I have already thanked a number of people, and I would also like to thank, on Senator ENZI's staff, Ilyse Schuman, and on my own staff, Stacy Sachs, Molly Nicholson, Jeff Teitz, and Charlotte Burrows, and two of my interns, Ashley Bennett and Lara Mounir.

I would also like to thank the many other staff members, both on and off the committee, who did such great work on this bill: Carmen Green, Nancy Hardt, Paula Burg, Lisa German, Jessica Gerrity, Dora Hughes, Ed Ramos, Ben Klein, Jim Esquea, David Lazarus, Lisa Layman, Jenny Ware, Mary-Sumpter Johnson, Stephanie Carlton, and Jennifer Claypool.

I would also like to thank the legislative counsels Bill Baird, Amy Gaynor, and Stacey Kern-Scheerer for all of their hard work on this bill.

Mr. ROBERTS. Mr. President, today the Senate voted to approve S. 1082, the Food and Drug Administration Revitalization Act. I am very pleased the Senate took this action and I now look forward to its consideration in the House.

Unfortunately, I was not present to vote for the bill, but I would like the record to reflect that I had planned to vote in favor of this legislation. Just last weekend, Kansas experienced a horrible disaster when a tornado devastated an entire community and took the lives of several Kansans.

Late last Friday evening, the town of Greensburg, KS, was literally wiped off the map by an enormous tornado. As a result of this and storms associated with the system, 12 Kansans are confirmed dead, and all of the 1500 residents of Greensburg have been displaced. What we have experienced in Greensburg is unlike any other event in recent Kansas history. The hospital is gone, the schools are gone, every church is gone, virtually every business in the community is gone, including all of Main Street. Estimates are that fully 95 percent of the structures in the town are damaged or destroyed. Because of this devastation, I invited President Bush to come to Greensburg, KS, and view the damage from this unspeakable disaster. Today, President Bush is in Greensburg, and I, along with other members of the Kansas congressional delegation, are showing him the devastation this community has experienced, so I could not be present to vote for S. 1082.

However, I want my colleagues to know that I support this legislation and would have voted in favor of the bill if I were present. I believe S. 1082 will give FDA the tools to ensure drug safety and will renew some very important prescription drug and medical device programs. I am also pleased the bill includes an amendment I sponsored with Senators HARKIN, BURR, and COBURN to improve the drug advertisement provisions in the underlying bill. This amendment was accepted unanimously by the Senate.

Our amendment addresses the first amendment concerns with the advertising provisions in the original bill and gives the FDA the tools they need to protect the public from false or misleading prescription drug advertisements. We believe this amendment is a more commonsense approach to dealing with prescription drug advertisements and ensures the public will get truthful and accurate information about new prescription drugs.

I especially want to thank Chairman KENNEDY, Ranking Member ENZI, and Senator HARKIN for their leadership and hard work on this issue. I also thank Senators BURR and COBURN for their cooperation and cosponsorship of my amendment. This amendment represents the result of our efforts to achieve an outcome that is acceptable to all of us. The agreement that was accepted today is a fair compromise that addresses the concerns of all of the Members involved

Mr. BYRD. Mr. President, I voted against Senator DURBIN's amendment because it would have forced the removal of the best scientific minds from the oversight of the safety of our Nation's food and prescription drug approval process. Though well intentioned, the Durbin amendment would have limited the advice available to the Food and Drug Administration for critical decisions pertaining to consumer safety. I will support the efforts to ensure that conflicts of interest do not interfere with the safety of the American people, and I will work to ensure that the country's best experts continue to secure our medications and food supply.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

NOMINATION OF DEBRA ANN LIVINGSTON TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider Executive Calendar No. 104, which the clerk will report.

The legislative clerk read the nomination of Debra Ann Livingston, of New York, to be United States Circuit Judge for the Second Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 3 hours for debate equally divided between the chairman, Senator LEAHY, and the ranking member of the Judiciary Committee or their designees.

The Senator from Vermont is recognized.

JACK VALENTI

Mr. LEAHY. Mr. President, in the time allotted to me, I will talk about some other things. Later this afternoon, a wonderful American man who had a life that epitomizes what is best in our country will be buried in Arlington. I am speaking about Jack Valenti. Jack and his wife Mary Margaret first took my wife Marcel and I under their wings when I came here as an unknown 34-year-old Senator from Vermont. We had so many wonderful times with both of them. There would be times, obviously, as many of us did during Jack's years as president of the Motion Picture Association, when we would gather for a dinner at the MPAA, always with at least one Italian dish, and then watch a first-run movie. Jack would be greeting everybody by name. For those of us who sometimes have to remember the names of our own families, he was remarkable. But the remarkable thing was, he greeted everybody. He knew about you and was interested in what you were interested in, but also on the points that he wanted to get across, he would do so in a way with integrity, with brilliance, and with the respect of both Republicans and Democrats, as he would go through the halls of the Senate and the House.

On a personal basis, with he and Mary Margaret, we would sit sometimes having a quiet meal at their house or on one occasion at a favorite restaurant of theirs, on a soft summer evening, sitting outdoors and talking about kids and, in that case, their pending grandchild. I could not help but think about this man, who by all rights never should have made it through World War II. He was a highly decorated fighter bomber pilot. He went through battles where there were enormous casualties. He received the Distinguished Flying Cross and just about every other bravery medal one could, and he survived.

