believes that adult obscenity contributes to the demand for prostitutes, and/or women and children who are trafficked into prostitution. His curt response was the same for both questions: “I have not studied this issue and therefore do not have a personal belief.” It is hard to believe that a lawyer who devoted significant time and energy throughout his career to representing the pornography industry would not have an opinion on these issues.

In response to my question about whether he personally believes there is a Federal constitutional right to same-sex marriage, he replied: “I have not studied this issue and therefore have not developed a personal view as to whether there is a constitutional right to same-sex marriage.” I simply find it hard to believe that a lawyer of the caliber and experience possessed by David Ogden has not thought about matters of such widespread public debate.

In short, although I am impressed by Mr. Ogden’s credentials, his lack of candor in response to my questions leaves me guessing about the approach he will take to these and other sensitive issues at the Department of Justice. While former clients or advocacy should not necessarily disqualify a lawyer from such positions, David Ogden did not do enough to distance himself from controversial views he advocated in the past, often against the interests of the government. Therefore, Mr. Ogden’s performance throughout this nomination process is not enough to overcome the unfortunate presumptions created by his record of representation. I am unable to support his nomination.

THE PRESIDING OFFICER. The Senator from Tennessee.

MR. ALEXANDER. Mr. President, I ask unanimous consent to speak for up to 15 minutes as in morning business, with the time charged to the Republican side on this debate.

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

SECRETARY GEITHNER

MR. ALEXANDER. I thank the Senator from Vermont.

Mr. President, this morning Secretary Geithner appeared before the Budget Committee. He had good humor. He was resilient. He did a good job in his testimony. He said, a variety of times, approximately this: There would be no economic recovery until

we fix the banks and get credit flowing again.

I would like to make a constructive suggestion to our new President, who I think is an impressive individual, and to Secretary Geithner, because while that may be the goal of the Government, the country is not yet persuaded that the Government will do that or can do that.

I asked Secretary Geithner whether he is familiar with a book by Ernest May, a longtime professor at the Kennedy School of Government at Harvard University. The book is called “Thinking in Time: The Uses of History for Decision Makers.” The reason I asked Secretary Geithner about that was because Ernest May’s book ought to be required reading for any governmental decision maker. The thesis of the book is that any crisis one may be presented—if you are Secretary of Treasury, Secretary of Defense—usually has something in history to teach you a lesson. For example, if you are the Kennedy administration dealing with the Cuban missile crisis in the early 1960s, you may want to look back to Hitler’s invasion of Rhineland in 1936 to see whether we should have stopped him then and avoided, perhaps, World War II.

Professor May often says one has to be very careful in thinking about the different analogies because you might pick up the wrong analogy and the wrong lesson from history. I would like to suggest to the President and to the Secretary of Treasury, in the spirit of Professor May’s book, a couple of analogies from history that I believe would help this country deal with the banking crisis, deal with getting credit flowing again, and begin to get us back toward the economic recovery that we all want for our country and that we very badly need.

The first example comes from President Franklin Delano Roosevelt, who was elected after a deep recession, and maybe even a depression was already underway, much worse than today. Mr. President, 5,000 banks had failed, and deposits were not insured. What did President Roosevelt do? He did one thing: Within 2 days after taking the oath of office, he declared a bank holiday, from March 6 to March 10, 1933. Banking transactions were suspended across the Nation except for making change. He presented Congress with the Emergency Banking Act. The law empowered the President, through the Treasury Department, to reopen banks that were solvent and assist those that were not. The House passed it after 40 minutes of debate, and the Senate soon followed. Banks were divided into categories. On the Sunday evening before the banks reopened, the President addressed the Nation through one of his signature fireside chats. The President assured 60 million radio listeners in 1933 that the crisis was over and the Nation’s banks were secure. By the beginning of April, Americans confidently returned \$1 billion to the

banking system; the bank crisis was over. Now, there was a lot more to come. That was not the end of the Great Depression, but it was the end of the bank crisis, and it came because of swift and bold Presidential leadership.

The lesson I would suggest from that analogy to our nation's history, is that President Roosevelt did not try to create the Tennessee Valley Authority and the Civilian Conservation Corps and the PWA and the WPA and pack the Supreme Court all in the first month of his term of office.

