mock trial competitions, and funding the Summer Institute training for teachers. These are the types of tremendous programs that are funded through the interest on lawyer trust accounts. That line of funding, due to a technical overrsight, ends on December 31.

So I am rising to ask my colleagues, if you are the Senator who is holding this up, I encourage you to get the facts from your State because all 50 States participate, and then let this funding, provided through a wonderful arrangement between the banks and our lawyers and these trust accounts, go forward. Who knows how many thousands, the multiple of thousands who will be assisted in challenging situations if we fix this before we adjourn.

I yield the floor.

REGISTRATION OF MUNICIPAL ADVISERS

Mr. DODD. Madam President, on the occasion of the Municipal Securities Rulemaking Board's, MSRB, implementation of congressionally mandated registration of municipal advisers, I would like to briefly speak on this important development. Congress in the Dodd-Frank Act of 2010 sought to enhance the regulation of the $3 trillion municipal securities market. The law expanded the authority of the MSRB in recognition of the MSRB's deep and specialized expertise, and the law expanded the mission of the MSRB to protect issuers and other municipal entities. It directed the MSRB to write rules regulating municipal advisers—persons and firms that advise municipalities and public pension funds or solicit their business on behalf of others, which includes ''financial advisers, placement agents, swap advisers'' and others. The law also reaffirmed the MSRB's authority to regulate the conduct of municipal securities dealers. At the same time, Congress required municipal advisers to exercise a higher, fiduciary standard of care to those municipal entities that seek their advice about municipal securities and other related financial matters.

During the Senate-House Conference for the Dodd-Frank Act, the conferees carefully considered and debated alternative approaches for overseeing municipal advisers and strengthening municipal securities market regulation. We recognized that the MSRB has written a comprehensive set of rules on key issues and said that the MSRB is well-equipped and experienced to write rules regulating participants in the municipal markets. Over the past decades, the MSRB has accumulated knowledge and hired specialized expertise to write rules regulating the complex and varied municipal securities market. In addition, the Banking Committee in its report, S. Report No. 111–176 accompanying S. 3217, said that the MSRB is in the best position to assure that rules are consistent with other rules governing the municipal markets.

Under the new law, the MSRB is expected to develop a robust system of regulation for intermediaries, including swap advisers, as it has for dealers. Swap advisers were specifically identified in the statute and made subject to MSRB rulemaking. The financial press has reported about State and local governments that received bad advice from advisers and entered into swaps and other derivatives that they did not fully understand, that are not performing as promised, and that are now costing them tremendous amounts to unwind. Those swaps are often tied to municipal securities issued by those same State and local governments and Congress recognized the experience of the MSRB in the regulation of the municipal markets.

The act, which authorizes MSRB regulation over municipal advisers, has limited exceptions, including an exception for commodity trading advisers registered under the Commodity Exchange Act or their associated persons who provide advice related to swaps. This exception covers swap dealers and major swap participants regulated by the CFTC. It does not extend to independent swap advisers or other types of municipal advisers not explicitly exempted, which are meant to be subject to the MSRB rules. I expect that the regulators of municipal swaps advisers would adopt rules governing advisory practices that are consistent with each other as well as relevant and appropriate for the municipal markets. Thus, municipal swaps advisers would be subject to practice rules embodying common principles, since they have the same types of clients.

NOMINATION OF ROBERT N. CHATIGNY

Mr. DODD. Madam President, I rise today to express my strong support for the nomination of Judge Robert Chatigny to serve on the U.S. Court of Appeals for the Second Circuit. I would like to thank my dear friend and colleague, Chairman LEAHY, for his efforts on this nomination. Chairman LEAHY, and his staff, does an outstanding job in seeking to ensure that the Federal courts function as our Constitution prescribes. I applaud him for his work and his commitment to the rule of law.