He came back to a career that ranged from being somber, as we all know, in Texas at the time of President Kennedy's death, to going on the plane with President Johnson, and sharing those Texas roots and working with him.

From a personal point of view, I think of the time he spent with my late mother who was an Italian American. They had that bond. He would single her out at national gatherings of Italian Americans. She loved it. She called me once and said: I saw that nice young man on television. I said: Mother, whom are you talking about? She said: Jack Valenti, that nice young man. I said: Mom, Jack is almost 20 years older than I am. She said: Really. Well, he doesn't look it. And then came the killing shot. She said: Patrick, you should take better care of yourself. When Jack had one of his many retirement parties—I will speak to that in a moment—I told that story.

I am afraid more than one person in the audience agrees with my mother.

I said ''one of his many retirements.'' He never retired. He continued to write books. He had one that he just finished before a stroke silenced him a few

weeks ago. I have a copy of his book in my desk on the Senate floor. I have a copy of all his books. They are well written. He had a command of the English language that all of us would like to think we could master with the best of all speechwriters, and we can't. He did it. He was his own speechwriter. Nobody else could begin to match what he did.

One of the things I think of—and I was thinking of this at his funeral, where I had the honor of being an honorary pallbearer—I spoke with Mary Margaret and his son John afterward, his daughter Courtney. I was speaking with others. I remembered an op-ed piece that my friend Matt Gerson wrote for the Saturday, April 28, Washington Post about Jack. Matt refers to the mentoring that he did of so many people. Matt refers to his own mentoring by Jack Valenti.

Well, I am one of those Senators—one of hundreds of Senators—on both sides of the aisle mentored by Jack. I, along with my wife, am among the thousands of people who will miss his phone calls, who will miss his conversations, who will miss his friendship, and we join in sending our condolences to Mary Margaret, and know she carries on great memories of her own, and memories we will continue to share.

Mr. President, I ask unanimous consent that the op-ed piece I referred to by Matt Gerson be printed in the RECORD.

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

[Saturday, April 28, 2007]

WHAT JACK VALENTI TAUGHT US ALL

(By Matt Gerson)

Jack Valenti lived a unique life between two of society's fascinations—politics and Hollywood. For Republicans and Democrats, for senators and young aides, for celebrities and the legions behind the cameras, interactions with him were graduate seminars in history, politics, human nature and common sense. This extraordinary communicator punctuated every conversation with a witticism linked to his beloved Texas, a quote from an obscure historical figure or a rule passed on to him by his mentor, Lyndon Johnson. In the weeks leading up to his death Thursday, all over town a simple "How's Jack?" almost always led to, "You know, I try to live by something I once heard him say."

I first noticed his reach when a lunch companion said, "I try to return every phone call the same day I receive it, and I try to treat an appointment secretary like a Cabinet secretary." That was followed by a senator who revealed: "Jack was the first one to contact me after my son died. I will never forget his concern and support. How can I reach his family?"

For those Jack mentored during the 38 years he dedicated to America's film industry, it became clear that character was defined by loyalty. In both Washington and Hollywood, people often desert "friends" at the first whiff of public disfavor. Not Jack—time and again he insisted that you never abandon a friend who was going through a rough time, and he always stood with a beleaguered colleague or public official who was receiving unwanted publicity.

He would tell his team to respect every elected official ("because you never even ran for dog catcher, and they were sent here by the people"). He admonished us that your adversary today might be your ally tomorrow. "In a political struggle, never get personal—else the dagger digs too deep."

Jack rejected the partisanship that gripped Washington and would warn that "nothing lasts—today's minority backbencher will be tomorrow's subcommittee chairman." On the day the Motion Picture Association of America headquarters was named the Jack Valenti Building, Sen. Ted Stevens observed, "Jack works across the aisle because he doesn't see an aisle. It is the root of his success and what others ought to emulate."

Each of the six studio chiefs who spoke at the dedication ceremony emphasized that Jack's word was his bond—if he made a promise, he never wavered. His rock-solid commitment gave him unusual credibility with leaders on both coasts and around the world.

Jack was a gifted public speaker who put incredible effort into making it all look effortless. He would rework his text behind closed doors, reciting it until the cadence was just right. Jack was ebullient when a president complimented him once on the "extemporaneous" remarks he had made at the Gridiron Club. "The president couldn't believe I didn't have a prepared text. I neglected to mention that I didn't need notes because I spent several days getting ready," he said.

It was especially fun to watch Washington's most accomplished professionals try to decipher one of his homilies. They eventually got the point and often adopted the line as their own. When a project was in trouble, it was time to "hunker down like a mule in a hailstorm." [Modified from the original Texas vernacular for a family newspaper.] When prospects got even worse, "The ox was in the ditch." But every problem could be addressed if you remembered "the three most important words in the English language: Wait a minute."

When someone from the MPAA left to take a new job, Jack would say, "I like to think I teach my people everything they know. But I know I didn't teach them everything I know." That line always got a laugh. I worked with Jack for six years and was friends with him for nearly two decades. In the past few years, frankly, I thought I had gleaned every lesson he had to offer. But then I picked up the galleys of his soon-to-be-published memoir, a book that tracks his "Greatest Generation" fable. This grandson of Sicilian immigrants, decorated combat pilot, Harvard MBA ("thanks to the greatest piece of social legislation ever devised by man—the G.I. Bill"), presidential adviser and confidant of America's business leaders has left a treatise with even more rules to live by.