He declared a banking holiday within 2 days after taking office. He assured the country that he would fix the problem. He went on the radio not for the purpose of talking about the whole range of problems but to say, on March 12, 1933: I want to talk for a few minutes to the people of the United States about banking. And he explained what was going on. He said: We do not want and we will not have another epidemic of bank failures. He said: We have provided the machinery to restore our financial system.

The people believed him. They put money back in the banks because the American people were looking for Presidential leadership at that moment. They knew that the Congress or the Governors or other individuals in the country could not fix the bank problem. They knew the President had to fix it. When the President took decisive action and said he would fix the problem, the country responded and that part of the problem was fixed. The bank crisis was over. That is analogy No. 1.

Analogy No. 2—and I believe the analogy is closer to today's challenge facing President Obama and Secretary Geithner and all of us, really—is President Eisenhower's speech in October 1952 in which he declared he would end the Korean war. I'd like to read a paragraph from that speech because it seems to me so relevant to the kind of Presidential leadership that might make a difference today.

President Eisenhower said:

The first task of a new administration will be to review and re-examine every course of action open to us with one goal in view: to bring the Korean war to an early and honorable end.

In these circumstances today, one might say to bring the bank crisis and the credit freeze to an early, honorable end.

President Eisenhower, then a general, not President, said:

This is my pledge to the American people. For this task a wholly new administration is needed. The reason for this is simple. The old administration cannot be expected to repair what it failed to prevent.

In other words, the issue in the Presidential election of 1952 was change. That is also familiar. It just happened to be the Republicans arguing for change at the time.

Then the President said:

That job requires a personal trip to Korea. I shall make that trip. Only in that way

could I learn how best to serve the American people in the cause of peace. I shall go to Korea.

On November 29, in the same month he was elected to the Presidency, Dwight D. Eisenhower left for Korea.

The lesson from that instance in history, as Ernest May would have us look at, is not that President Eisenhower ended the Korean war by Christmas or even by Easter of the next year. The lesson is that he told the American people he had one objective in mind. Of all the things going on in 1952— inflation and other problems—he focused on the one that only a President could deal with. He did it in memorable terms. We remember the phrase today: I shall go to Korea. The people believed him. They elected him. They relaxed a little bit. The war was ended, and the 1950s were a very prosperous time.

I wish to make this a constructive and, I hope, timely suggestion because the President and the Secretary are about to tell us what they are going to do about banks. What I would like to suggest is this: they don't need to scare us anymore. Back in Tennessee, we are all pretty scared. There are a lot of people who are not sure what is going to happen with the banks. They don't need to explain the whole problem to us anymore. That is not what leaders do. Leaders solve problems. Maybe it needs to be explained enough so we grasp it, but basically Americans are looking for Presidential leadership to solve the problem.

I don't think we have to be persuaded that our impressive new President is capable of doing more than one thing at a time. He may have shown that better than anybody else in history. We have already had two summits—one on health and one on fiscal responsibility. I was privileged to attend one of the summits. I thought it went very well. The President has repealed some of President Bush's orders that he didn't agree with on the environment and stem cell research. The President has been out to a wind turbine factory in Ohio talking about energy. He has persuaded Congress to spend a trillion dollars, over my objection, but still he was able to do that in the so-called stimulus bill. The new Secretary of Education has worked with the President, and he made a fine speech on education the other day. He is doing a lot of things. A lot of things need to be done.

The point is, there is one overriding thing that needs to be done today, and that is to fix the banks and get American credit flowing again. President Roosevelt didn't create the Tennessee Valley Authority and the CCC and the WPA during the bank holiday. He fixed the banks. So my respectful suggestion is that our impressive, new President say to the American people as soon as he can, in Eisenhower fashion: I will fix the banks. I will get credit flowing again. I will take all these other important issues facing the country—health care, education, energy, on which I am

eager to work—and I will make them subordinate to that goal. In the spirit of President Eisenhower: I will concentrate my full attention on this goal until the job is honorably done; that job being, fixing the banks and getting credit flowing again.

I genuinely believe that if this President did that, if he, in effect, made that speech, cleared the decks, gathered around him the bright people he has around him and said to the American people: Don't worry, a President can do this and I am going to. That statement would be the beginning of the economic recovery. Because lack of confidence is a big part of our problem. This crisis began with \$140 oil prices. That was, in the words of FedEx chairman Fred Smith, "The match that lit the fire." Then there was the housing subprime mortgage crisis and then banking failures.