Judge Chatigny was first nominated to the Second Circuit last year, but after a sustained and, in my view, totally unwarranted attack on him by some, my colleagues on the other side refused to grant consent to allow his nomination to remain pending in the Senate. As a result, under rule 31, his nomination, along with 12 others, including 4 other judicial nominees, was returned to the President on August 5, prior to the August recess.

While I was extremely disappointed by this development, I am pleased that President Obama decided to renominate Judge Chatigny to this position. Judge Chatigny is an individual of outstanding character, keen intellect, and extensive judicial experience. I can think of few jurists more qualified to serve on the Second Circuit than he, and I congratulate President Obama on making such an excellent selection to fill this vacancy.

For 16 years, Robert Chatigny has been a Federal judge in Connecticut, serving as chief judge of the District of Connecticut from 2003 to 2009. In addition to ruling on a wide variety of cases, Judge Chatigny has earned a reputation for integrity, intelligence, and strict adherence to the rule of law.

I am pleased that Judge Chatigny has received the support of numerous former Federal prosecutors in Connecticut who understand the importance of upholding the rule of law and vouch for his character and his qualifications. Let me quote from a letter to the Judiciary Committee from three former U.S. Attorneys, each appointed by a Republican President:

> We believe that he is a fair minded and impartial judge, who has the appropriate fitness and temperament for the appellate court.

In addition, the Judiciary Committee has also received a letter signed by 17 former assistant U.S. attorneys currently practicing law in Connecticut, in which they express their confidence that he will be ''unbiased, compassionate, and temperate.''

This support demonstrates the high regard in which Judge Chatigny is held by the members of the legal community in Connecticut that know him best. In addition to the praise from the Connecticut Bar, Judge Chatigny has been unanimously rated ''well qualified'' by the American Bar Association.

Judge Chatigny's legal experience prior to his appointment reveals a rich understanding of—and deep commitment to—the American legal system. After graduating from Brown University and the Georgetown University Law Center, he served as a clerk to three Federal judges, including judges Jon Newman and Jose Cabranes. Prior to his service on the court, he built an excellent reputation in private practice, first as an associate here in Washington, before returning to private practice in Hartford for nearly a decade.

In addition, Judge Chatigny has devoted substantial time and effort to improving the legal profession. When the Governor of Connecticut sought experienced and knowledgeable public servants to help make better public policy, Judge Chatigny was an easy choice, serving on both the State Judicial Selection Commission and the State Commission on Prison and Jail Overcrowding. In addition, he has served in various roles with the Connecticut Bar Association, as well as being an advisor to the congressionally created Federal Courts Study Committee.

Unfortunately, Judge Chatigny has become the target of totally unjust attacks that threaten not only to defeat his nomination but also send a chilling

message that will endanger the independence of all Federal judges.

One may wonder why the nomination of a judge so well qualified and so highly regarded as Judge Chatigny has drawn any opposition at all from my colleagues on the other side of the aisle. The answer lies primarily in Judge Chatigny's role in the appeal of the first death penalty case in Connecticut in 40 years. Here are the facts.

Michael Ross raped and murdered eight women. His crimes were heinous and inhuman. He was convicted in the State courts of Connecticut and sentenced to death. His defense of insanity, although seriously contested at trial on the basis of conflicting psychiatric testimony, was rejected.

On January 21, 2005, 5 days before the scheduled execution, a public defender filed a petition for a writ of habeas corpus in the Connecticut Federal district court that came before Judge Chatigny. The petition presented substantial evidence challenging Ross's competency, alleging that under the U.S. Supreme Court's 1996 decision in Rees v. Payton, Ross was not competent to waive legal challenges to his death sentence, and that his execution would violate the 5th, 6th, 8th, and 14th amendments.

Three days later, on January 24, Judge Chatigny conducted a hearing in the habeas case and heard testimony from a psychiatrist supporting the claim of incompetency. The judge issued a stay of execution. The next day, January 25, the Second Circuit Court of Appeals unanimously denied the State's motion to vacate Judge Chatigny's stay and dismissed the State's appeal from the stay order. Two days later, on January 27, the U.S. Supreme Court, by a vote of 5 to 4, vacated the stay of execution.