One paragraph is a must-read for the BlackBerry-addicted. Jack quoted Emerson's observation that "for every gain, there is a loss. For every loss, there is a gain." While lamenting the number of nights he spent away from his family, he reminded us that attending one more reception meant missing a meal around the dinner table, and one extra night on a business trip would mean one less chance to help with homework or watch a soccer game.

I have recounted that quote many times over the past few weeks. And while this loss is devastating for many in Washington and Los Angeles, the life lessons that are his legacy are our gain.

NATIONAL GUARD EQUIPMENT STOCKS

Mr. LEAHY. Mr. President, earlier today, we had a meeting of the Senate Appropriations Committee. Defense Secretary Gates and Chairman of the Joint Chiefs of Staff General Pace were there. I was at that meeting. I had questions that I asked. I have been bothered since the meeting, not so much by what they said, but by what has happened in the last few days.

Every one of us, when we turn on our television set, sees the devastation in Kansas by a tornado—something we would not see in my State of Vermont. But even in a State where these are not unusual things, the devastation of this tornado was unique. I thought yesterday about how the President of the United States, through his spokesperson, blatantly dismissed the all too real concerns of the Governor of Kansas, Governor Sebelius, about the equipment levels available to our National Guard for dealing with such emergencies at home as this horrible disaster I spoke of that befell Greensburg, KS.

The White House spokesperson, sitting comfortably at the White House, said: Well, you know, there is no problem. The Guard has considerable equipment stocks still available.

Everybody who has studied the situation with our National Guard around this country knows that assertion is absurd on a number of levels. Maybe they felt they could make a political statement because the Governor is of another party. But the reality is, the Governor spoke the truth. She knows the Guard faces real, incontrovertible shortfalls in vital equipment.

Contrary to what the White House has said, the Governors—I am talking about the Governors; Republican, Democratic Governors alike—and their adjutant generals—those who are the heads of the National Guard in their respective States—are reporting something quite different than the blase attitude of the White House.

State after State reports missing humvees, medium-sized trucks, generators, dump trucks, communications systems. These are not claims from just any observer of Guard issues; these are the leaders who have been elected by the people to provide for their security and deal with these sometimes terrifying State emergencies.

As the Presiding Officer knows, the Governors command the Guard when operating in a State, and we have to give special credence to what they say. The idea that there is no problem—this kind of dismissive "there is no problem"—is equally ridiculous because it has been clearly documented there is a very real $24 billion equipment shortfall in Army National Guard equipment alone. Now, those are reports that do not take into consideration the shortfalls within the Air National Guard. But both the Active Army and the National Guard agree on this figure. It was developed together with the National Guard Bureau working closely with the Army staff.

To say there is no problem, on the one hand, and have an arm of the administration, on the other hand, say there is a $24 billion shortfall—to me, that is a problem.

What is a greater problem is there are no plans to address this shortfall in the long-range budget. There are no plans to buy the 18,000 needed humvees, no plans to obtain the 30,000 medium-sized trucks, no plans to purchase the 12,000 required generators, no plans to purchase the 62,000 communications sets—the list goes on and on.

Another reason the White House's assessment of Guard equipment issues is so flawed is that everyone—from the Guard leadership to the Army leadership to Members here on the Hill—knows that, very frequently, that equipment slated for the Guard never actually makes it to the Guard because it is diverted, transferred to the Active Force before it gets into Guard stocks.

Even when the Guard equipment makes it into the Guard stocks, it is often quickly turned around and sent right back off to Iraq, along with deploying Guard units, many of which now face their second Iraq deployment.

It is passing strange to me that while this administration asks for a blank check to resupply the Iraqi National Guard, they do not have 1 cent in their long-range budget to resupply the American National Guard. Now, whether someone is for or against the war in Iraq, you would think our own forces—our own American national guard—could be treated at least on par with the Iraqi national guard, especially as we see the brave men and women of our National Guard not only answering the call in Iraq and Afghanistan, but answering the call when there are dangers here at home. We do not see them, as we have seen in units of the Iraqi national guard, setting out to kill each other or forming death squads. So why do we write blank checks for the Iraqi national guard when we can't take care of our own? I wish the President and the White House would come to fully realize this reality. Here is the real situation when it comes to National Guard equipment: The Guard does not have adequate stocks to deal with emergencies where they can maximize their full potential. In a smaller scale disaster, they cannot respond as quickly to support first responders and local law enforcement.

That is what we saw recently in Kansas. Now, suppose you have another emergency in Kansas or a larger scale emergency or something like Hurricane Katrina or, God forbid, two simultaneous disasters. The Guard is going to be hard pressed to respond as well as it did along the gulf coast almost 2 years ago.

Let me show you some photographs. You can see from these photographs, these are things our Guard does. You see this capsized tanker, and helicopters trying to rescue the people. Those are National Guard helicopters.

Here we have a forest fire close to an urban area, where homes are in danger. You can see an airplane putting down a fire retardant. That is a National Guard airplane.

Here you see a little child being rescued, carried up to a helicopter in the arms—the embracing arms, the safety of the arms—of a National Guard member.

Here you see the rescue of somebody who was in an accident.

Here you see National Guard in armored personnel carriers in a flooded area. In case you are wondering where that area is, look at the sign in the background that says ''Welcome to New Orleans.'' Much of that sign is under water. First responders—the police, fire departments—in New Orleans were totally overwhelmed, figuratively and literally. The Guard responded.

Look at these firefighters, trudging through a forest, at risk to their own lives, to put out a forest fire. Who are they? National Guard members.