Now, even in strong community banks in Tennessee, we have people who are out of work and who can't pay their small business loans or student loans. Some of those banks are beginning to have some problems.

We need to interrupt this train. We only have one person who can do it. A Senator cannot do it. The Vice President cannot do it. The Secretary of the Treasury cannot do it. No Governor can do it. The President can; only he can do it. Even though he may be able to do many things well at one time, he needs to do one thing until the job is honorably done.

My respectful suggestion is that Ernest May's book, which reminds leaders to think in terms of history, "Thinking in Time," is a powerfully apt book for these times. As the Secretary and the President and his advisers think about how to present to the American people what their plan is, they should remember that a part of it is not only developing a strategy. The most important part is persuading at least half the people they are right. I believe that means clearing the deck: no more summits, no more trips in other directions. Focus attention on the problem facing the country until the job is honorably done.

In Eisenhower fashion, I hope the President will say: I will fix the banks. I will get credit flowing again. I will concentrate my attention on that job until it is done.

I yield the floor, suggest the absence of a quorum, and ask unanimous consent that the time during the quorum be split evenly between the parties.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that my time be charged equally to both sides.

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

MR. WHITEHOUSE. Mr. President, I come to the floor today to urge my colleagues to support the nomination of David Ogden to be our Deputy Attorney General. In doing so, I will make a few brief points.

First, Mr. Ogden is extraordinarily qualified as a lawyer. He has served as the Assistant Attorney General in charge of the Civil Division, as the Chief of Staff to Attorney General Janet Reno, as the Associate Deputy Attorney General, and as Deputy General Counsel over at the Department of Defense. He has a distinguished government record.

He has also been a distinguished lawyer in the private sector, as evidenced by his position as cochair of the Government and Regulatory Litigation Group at the law firm of WilmerHale. His qualifications for this important position as Deputy Attorney General are exemplified by the support of former Deputy Attorneys General of both parties.

Republican Larry Thompson said:

David is a person of honor who will, at all times, do the right thing for the Department of Justice and our great country. As a citizen, I am extremely grateful that a lawyer of David's caliber again offers himself for public service.

Democrat Jamie Gorelick wrote that David Ogden "is a man of unusual breadth and depth who is as well prepared to help lead the Department as anyone who has come in at the outset of a new administration can possibly be."

Second, now more than ever, the Department needs a competent Deputy Attorney General. I will not go back and review the long sad litany of problems—to put it mildly—we saw in the Bush Justice Department. But the incompetence and politicization that ran rampant through that building must never be repeated.

The Deputy Attorney General is the second ranking member at the Department, and some have compared the position to a chief operating officer. We need in that office a person who understands what makes the Department of Justice such an important and unique institution, who is committed to restoring the Department's honor and integrity, who will act independent of political pressure, and who understands the levers within the building that need to be pulled to get things done. Based on my review of his background and based on his confirmation hearings and based on my personal conversations with David, I believe him to be such a man.

I commend Chairman LEAHY for his determination to confirm as many Department nominees as quickly as possible. The Department has more than 100,000 employees and a budget exceeding \$25 billion. It is also tasked with confronting the most complex and difficult legal challenges of our day. The Attorney General must have his leader-

ship team in place as quickly as possible. It is March 12 and the Attorney General does not have his Deputy confirmed by this body. Despite some very unfortunate delay tactics that have taken place, Chairman LEAHY is doing all he can to move these nominees in a careful, deliberate, and expeditious manner. I commend him for that effort and I look forward to supporting him in that effort.

I would also add that as a Senator I have found some of the comments that have been made about Mr. Ogden to be very troubling, and certainly not the sort of debate I had in mind when I ran to be a Senator. Everybody here who is a lawyer knows that a lawyer in private practice has a duty—a duty—to zealously advocate—to zealously advocate—the position of his client. What makes our system great is that you don't have to win a popularity contest as a client before you can get a zealous advocate for your position. Every lawyer is under a duty to zealously advocate their client's position.