Later that same day, Judge Chatigny received new evidence bearing on Ross's competency, and, mindful that he had been instructed not to enter any order delaying the execution, nevertheless felt it his duty to alert all counsel to the new evidence. He therefore faxed it to all counsel, and convened a telephone conference to discuss the evidence.

The next day, January 28, Judge Chatigny convened another telephone conference with all counsel and learned of the existence of additional new evidence bearing on the defendant's mental competency.

Shortly after midnight, the State agreed to postpone the execution until Monday, January 31, at 9 p.m. Later that morning, on January 29, defense counsel received information that the psychiatrist who had testified for the State might now have a different opinion on the issue of mental competency based on the new evidence.

Two days later, on January 31, defense counsel filed a motion in State court to stay the execution. The State did not oppose the motion, the motion was granted, and the death warrant expired.

On February 10, the State trial judge ordered a new competency hearing, which was conducted in the State court for 6 days in early April. On April 22, the State trial judge issued a decision finding that Ross was competent, and on May 10, the Connecticut Supreme Court affirmed. Three days after this final ruling was handed down, Michael Ross was executed.

Thereafter, a State prosecutor filed a complaint against Judge Chatigny alleging that his actions in the Ross case constituted judicial misconduct. The chief judge of the Second Circuit convened a special three-judge panel to investigate the allegations. The panel included former U.S. Attorney General Michael Mukasey, who was then chief judge of the U.S. District Court in Manhattan. The panel unanimously concluded that no judicial misconduct had occurred, and that ruling was unanimously adopted by the Judicial Council of the Second Circuit.

Despite the unanimous conclusion of these distinguished jurists that Judge Chatigny did nothing improper in his handling of the Ross case, it has become a focal point for objections to his confirmation. Some have argued that the judge should not have intervened, even briefly, to delay the execution of such an evil person as Michael Ross, an admitted killer of 8 young women.

I would, however, invite my colleagues to consider carefully the implications of that criticism. Here was a district judge confronted with a substantial claim, in a properly presented petition for a writ of habeas corpus, that new evidence put in doubt the competency of a defendant about to be executed.

The judge had two choices: he could turn his back on the matter and let the execution proceed without any examination of the new evidence, or he could insist that constitutional standards be followed and the new evidence be considered so that the execution, if and when it occurred, would be carried out in accordance with constitutional requirements.

Turning his back on the case would have been the easier course. Accepting the challenge to consider the habeas corpus petition, I believe, took considerable courage. The judge acted in conformity with his oath of office, which obliges him to uphold the Constitution of the United States. And for that, he is being savagely attacked.

Some critics of Judge Chatigny's nomination point out that the stay of execution issued by the judge was later vacated by the U.S. Supreme Court by a vote of 5 to 4. And, of course, that 5 to 4 majority ultimately prevailed.

But it must be noted, in assessing Judge Chatigny's decision to issue the stay, that of the 13 judges that reviewed the matter—1 district judge, 3 Circuit Judges, and 9 Supreme Court Justices—only 5 thought the stay should not have been issued, and 8 thought it was proper.

Even more significant is the fact that once the new evidence was brought to the attention of the counsel for the State, the State elected not to oppose a new court hearing so that the new evidence could be fairly considered. The new evidence was of sufficient value to require 6 days of hearings in the State court.

Ultimately, the new evidence did not change the outcome of the case, and Ross was executed. But if Judge Chatigny had not intervened, an execution would have occurred without the 6-day hearing that the State court found necessary to determine the defendant's competency, and the assurance of compliance with constitutional requirements would have been lost.

After a call for an investigation by some legislators in Connecticut was made, the Bar Association's president publicly stated that ''no one should want decisions of life or death made without consideration of all relevant facts and circumstances,'' and that the attacks on the judge threatened to ''undermine'' the independence of the judiciary. Judge Chatigny's handling of the Ross case was praised by both the Hartford Courant and the Connecticut Law Tribune.