The Secretary of Defense maintained this morning in his appearance before the Defense Appropriations Subcommittee that the Guard has 56 percent of its equipment stocks available. Well, that figure contradicts everything I have heard from other responsible officials, who put the figure closer to 35 percent. Frankly, 35 percent or 56 percent is not adequate, by any means.

In the latest supplemental spending bill, which the President seemed happy to veto, I worked with my colleague on the National Guard Caucus, Senator BOND. We cochair the National Guard Caucus. We also serve on the Defense Appropriations Subcommittee. We added $1 billion for Army Guard equipment purchases. That $1 billion was not requested by the administration. We had virtually unanimous support, Republicans and Democrats, in this body for it. It would go directly for dealing with that $24 billion shortfall. Now, that has been vetoed. We are going to work together in a bipartisan fashion to get it back into whatever spending bill we pass.

We cannot do that unless we work together—unless we work together. This is a case where it almost becomes a cliche to say: We cannot afford to let our Guard down—but we cannot. We do not have tornadoes in Vermont, but we have had some pretty vicious floods—one that nearly wiped out my hometown of Montpelier, VT, the capital. We have had some pretty vicious ice storms—one that almost removed the agricultural sector of a major part of our State.

In each case—as hard working as the local responders were, and they were, the police and the fire departments—the first call of the Governor went to the Guard, the National Guard. And they came. They rescued people. They kept people going.

When you have an ice storm, and it is 10 degrees below zero in your State, you can't wait for them to say: Well, we have 56 percent or we have 35 percent of your equipment. The other equipment you need is in Los Angeles, and we will ship it to you as quickly as we can. That is the old ''check is in the mail.'' If it is 10 degrees below zero, and you have an ice storm, with all the power lines that come down, people are going to die—people are going to die—if they can't get power within a matter of, really, minutes. The Guard can do that.

We know what a fiasco it was with our still dysfunctional Department of Homeland Security after Katrina. We have seen how the Department of Homeland Security and its FEMA division have still not responded to that. But we did respond when the Governors called out the National Guard.

So I rarely ever respond to comments made by the White House and their press operation, even when they take gratuitous swipes at me, but this one, I couldn't pass up. They know what the numbers are. They know the Governor of Kansas was speaking the truth. They know the Guard is woefully undersupplied. They know they have been diverting money to pay for the Iraqi National Guard from our Guard. So I think it would be really helpful for the White House to stop showing contempt for the views of our Nation's elected Governors. Take and consider their input, respect their thoughts about the Guard given their places with the National Guard in their States.

Let's turn the situation around. Let's come up with a new plan to replenish depleted Guard equipment stocks. We can't afford to continue to let our Guard down.

Mr. President, I ask unanimous consent to have printed in the RECORD the appropriate charts on this matter.

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

FY08
ARNG TOP 25 EQUIPMENT MODERNIZATION SHORTFALL LIST

	Quantity Required	Quantity Shortage	Shortage $M	POM 08-13 $M	APPN	UFR 08-13 $M
HMMWV	48,715	18,611	$4,039	$1,647.0	OPA	$2,392.0
Family of Medium Tactical Vehicles	37,995	30,140	$7,267	$1,689.9	OPA	$5,577.1
HTV - HEMTT/LHS/PLS	21,180	14,796	$1,652	$1,059.3	OPA	$592.7
M916A3 Light Equipment Transporter	1,591	794	$180	$152.4	OPA	$27.6
Tactical Trailers	5,699	2,984	$177	$10.6	OPA	$166.4
M917A2 Dump Truck	544	334	$67	$0.0	OPA	$67.0
CH-47F Chinook	159	159	$6,678	$670.6	ACFT	$6,007.4
Comm Systems (JNN, SINCGARS, HF)	143,615	62,613	$3,997	$968.7	OPA	$3,028.3
UAV Systems (Shadow , Raven)	586	575	$462	$307.1	OPA	$154.9
Small Arms	209,098	99,129	$360	$240.0	OPA	$120.4
ABCS (Suite of Systems)	1,399	800	$166	$20.7	OPA	$145.3
Digital Enablers (Log Automation)	12,167	7,873	$196	$0.0	OPA	$196.0
Movement Tracking System	16,711	12,588	$302	$203.4	OPA	$98.6
Night Vision (AN/PAS-13, AN/VAS-5)	41,912	33,170	$640	$241.5	OPA	$398.5
Tactical Water Purification System	131	128	$61	$38.9	OPA	$22.1
Tactical Quiet Generators	19,611	12,748	$324	$118.1	OPA	$205.9
All Terrain Crane (ATEC)	174	29	$7	$0.0	OPA	$7.0
M9 ACE SLEP	114	90	$80	$0.0	OPA	$80.0
Route and Area Clearance Systems	138	138	$203	$167.8	OPA	$35.2
Horizontal Construction Systems	587	332	$141	$111.0	OPA	$30.0
How itzers (M777A1, M119A2)	498	342	$4,259	$477.4	WTCV	$3,781.6
Profiler	65	63	$57	$57.2	OPA	$0.0
LLDR	1,099	1,034	$362	$187.5	OPA	$174.5
Gun Laying Positioning System	455	208	$20	$0.0	OPA	$20.0
Chemical (Detectors, Decon & Shelters)	65,719	52,433	$669	$107.5	OPA	$561.5
TOTALS	629,962	352,111	$32,367	$8,476.5		$23,890.1

Quantity Required = Endstate FY08 ARNG Requirements (MTOE or like AC) to fully modernize the ARNG.
Quantity Shortage = Quantity Required – On-Hand – Programmed (2-year Equipment Distribution Plans).
Shortage ($M) = Quantity Shortage x Per Unit Cost.
POM 08-13 ($M) = Total procurement funding stream from FDIIS (dtd 10 JAN 07), by Army Program Element (APE) for respective equipment systems.
APPN = Type of Appropriation (OPA – Other Procurement Army, ACFT – Aircraft, WTCV – Weapons & Tracked Combat Vehicles.
UFR 08-13 ($M) = Shortage dollar amount – POM 08-13 dollar amount.