So to take a lawyer who has served in private practice with great distinction and attribute to him personally the views of clients is plain dead wrong and strikes at the heart of the attorney-client relationship that is the basis of our system of justice. It is a terrible mistake to do that, and particularly to exaggerate those positions to the point where he has been accused of supporting things such as child pornography. It is an appalling misstatement. The major organizations that concern themselves with the welfare of children in this country support David Ogden. That should put these false claims to rest. However, I do very much regret that the level of debate over someone such as David Ogden in this historic body has come to a point where those sorts of charges are being thrown out, completely without factual basis and, in many respects, in violation of what we should as Senators understand to be a core principle, which is that a lawyer is bound to advocate for his client and to do so does not confer upon the lawyer the necessity of agreeing to those views.

As somebody who spent a good deal of time in public service as a lawyer and who has spent some time in private practice as a lawyer as well, I can tell my colleagues that one of the reasons people come to public service is so they can vindicate the public interest. David, as Deputy Attorney General, I have no doubt whatsoever will serve in a way that vindicates the public interest, that protects children, that protects our country, and that serves the law.

I appreciate the opportunity to say this, and I yield the floor.

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

MR. SPECTER. Mr. President, I have sought recognition to discuss briefly the pending nomination of David Ogden to be Deputy Attorney General. I had spoken on the subject in some detail 2 days ago, and my comments appear in the CONGRESSIONAL RECORD. But I wish to summarize my views today and also to respond to an issue which has been raised about undue delay on Mr. Ogden's nomination. There has been no such delay, and I think that is conclusively demonstrated on the record.

President Obama announced Mr. Ogden's nomination on January 5, but the Judiciary Committee did not receive the nomination materials until January 23, and he was not officially nominated until January 26.

Then the committee promptly held a hearing on his nomination on February 5, 13 days after receiving his nomination materials. His hearing record was open for written questions for 1 week, until February 12, and Mr. Ogden returned his responses on February 18 and 19.

Following Mr. Ogden's hearing, the Judiciary Committee received an unprecedented number of opposition calls and letters—over 11,000 contacts in opposition to the nominee, unprecedented for someone in this position. Despite this opposition, the committee promptly voted on Mr. Ogden's nomination on February 26.

I note that the week prior to the committee's vote on Mr. Ogden's nomination was a recess week, and it was the same week the committee received Mr. Ogden's answers to his written questions. As is the standard practice, the committee would not have voted on him prior to February 26 because the record was not complete.

Rather than hold this nominee over for a week in committee, which is any Senator's right, Republicans voted on Mr. Ogden's nomination for the first time it was listed, on February 26. And now, 45 days after Mr. Ogden was nominated, the Senate is poised to vote on his nomination.

Even allowing that Mr. Ogden's nomination was announced on January 5—66 days ago—the Senate is still acting as quickly as it has on past Deputy Attorneys General.

On average, since 1980, Senators have been afforded 65 days to evaluate Deputy Attorney General nominees. Senators were afforded 85 days to evaluate the nomination of Larry Thompson and 110 days to evaluate the nomination of Mark Filip, both nominated by President George W. Bush. In fact, we are voting on Mr. Ogden's nomination faster than any of President Bush's nominees: Larry Thompson, 85 days; James Comey, 68 days; Paul McNulty, 147 days; and Mark Filip, 110 days. I believe these facts put to rest any allegation there was any delay.

I spoke on Wednesday urging my colleagues to move promptly, noting I had a call from Attorney General Holder who said he was needed. Not having had any top-level people confirmed, I think the Attorney General's request is a very valid one. In my position as ranking member, I am pushing ahead and trying to get the Ogden nomination voted on.

On Wednesday, I noted the fine academic record and professional record and put his resume into the RECORD, so I need not do that again.

I noted on Wednesday in some detail the opposition which had been raised by a number of organizations—Family Research Council, headed by Tony Perkins; Fidelis, a Catholic-based organization; the Eagle Forum; and the Alliance Defense Fund—on the positions which Mr. Ogden had taken in a number of cases. I also noted the judgments that when Mr. Ogden took those positions, he was in an advocacy role and is not to be held to those policy positions as if they were his own.

I noted that the Judiciary Committee is taking a close look at other nominees—Elena Kagan, for example—on the issue of whether she adequately answered questions. I am meeting with her later today. Her nomination is pending. Also, the nomination of Ms. Dawn Johnsen involving the issue of her contention that denying a woman's right to choose constitutes slavery and a violation of the 13th amendment.