If Judge Chatigny is to be attacked for performing his constitutional function as he saw it, what message does that send to other judges when confronted with constitutional claims in cases that understandably arouse public passions?

Let me respond to one other criticism that has been made concerning the Ross case. The critics have quoted Judge Chatigny as saying that Ross should never have been convicted. Their quotation is a serious distortion of what the judge said.

Speaking with reference to the evidence of Ross's insanity defense, the judge said, expressing the traditional standard courts use in determining whether there is sufficient evidence to present an issue to the jury, that ''looking at the record in a light most favorable to Mr. ROSS, he never should have been convicted.'' Unfortunately, the critics have left out the important first half of that statement.

Let me also briefly mention the concerns raised by some about Judge Chatigny's treatment of Michael Ross's attorney in regards to his law license. I think this criticism does not stand up to close scrutiny.

It is, of course, true that Judge Chatigny had a heated discussion with the Ross's lawyer regarding his client's competence. Judge Chatigny believed strongly that a state court in Connecticut should be given the opportunity to consider new evidence of Ross's competence and tried to convince the attorney of this.

There is no doubt that the exchange between Judge Chatigny and the defense lawyer was intense. However, as the Judicial Council of the Second Circuit found, there was no misconduct in this episode. In fact, the special committee's report stated:

The judge was clearly concerned that [the defense lawyer's] reluctance to engage the

court in the question of Ross's competence . . . might cause an unconstitutional execution. It is clear the judge's concern was to repair what he perceived as a breakdown in the adversarial process, resulting from an attorney's insistence on adhering to his client's expressed desire to waive judicial review and consent to his execution, in spite of indications that the client might be without competence to make such a waiver. The judge's perception of the need for remedial action in his communications with the attorney was reasonable. While his words were strong, when properly understood they were not unreasonable.

Further, who among us in public life during debates on contentious issues has never said anything that we would perhaps not repeat? The next business day after this episode, Judge Chatigny sought out the defense lawyer and apologized for his actions. He recognized that his words were ''excessive'' and at the first chance available sought to apologize for them. I think this shows exactly the sort of humble and self-examining personality that we need more of on the court.

But perhaps most importantly, Mr. President, one verbal exchange between a judge and counsel, in the middle of a highly contentious and emotional court case does not shed light on the entire arc of a judge's career. As demonstrated from the record and the support he has received in Connecticut, this episode is an aberration and one not likely to be repeated. We should not unduly punish someone with an outstanding record such as Judge Chatigny because of one heated exchange. What type of judicial standard would we be asking of those who aspire to the bench?

The critics have also said that the complete exoneration of Judge Chatigny on the misconduct complaint has little, if any, bearing on whether he should be confirmed for the court of appeals. Yet they persist in claiming that the Judge did something improper when the claim of improper conduct was totally rejected.

On this last point, I believe it is also worth reiterating that one of the judges who served on that panel, Michael Mukasey, also served as U.S. attorney general during the waning years of the Bush administration.

But Michael Mukasey has done more than simply reject a misconduct complaint. Once the nomination of Judge Chatigny was made, Michael Mukasey let it be known that he supported the confirmation of Judge Chatigny for a seat on the court of appeals. Can anyone seriously believe that a former U.S. attorney general would support a nominee to the Federal bench who was not unquestionably deserving of confirmation?

And Michael Mukasey's support of Judge Chatigny's nomination does not stand alone. As I mentioned earlier, three former U.S. attorneys appointed by Republican Presidents, the prosecutors most familiar with Judge Chatigny's record, have publicly informed the Senate Judiciary Committee that they strongly support his confirmation for the court of appeals, as have 17 former assistant U.S. attorneys.

One other criticism of Judge Chatigny also must be addressed. Individuals have attacked Judge Chatigny because in some instances, he imposed a sentence below the sentencing guidelines in certain cases.