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31 JAN 07 ARO—Materiel Programs Division

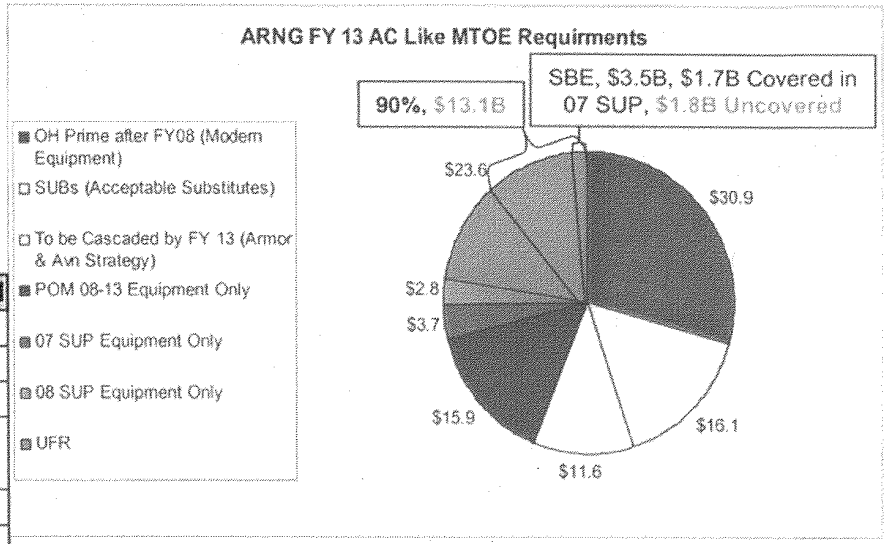
ARNG Equipping Requirements versus Resources

NGB-ARQ

ARNG Equipping Requirements Overview

ARNG Total Requirement for FY13 AC Like MTOE & TDA: $104.6B

ARNG FY13 AC Like MTOE Rqmnts	$B	% OF Rqd
Total Required $B	$104.6	100%
OH Prime after FY08 (Modern Equipment)	$30.9	30%
SUB (Acceptable Substitues)	$16.1	15%
To be Cascaded from AC by FY 13 (Armor & Avn Strategy)	$11.6	11%
POM 08-13 Equipment Only	$15.9	15%
07 SUP Equipment Only	$3.7	4%
08 SUP Equipment Only	$2.8	3%
Value On Hand + Pgmd + Cascade	$81.0	77%
Total UFR	$23.6	23%
UFR to Reach 90%	$13.1	



FY13 ARNG AC Like MTOE Requirements

The ARNG has a **$23.6 UFR** after FY13

$13.1B against this equips ARNG to 90%

* "Equipment Only" Only includes funds that purchase new equipment.
* On Hand Equipment does not include Unacceptable Substitutes (Example- M35s and 800s)
* Does not Include "Grow the Army" and all costs are based in FY08 dollars

ARNG UFR to reach 90%: $13.1B

Equipment Category	Required Quantities (000)	On Hand Quantities (000)	Quantities Delivered FY 07-08 (000)	Shortfall Quantities before FY 08-13 (000)	Shortfall before FY 08-13 ($M)	Procurement Program FY 08-13 ($M)	Post FY 08-13 Shortfall ($M)	* UFR to S-1 Floor (90%)
Armor-Hvy T/W	15.04	8.58	0.59	5.87	$1,949.18	$2,312.76	$0.00	$0.00
AVN	60.58	29.84	0.36	30.38	$12,928.15	$3,596.72	$9,331.43	$5,528.87
C2	189.68	17.02	23.95	148.71	$1,917.63	$2,021.18	$0.00	$0.00
Communicate	589.81	336.90	15.52	237.39	$3,009.98	$1,512.38	$1,497.60	$891.07
Engineer	30.97	14.42	0.79	15.76	$1,655.52	$851.72	$803.80	$478.26
Force Protection	476.50	356.94	20.29	99.27	$996.37	$122.89	$873.48	$519.72
ISR	5.65	2.22	0.93	2.50	$381.96	$787.05	$0.00	$0.00
Logistics	588.11	137.45	3.07	447.59	$1,637.92	$648.38	$989.54	$588.78
Maintenance	19.25	3.25	2.29	13.71	$281.19	$36.50	$244.69	$145.59
Medical	25.14	10.24	6.19	8.71	$15.98	$101.67	$0.00	$0.00
Precision Strike	27.51	10.49	0.91	16.10	$1,975.81	$2,474.67	$0.00	$0.00
Security	1730.86	819.94	135.94	774.97	$3,561.81	$1,543.94	$2,017.87	$1,200.63
Transportation	179.61	51.20	17.61	110.80	$10,163.36	$5,178.90	$4,984.46	$2,965.76
Other	262.05	72.35	0.00	189.70	$1,451.32	$0.00	$1,451.32	$863.54
Totals	4,200.75	1,870.85	228.23	2101.46	$41,926.18	$21,188.76	$22,194.19	$13,182.22