I believe on balance Mr. Ogden ought to be confirmed, as I said on Wednesday, noting the objections, noting the concerns, and contrasting them with his academic and professional record. He took advocacy positions well recognized within the profession, but that is a lawyer's responsibility. He cannot be held to have assumed those positions as his own policy.

We will later today take up the nomination of the Associate Attorney General. While I have the floor, I think it appropriate to make some comments regarding this nomination.

Thomas Perrelli is the nominee. He has an outstanding academic record: a graduate of Brown University, Phi Beta Kappa and magna cum laude, very substantial indicators of academic excellence. Then Harvard Law School, again magna cum laude, 1991; managing editor of the Harvard Law Review. He clerked for Judge Lamberth in the U.S. District Court for the District of Columbia. He has been an associate at Jenner & Block; counsel to the Attorney General; Deputy Assistant Attorney General; and later a partner in Jenner & Block. He was named to the "40 under 40" list by the National Law Journal; a recipient of the Jenner Pro Bono Award; and recognized as one of Lawdragon's 500 "New Stars, New Worlds."

Mr. President, I ask unanimous consent to have printed in the RECORD his résumé.

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

THOMAS J. PERRELLI

ASSOCIATE ATTORNEY GENERAL

Birth: 1966, Falls Church, Virginia.

Residence: Arlington, Virginia.

Education: A.B., Brown University, magna cum laude, 1988; Phi Beta Kappa, 1987; J.D., Harvard Law School, magna cum laude, 1991; Managing Editor, Harvard Law Review.

Employment: Law Clerk, Honorable Royce C. Lamberth, U.S. District Court for the District of Columbia, 1991–1992; Associate, Jenner & Block LLP, Washington, DC, 1992–1997; Counsel to the Attorney General (Janet Reno), U.S. Department of Justice, 1997–1999; Deputy Assistant Attorney General, U.S. Department of Justice, Civil Division, 1999–January 2001; Unemployed, January 2001–June 2001; Partner, Jenner & Block LLP, Washington, DC, 2001–Present; Managing Partner, Washington, DC office, 2005–Present; Co-Chair, Entertainment and New Media Practice.

Selected Activities: Named to "40 under 40," National Law Journal, 2005; Recipient, Albert E. Jenner, Jr. Pro Bono Award, Jenner & Block, 2005; Recognized as one of Lawdragon's 500 "New Stars, New Worlds," 2006; Named Best Intellectual Property Lawyer in Washington, DC by Washington Business Journal, 2008; Recognized as leading media and entertainment lawyer, Chambers & Partners USA, 2007–2008; Member, American Bar Association.

Mr. SPECTER. Mr. President, there had been some question raised as to Mr. Perrelli's representation of clients in a couple of cases—including the American Library Association v. Attorney General Reno, where he appeared on behalf of a coalition of free speech groups and media entities (including Penthouse) arguing that the Child Protection Restoration and Penalties Enhancement Act of 1990 criminalized material in violation of the first amendment.

There were a number of letters filed by pro-life organizations, including the Pennsylvania Family Institute, International Right to Life Federation, Family Research Council, and the National Right to Life Committee. We have evaluated those issues closely.

I questioned Mr. Perrelli in some detail on the position he took in the Terri Schiavo case where he claimed the Federal court did not have jurisdiction. It seems to me as a legal matter, the State court did not have exclusive jurisdiction, that the Federal court could take jurisdiction under Federal doctrines. He defended his position saying that he was taking an advocate's role, and he thought it was a fair argument to make. My own view was that it was a little extreme.

I think all factors considered, the objections which have been raised of Mr. Perrelli as Associate Attorney General turn almost exclusively on positions he took as an advocate. I believe his outstanding academic and professional record support confirmation.

Again, we are taking a very close look at all of the nominees but, on balance, it seems to me that is the appropriate judgment. Here, again, we are almost 2 months into a new administration and the Attorney General does not have any upper echelon assistants. These confirmations will provide that assistance.

I think it is fair to note that Mr. Perrelli's nomination was supported overwhelmingly in the committee, the same conclusion I came to. It was a 17-to-1 vote in his favor. Only one Senator voted no and one Senator voted to pass. That is showing pretty substantial support.

