discharged from the Committee on the Judiciary and that it be referred to the Committee on Energy and Natural Resources.

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

ORDERS FOR WEDNESDAY, SEPTEMBER 28, 2005

Mr. COBURN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Wednesday, September 28; I further ask that following the morning prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to executive session to continue consideration of Calendar No. 317, John Roberts to be Chief Justice of the United States; I further ask consent that the time from 10 to 11 be under the control of the majority leader or his designee; the time from 11 to 12 be under the control of the Democratic leader or his designee; 12 to 1 under the majority control; 1 to 2 under Democratic control; 2 to 3 under majority control; 3 to 4 under Democratic control; 4 to 5 under majority control; 5 to 6 under Democratic control; 6 to 7 under majority control; 7 to 8 under Democratic control.

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

PROGRAM

Mr. COBURN. Mr. President, this week the Senate has been considering the nomination of Judge Roberts. Tomorrow we will continue making statements on this important nomination, with the vote on Mr. Roberts' nomination occurring at 11:30 a.m. Thursday. The majority leader is asking that all Senators be seated at their desk for this historic vote. As a reminder, the leader has announced that the Senate will turn to the Defense appropriations bill on Thursday, and votes are expected on Thursday and Friday of this week. The Senate will also need to act on a continuing resolution before the close of business this week.

ORDER FOR ADJOURNMENT

Mr. COBURN. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the 60 minutes allocation of time for the other side which begins at 6:45 and that the Senate now resume executive session.

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

Mr. DURBIN. Mr. President, may I inquire, are we in a quorum call?

The PRESIDING OFFICER. We are in morning business.

Mr. DURBIN. May I inquire of the Chair, it is my understanding that the remaining 60 minutes in executive session on Judge Roberts is allocated to the minority?

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. Could the Chair tell me when that 60-minute period begins?

The PRESIDING OFFICER. It begins at 6:45 p.m.

Mr. DURBIN. Until 6:45, if no other Senators are seeking recognition, may I speak in morning business?

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

Mr. DURBIN. I thank the Chair.

NOMINATION OF JOHN ROBERTS TO BE CHIEF JUSTICE

Mr. DURBIN. Mr. President, the Senate is considering the nomination of John G. Roberts, Jr. to be Chief Justice of the United States. This is a rare occurrence, rare for us to even consider a Supreme Court vacancy, let alone a Chief Justice. I have been honored to be a member of the Senate Judiciary Committee and have spent the week before last, a major part of it, in hearings where Judge Roberts came and testified. They were historic in nature. I am surprised, as I go back home to Illinois, how many people followed them and listened, either over the radio or watched them on television, and followed the questions and answers so closely.

It has been a very difficult process for many. I can't think of a more challenging assignment than to try to measure a person and try to decide how a person will react to certain questions and challenges over the rest of their natural lifetime. But that is our responsibility. Filling this vacancy on the Supreme Court means choosing a person of Judge Roberts' age, for example, who could serve for 20 or 30 years. That is the reality of this decision-making process.

The greatest compliment one can pay a judge is not that he is smart or has great intelligence. The greatest compliment one can pay a judge is that he is wise, that in his work on the bench, he has shown the wisdom of Solomon.

In the Scriptures, Solomon was often described as the wisest man who ever lived. But in chapter 3 of First Book of Kings, we learn what Solomon wanted even more than wisdom. It is written:

> In Gibeon, the Lord appeared to Solomon in a dream at night, and God said, ''Ask what you wish me to give you.'' Then Solomon said, ''So give your servant an understanding heart to judge your people, to discern between good and evil. For who is able to judge this great people of yours?''

Many questions were asked of John Roberts at his hearings. If there was any effort to determine whether he had a great legal mind or great intelligence, he certainly satisfied every question. But then if you look at the questions more carefully, more closely, you will find we were asking even more fundamental questions of John Roberts. We were asking and trying to determine not his knowledge but his wisdom, whether he had, as Solomon wished, an understanding heart.

Some have argued that it is unfair for any Senator to raise that kind of a question. Senator LINDSEY GRAHAM of South Carolina is my friend. He said it was not fair to get into this whole line of questioning about what is in your heart. I disagree. I believe we are not being fair to the American people if we don't understand the values of people who serve on the Supreme Court, if we don't strive to understand their philosophies, and if we don't try to put ourselves inside the mind and heart of someone we are entrusting with a lifetime position to serve on the highest Court in the United States.

In 1991, at his confirmation hearing, Justice Souter said that judges must understand that since they are people who have the power to ''affect the lives of other people and who are going to change their lives by what they do, we had better use every power of our minds and our hearts and our beings to get these rulings right.''

Justice Breyer in 1994 said:

> That is why I always think that law requires both a heart and a head. If you do not have a heart, it becomes a sterile set of rules removed from human problems and will not help. If you do not have a head, there is a risk that in trying to decide a particular person's problem in a case that may look fine for that person, but cause trouble for a lot of other people, making their lives worse. So it is a question of balance.

I asked John Roberts if he could meet the test that my mentor and predecessor, Illinois Senator Paul Simon, brought to the Judiciary Committee questioning years ago. Senator Simon asked of the judicial nominees: Is this nominee committed to expanding the freedom enjoyed by all Americans, or will he or she restrict it? I also asked Judge Roberts whether he had the courage of Frank Johnson, an Alabama Federal judge and a Republican appointee who stood up for civil rights in the 1960s at a time and place when it was very unpopular to do so. What did we learn? Regrettably, we learned very little about Judge Roberts during the 20 hours of testimony.

Senator FEINSTEIN and Senator BIDEN asked an important line of questions that I followed carefully. They asked of Judge Roberts what he would do, not as a judge, not as a lawyer, but as a father in a family circumstance where someone you love has left instructions to you that at the closing moments of their life, they do not want any extraordinary life support. This happens thousands of times every day. Families face this decision, and it is an important decision, not just on a personal and emotional basis but on the basis of our right of privacy in America. In the Terry Schiavo case—that tragedy in Florida—this sad woman was on a support system for some 15 years, if I am not mistaken. The case went through the courts year after year, and finally, when all the appeals in Florida had been exhausted, there was an effort