*** In addition to the fall current funds programmed through FY13, an additional UFR of $13.18B is required to get the ARNG to 90% EOH (S-1). It will take approximately $24B to reach 100%. All figures are based on FY 08 Costs and don't include "Grow the Army" Costs.**

NGB-ARQ

Essential 10 Key Enablers: DSCA Prioritized Buy List

ITEM	PRIORITY 1	PRIORITY 2	PRIORITY 3	PRIORITY 4	RATIONALE/JUSTIFICATION
Joint Force Headquarters					
Miscellaneous Equipment	$5,000,066	$5,000,027	$5,000,126	$5,000,111	
Command and Control (C2)					
Joint Network Nodes (JNN)	$33,300,000	$16,650,000	$16,650,000	$16,650,000	Provides the tactical user with an interface to strategic data networks, and interoperability with commercial, joint, combined and coalition communications systems across multiple security levels.
Army Battle Command Systems (ABCS)	$7,808,500	$7,233,500	$5,638,100	$6,458,800	Provides enhanced situational awareness via a suite of systems that receive and transmit C4ISR information.
Standard Army Management Information System (STAMIS)	$25,727,920	$20,550,610	$21,595,610	$15,953,980	Provides logistics management/automation systems an electronic information exchange capability via both tactical and commercial networks.
Unmanned Aerial Vechicle - SHADOW	$15,000,000	$15,000,000	$15,000,000	$15,000,000	Without funding the ARNG will be unable to provide commanders superior situational awareness, information flow, and adequate Force Protection in urban and conventional tactical environments.
Communications					
HF Radios / Equipment	$16,288,475	$17,445,135	$15,435,815	$18,785,815	Provides secure, long-range voice and data capability.
Aviation					
Helicopters - Hoists/Mounts	$953,016	$1,191,270	$1,191,270	$1,191,270	Required to support HLD/HLS, state, domestic and other contingency operations.
Helicopters - NAVSTAR GPS Aviation Sets	$1,235,130	$1,235,130	$1,370,130	$1,370,130	Provides modern equipment and interoperability to ARNG aircraft.
Civil Support Teams and Force Protection					
NBC Shelters	$5,502,000	$6,288,000	$7,860,000	$7,860,000	Provides a contamination free and environmentally controlled work area for medical personnel.
NBC - Joint Services Transportable Decontamination System Small Scale (JSTDS-SS)	$990,000	$990,000	$1,155,000	$1,320,000	Without funding the ARNG will be cascaded outdated and no longer in production models of the M17 LDS from the Active Component.
NBC Radiation/Chemical Detectors	$682,160	$682,160	$816,990	$910,740	Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.
Engineer					
Heavy Construction Equipment - Horizontal (Dumps, Graders, Excavators)	$16,151,889	$11,927,933	$12,579,096	$11,957,388	Replaces overaged systems that are in critical need of modernization and incapable of full mission support.
Heavy Construction Equipment - Vertical RTCH, ATLAS)	$19,004,075	$16,755,970	$19,505,970	$22,255,970	Primary container/material handling equipment required to support and sustain ARNG units.
Logistics					
Generators - Small/Medium	$5,348,830	$5,839,690	$5,839,690	$5,783,445	Critical requirement during natural disaster or state emegency. Provides electrical power as needed to support mission requirements.
Liquid Logistics - Water Purification	$6,451,500	$8,070,000	$8,047,500	$10,707,500	Replaces existing 600 GPH reverse osmosis water purification systems with a 1500 GPH capability.
Liquid Logistics - Tank Water	$4,840,000	$4,840,000	$4,840,000	$5,550,000	Provides a bulk water delivery/distribution/storage systems.
Maintenance					
STAMIS - Standard Army Maintenance System (SAMS)	$967,458	$942,780	$983,910	$1,557,590	Mission critical system required to support unit-level maintenance support requirements.
Medical					
HMMWV Ambulance	$13,455,000	$14,490,000	$14,490,000	$13,455,000	Provides patient transport/evacuation capability.
Security					
Small Arms - Shotgun	$264,610	$299,860	$332,525	$377,845	Critical for security operations in urban environments.
Night Vision - Driver's Vision Enhancers (DVE)	$4,926,825	$4,926,825	$5,038,310	$5,474,250	Provides a thermal night vision capability to drivers enabling continuous mission operations.
Transportation					
HMMWV - Un Armored	$101,590,000	$107,800,000	$107,800,000	$106,765,000	
HMMWV - Up Armored	$31,598,000	$38,003,000	$38,003,000	$35,868,000	Critical enabler for the ARNG to perform all mission and support requirements, domestic or combat.
FMTV - Trucks	$60,451,326	$61,580,790	$60,966,638	$60,451,326	Replaces obsolete, non-deployable trucks. Critical enabler for the ARNG to perform all mission and support requirements.
HTV - HEMTT Tanker / Wrecker / LHS	$42,833,720	$52,628,720	$51,203,720	$50,637,440	Provides line and local haul, resupply, and recovery capability to sustain operations.
HTV - PLS Truck / Trailer / Bed / CHU	$56,768,600	$56,768,600	$56,768,600	$56,768,600	Primary component of the maneuver-oriented ammunition distribution system. Also performs local-haul, line-haul, unit re-supply and other transportation missions.
MTV - M916A3 Light Equipment Transporter	$11,350,000	$11,350,000	$11,350,000	$11,350,000	Prime mover for pulling the M870 series trailer and heavy engineer equipment.
MTV - Tactical Trailers	$11,510,000	$11,510,000	$10,540,000	$10,540,000	Required for transport of heavy engineer equipment, ISO containers, and other cargo.
Total	$500,000,000	$500,000,000	$500,000,000	$500,000,000	

NGB-ARQ

Mr. LEAHY. Mr. President, I suggest the absence of a quorum, with the time to be charged to both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Mr. President, I ask for the yeas and nays on the pending judicial nomination.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays are ordered.