I thank the Chair. I note the presence of the distinguished chairman of the committee, so I yield the floor to Senator LEAHY.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I understand my time has been used. We are supposed to vote at 2 p.m. I ask unanimous consent that I be able to use the time until 2 o'clock.

Mr. SPECTER. Mr. President, if Senator LEAHY would like my time, he is welcome to all of it.

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

Mr. LEAHY. Mr. President, I thank the distinguished Senator from Pennsylvania for his support of both David Ogden and Thomas Perrelli, both superbly qualified candidates, both of whom will be confirmed this afternoon. I will speak further about Mr. Perrelli after this vote.

Again, I go back to David Ogden. David Ogden has been strongly supported by Republicans and Democrats, those who served in the Bush administration and other administrations. I thought it was a scurrilous attack on him because he and his firm supported libraries, supported perfectly legal publications, and some Republicans saying they could not vote for him because of that.

I note that these same Republicans all voted for Michael Mukasey, a fine gentleman, to be Attorney General, who listed as one of his primary cases his representation of the TV channel that carries "Dial-a-Porn."

Now, certainly when a Republican, nominated by a Republican, represented Dial-a-Porn, that seems to be wrong; when a Democrat, nominated by a Democrat, represents libraries and basically a mainstream men's magazine, that is wrong.

I hope we will avoid in the future such double standards. I see a man who has helped children, who has volunteered his time, who has given great charity to children, and who has been supported by the Boys and Girls Clubs, by the Missing and Exploited Children's groups, by the National District Attorneys Association, and by every major law enforcement organization.

So, Mr. President, I know time has expired, and I would ask for the yeas and nays on confirmation of the nomination.

The PRESIDING OFFICER (Mr. BENNET). Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of David W. Ogden, of Virginia, to be Deputy Attorney General?

The clerk will call the roll.
The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from North Carolina (Mrs. HAGAN), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Nebraska (Mr. JOHANNS), the Senator from Texas (Mr. CORNYN), and the Senator from Georgia (Mr. ISAKSON).

Further, if present and voting, the Senator from Texas (Mr. CORNYN) would have voted "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 65, nays 28, as follows:

[Rollcall Vote No. 97 Ex.]

YEAS—65

Akaka	Graham	Murray
Alexander	Gregg	Nelson (FL)
Baucus	Harkin	Nelson (NE)
Bayh	Inouye	Pryor
Begich	Johnson	Reed
Bennet	Kaufman	Reid
Bingaman	Kerry	Rockefeller
Bond	Klobuchar	Sanders
Boxer	Kohl	Schumer
Brown	Kyl	Shaheen
Burris	Landrieu	Snowe
Cantwell	Lautenberg	Specter
Cardin	Leahy	Stabenow
Carper	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Dodd	Lugar	Voinovich
Dorgan	McCain	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	
Gillibrand	Mikulski	Wyden

NAYS—28

Barrasso	Crapo	Murkowski
Bennett	DeMint	Risch
Brownback	Ensign	Roberts
Bunning	Enzi	Sessions
Burr	Grassley	Shelby
Casey	Hatch	Thune
Chambliss	Hutchison	Vitter
Coburn	Inhofe	Wicker
Cochran	Martinez	
Corker	McConnell	

NOT VOTING—6

Byrd	Hagan	Johanns
Cornyn	Isakson	Kennedy

The nomination was confirmed.

The PRESIDING OFFICER. The motion to reconsider is considered made and laid on the table, and the President will be informed of the Senate's action.

NOMINATION OF THOMAS JOHN PERRELLI TO BE ASSOCIATE ATTORNEY GENERAL

The bill clerk read the nomination of Thomas John Perrelli, of Virginia, to be Associate Attorney General.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, what is the agreement on the Perrelli nomination?

The PRESIDING OFFICER. There is to be 90 minutes of debate, evenly divided.

Mr. LEAHY. Mr. President, I am only going to speak for 2 or 3 minutes. I have had a number of Senators, both

Republican Senators and Democratic Senators, ask if there is a possibility of this to be a voice vote. A number of them have airplanes to catch. I mention that for Senators on both sides of the aisle.