What his detractors ignore is that Judge Chatigny has also imposed sentences at or above the top of the guidelines' range and that, according to Sentencing Commission statistics, Judge Chatigny's sentences are well within the mainstream of sentences of all the judges in his district.

Indeed, the best commentary on Judge Chatigny's sentences in criminal cases is the fact that in the 16 years he has been a district judge, Federal prosecutors have not sought to appeal even one of these decisions. Let me repeat that: in 16 years as a Federal judge, prosecutors have never appealed one of Judge Chatigny's sentences.

I have served in this body for nearly 30 years. I am extremely proud of this institution and believe that it plays a critical role in our republic. One of the most important functions we have is to vote on nominees to the executive and judicial branches of our government.

It saddens me to note that this body has let partisan politics and delaying tactics interfere with our constitutional responsibility to provide advice and consent on the President's nominees. Unfortunately, Judge Chatigny is not the only eminently qualified judicial nominee to face this challenge.

As of November 29, the Senate had only confirmed 41 of President Obama's Federal circuit and district court nominees so far this Congress. By contrast, during the first Congress of the George W. Bush administration, the Senate, which at that time was controlled by Democrats, confirmed 100 of that President Bush's nominees to the Federal bench.

In addition, there have been repeated roadblocks to the consideration of numerous well-qualified nominees to critically important posts within the executive branch. The Federal Government has an immense amount of work to do, and obstructionist tactics have only made that harder.

I am convinced that this Judge deserves to be confirmed. He has outstanding qualifications and an outstanding record. No one, even his critics, doubts either his qualifications or his record. I believe he is being opposed because he acted with great courage to live up to his oath of office and uphold constitutional standards in one widely publicized case involving a despicable murderer.

Would that all judges display that kind of courage when put to a similar test.

Let me conclude with one further point. I recognize that some of my colleagues believe that Judge Chatigny's handling of the Ross case merits criticism. I believe, on the contrary, that his handling of the case was a courageous defense of constitutional requirements, as do many others, including experienced Federal prosecutors from both political parties.

But let us assume, for a moment, that the criticism is valid. What I would then ask this body to consider is this: is the criticism of the handling of one case out of the thousands over which Judge Chatigny has presided in 16 years as an outstanding U.S. district judge a sufficient reason to oppose his confirmation for the court of appeals?

Have we, as Senators, permitted the President's selection of a well qualified judge with 16 years of outstanding judicial service to be thwarted because in the hours before a scheduled execution, the first in Connecticut in 40 years, this judge thought it was his duty to make sure that constitutional standards, as he understood them, required him to act, not to overturn a conviction, not to overturn a death sentence, but simply to make sure that new evidence bearing on the defendant's mental competence was fairly considered?

It goes without saying that I am very disappointed the Senate will not be voting on this nomination before the end of the 111th Congress. Judge Chatigny is superbly qualified for a seat on the Second Circuit, and I believe the Senate has made a serious mistake by not confirming him.

FLOODING IN COLOMBIA

Mr. LEAHY. Madam President, I want to take a minute to call attention to a humanitarian disaster that has received only passing mention in the international press and which many Senators may be unaware of.

On December 7, Colombia's President Juan Manuel Santos declared a state of ''economic, social and ecologic emergency'' as a result of massive flooding which he called a ''public calamity.''

Heavy rains over a period of months have caused landslides that have swept away homes and rivers to overflow their banks, and now large areas of the country are inundated with water. According to a December 17 report by the U.N. Office for the Coordination of Humanitarian Affairs which is assisting the Colombian government, so far 2.1 million people have been affected by the flooding, 270 have died, 62 are missing, and more than 300,000 houses have been damaged or destroyed. Thousands of miles of roads have been obstructed, damaged or destroyed.

Twenty-eight of the country's 32 departments, which comprise 61 percent of the country, have been affected. President Santos said the number of homeless from the flooding could reach 2 million, and that ''the tragedy the country is going through has no precedents in our history.'' What's worse, the rains are expected to continue through next June.