Mr. LEAHY. Mr. President, the Senate continues to make significant progress today with another confirmation of another lifetime appointment to the Federal bench. The judicial nomination we consider is Debra Ann Livingston of New York, who has been nominated to the United States Court of Appeals for the Second Circuit. That is the circuit for New York, Connecticut and, of course, Vermont. Professor Livingston has the support of both her home State Senators. I thank Senator SCHUMER for chairing the confirmation hearing at which she appeared.

Professor Livingston is the Paul J. Kellner Professor of Law and vice dean of the Columbia Law School, where she has been a professor for 13 years, teaching criminal procedure, evidence, and national security law. She previously taught at the University of Michigan Law School. Prior to her academic career, Professor Livingston served as a Federal prosecutor and deputy chief of appeals for the U.S. Attorney's Office for the Southern District of New York and worked in private practice for the Wall Street law firm of Paul, Weiss, Rifkind, Wharton & Garrison. I congratulate Professor Livingston and her family on what I am sure will be her confirmation today.

Coincidentally, this is the anniversary of the date 6 years ago, in 2001, on which this President began his assault upon the courts by announcing his first list of nominees. With the help of Senate Republicans, this President has sought to pack the courts and tilt them decidedly in one direction. To a great extent, he has succeeded. After Republican Senators stalled President Clinton's nominees to the Fourth, Fifth, Sixth, D.C., and other circuits, the Senate proceeded to confirm this President's nominees to the very vacancies that had previously been maintained by pocket filibuster in the Senate.

In my time as chairman from mid-2001 to the end of 2002, I worked hard to reach out to this President and tried hard to change the tone and get the confirmation process back on track. We succeeded in confirming 100 nominees in 17 months, including 17 to the circuit courts. But I could not change the tone alone. This White House chose, instead, to use judicial nominations to divide and to seek political gain in the ensuing confrontations.

I have tried, again, this year to restore order and civility to the process. In spite of all our progress and all our efforts, we are still confronted by shrill complaints. More ominous are the signals and rumors that the White House is, again, gearing up to nominate more extreme nominees and more who do not have the support of their home State Senators. That is wrong. It may be the good politics to appeal to the Republican base, but it is wrong to use our courts in that way—just as it is wrong to corrupt the law enforcement responsibilities of the Department of Justice.

Some will undoubtedly repeat the current Republican ''talking point'' that the Senate must confirm 15 circuit judges this Congress, this year and next, because that is a ''statistical average'' of selected years. Well, during the 1996 session the Republican-led Senate refused to confirm a single circuit court nominee, not one. That meant that in the 104th Congress, in 1995 and 1996 combined, only 11 circuit nominees were confirmed.

It is true that during the last 2 years of this President's father's term, a Democratic-led Senate confirmed an extraordinary number of circuit nominees—20—in fact. That action was not reciprocated by the Republican majority during the Clinton years.

It is true that during the last 2 years of the Reagan administration, a Democratic-led Senate confirmed 17 circuit court nominees. That action was not reciprocated by the Republican majority during the Clinton years.

Instead, the last 2 years of President Clinton's two terms witnessed a Republican-led Senate confirming only 11 circuit nominees and then, with vacancies skyrocketing to historic highs, 15 circuit nominees in the 106th Congress.

Thus, to get to the supposed ''historical average'' that Republicans like to talk about, they take advantage of the high confirmation numbers during Democratic-led Senates and thereby inflate and excuse their own actions from the Clinton years.

There are three more factors that the Republican talking point ignores: The first is the number of vacancies. The second is adding additional judgeships by congressional action. The third is the number of qualified circuit nominees.

The last Congress of the Reagan administration, the one in which a Democratic-led Senate confirmed 17 circuit nominees, the circuit court vacancies went down from 13 to 8 during the course of the Congress. Seven circuit nominations were returned to the President without action. In fact, in addition to filling vacancies that were arising in the regular course, the Democratic-led Senate was working to fill many of the 24 additional circuit judgeships created in 1984. By the end of the Reagan Presidency all circuit vacancies, those from existing judgeships and those created during his Presidency, were reduced from a high of 25 down to 8.

During the last Congress of the first Bush administration, the one in which a Democratic-led Senate confirmed 20 circuit judges, the circuit vacancies again went down, from 18 to 16. Again, the Senate was filling both existing and newly created vacancies. In 1990, during President Bush's term, Congress authorized an additional 11 circuit judgeships. That was why vacancies at the beginning of the 102nd Congress rose to 18.