I am perfectly willing at some appropriate time to yield back all our time and have a voice vote on President Obama's nomination of Thomas J. Perrelli to be the Associate Attorney General, the number three position at the Justice Department. He is a superbly qualified veteran of the Department of Justice who has chosen to leave a lucrative private practice to return to public service. This nomination was reported out of the Judiciary Committee one week ago by a strong, bipartisan vote of 17-1. I thank Senator SPECTER, Senator HATCH, Senator KYL, Senator SESSIONS, Senator GRAHAM and Senator CORNYN for their support of this important nomination.

Given Tom Perrelli's background and qualifications, this strong support is no surprise. He is the managing partner of the Washington, D.C. office of Jenner & Block. Before that he held important posts at the Justice Department, earning a reputation for independence and integrity, as well as the respect of career lawyers at the Department. Mr. Perrelli joined the Justice Department in 1997 as Counsel to the Attorney General. In that role, Mr. Perrelli assisted the Attorney General in overseeing the civil litigation components of the Department of Justice, and also worked on a wide variety of special projects, including professional responsibility issues for Department attorneys, and law enforcement in Indian Country.

From 1999 to 2001, Mr. Perrelli served as Deputy Assistant Attorney General in the Civil Division, supervising the Federal Programs Branch. That branch defends Federal agencies in important constitutional, regulatory, national security, personnel and other litigation. In addition, he played a leading role on significant policy issues ranging from medical records privacy, the use of adjusted figures in the census to Indian gaming, and social security litigation.

A Phi Beta Kappa graduate from Brown University and graduate of Harvard Law School where he served as the Managing Editor of the Harvard Law Review, Mr. Perrelli has demonstrated throughout his years in Government that he understands that the role of the Department of Justice is to be the people's lawyer, with first loyalty to the Constitution and the laws of the United States. He clerked for Judge Royce Lamberth, a no nonsense judge. In private practice, first as an associate at Jenner & Block from 1992 to 1997 and then, again, from 2001 to the present where he became a partner and then the managing partner of its well-respected Washington office, he is recognized as an outstanding litigator and manager. He will need all those skills to call on all his experience in the challenging work ahead.

Numerous major law enforcement organizations have endorsed Mr.

Perrelli's nomination, including the National President of the Fraternal Order of Police, the Major Cities Chiefs Association, and the National Association of Police Organizations. Paul Clement, who worked for Senator Ashcroft and then Attorney General Ashcroft and was appointed by President Bush to be Solicitor General, wrote that career professionals at the Department who had worked with Mr. Perrelli "held him in uniformly high regard" and that Mr. Perrelli's "prior service in the Department should prepare [him] to be a particularly effective Associate Attorney General." He also described Mr. Perrelli as "an incredibly skilled lawyer" whose "skills would serve both Tom and the Department very well if he is confirmed as the Associate Attorney General."

I urge the Senate to confirm Tom Perrelli to the critical post for which President Obama has nominated him. I look forward to congratulating him, his wife Kristine and their two sons, James and Alexander on his confirmation.

I will withhold the remainder of my time. Before I do that, I know the floor staff on both parties are seeing whether it is possible to shorten the time. If it is—I am stuck here this afternoon, but for those Senators who are trying to grab a flight out of here, it would be good to let them know. I retain the remainder of my time. I see a distinguished former member of our committee, the Senator from Kansas, on the floor. I retain the remainder of my time and yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I rise to speak on the case of Mr. Perrelli, nominated to be Associate Attorney General. I rise to speak in opposition to the nomination. I will not be long, but I think there is an important policy issue that needs to be discussed.

I would be prepared to yield back time after that point in time. I do not know if we have other people who desire to speak, so Members could move on about their busy day.

I do think we have an important discussion here. I have no doubt of the qualifications of Mr. Perrelli to be Associate Attorney General. I think from what the chairman has stated—and I have no reason to dispute what the chairman has stated about the qualifications of Mr. Perrelli. I think they are good. I do not ascribe bad motives whatsoever to him or anybody. But I think there is a very important policy discussion that needs to take place here, with an opportunity to vote, before we put this individual third in command of the Justice Department, to oversee management of the Department's day-to-day operations, including formulating departmental policies.

Concerns have been raised with regard to Mr. Perrelli's nomination to be Associate Attorney General primarily due to his pro bono representation of Terri Schiavo's husband, Michael