By contrast, during the last Congress of the Clinton administration, the one in which a Republican-led Senate confirmed 15 circuit judges, circuit court vacancies skyrocketed from 17 to 26. This rise in circuit vacancies had nothing to do with Congress creating additional circuit judgeships, however. Unlike during the Reagan administration and during the Bush administration, during the Clinton administration the Republican-led Congress refused to act in accordance with the previous 6-year cycle for reviewing needed judgeships. Not a single new circuit judgeship was created during the Clinton administration that I can recall. Instead, the Republican-led Senate engaged in strenuous efforts to keep circuit judgeships vacant in anticipation of a Republican President. Indeed, at the end of the 106th Congress, the last in the Clinton Presidency, 17 circuit court nominees were returned to President Clinton without action. More circuit nominees were returned without action that Congress than were acted upon by the Senate for the first time in modern history.

Likewise, during the last Congress of the first term of President Clinton, the one in which a Republican-led Senate confirmed only 11 circuit judges, circuit court vacancies went up, from 16 to 19. Again, this was without the addition of new circuit judgeships.

Despite the carping and the clamor, the vacancies on the circuit courts have gone from 26—where a Republican-led Senate forced the circuit vacancies at the end of the Clinton administration—steadily downward during the Bush administration. With the confirmation of Judge Livingston, circuit vacancies will be at half that amount today 13—and approaching a historic low.

Judge Livingston will be the third circuit court nomination confirmed this year. It is only May, but we have already equaled the total circuit nominees confirmed in the entire year of 1993. We have far surpassed the total confirmed during the entire 1996 session when the Republican majority would not consider or confirm a single circuit nomination of President Clinton's.

This will be the 20th circuit court nomination confirmed while I presided as Judiciary chairman. It is a little

known fact that during the more than 6 years of the Bush Presidency, more circuit judges, more district judges and more total judges have been confirmed while I served as Judiciary chairman than during either of the two Republican chairmen working with Republican Senate majorities.

This will be the 18th judicial confirmation this year. It is spring and we have already confirmed more judges than were confirmed during the entire 1996 session when President Clinton's nominees were being reviewed by a Republican Senate majority. This is the 118th judicial confirmation while I have served as Judiciary chairman. That exceeds by more than a dozen the confirmations Senator HATCH presided over during the more than 2 years he was Judiciary chairman.

The Administrative Office of the U.S. Courts lists 47 judicial vacancies, yet the President has sent us only 24 nominations for these vacancies. Twenty-three of these vacancies—almost half—have no nominee. Of the 15 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for six of them. That means more than a third of the judicial emergency vacancies are without a nominee.

This is the third factor I mentioned above, the lack of nominees.

This President has shown that he would rather pick politic fights than good judges. I was encouraged at the beginning of this Congress that a few of the most controversial nominees from the last Congress were not renominated. That sensible approach seems to have ended, however, and this White House seems to be returning to its old, bad habits.

Despite the harping and the criticism, the Judiciary Committee has been working hard to make progress on those nominations the President has sent to us. Of course, when he sends nominees that he knows are unacceptable to home State Senators, it is not a formula for success. Sadly, that is what appears to be happening, again.

Before the consideration of the Second Circuit nominee today, we had already proceeded with committee and Senate consideration of the nominations of Randy Smith and Thomas Hardiman. They were confirmed to the Ninth and Third Circuits, respectively.

Some may recall that I had been working for more than a year to make progress on the Smith nomination. When the President finally renominated Judge Smith for an Idaho vacancy, we were able to make quick progress with that nomination.

Our circuit court confirmations so far this year are in addition to the 15 lifetime appointments to the Federal district courts we have proceeded to confirm. During the entire 1996 session only 17 judges were confirmed. We are doing pretty well with 18 confirmations before the middle of May.

With respect to circuit nominees, after this confirmation there will be only 13 vacancies. Eight of those are without a nomination. Of the five remaining current circuit nominees, one was only nominated a few weeks ago. Having consulted with the home State Senators from Mississippi, I have scheduled our next judicial confirmation hearing to be held tomorrow to include Judge Leslie Southwick of Mississippi.

All three of the other circuit nominations are renominations that were not considered last Congress with a Republican majority. Two are renominations that the White House made knowing full well that they did not yet have the support of their home State Senators. When I previously chaired the committee, I was able to break the blockade of Sixth Circuit nominations that was established by the Republican majority when it pocket filibustered several of President Clinton's outstanding nominations to the Sixth Circuit. Once we broke through with two Sixth Circuit confirmations in 2002, President Bush was left with seven appointments to the Sixth Circuit during his term in office. Given the White House's unwillingness to work with the home State Senators of the two current nominees, however, it will be very difficult to make more progress.

With respect to the nomination of Peter Keisler, that renomination is controversial. He was previously nominated in June of 2006 but was not considered by the Republican majority then in control. The Republican majority did not seek to proceed with this controversial nomination at that time. In fact, the President and the Republican Senate majority insisted, instead, to proceed over the last several years on other nominations to the important D.C. Circuit, which were, themselves, highly controversial. The nominations of Janice Rogers Brown, Thomas Griffith and Brett Kavanaugh were each apparently a higher priority for this White House and the Republican majority than the nomination of Mr. Keisler. The others have each been confirmed to lifetime appointments on this very important court. At the end of the last Congress, the Keisler nomination was returned to the President without action in accordance with Senate Rules.

The Republican Senate majority pocket filibustered more than 60 of President Clinton's qualified and moderate judicial nominees. I have proceeded on more judicial nominees far faster than Republicans did on President Clinton's nominees.

With the cooperation of the President, with his working with Senators from both parties in making his nominations, with the cooperation of the committee and the Senate, we can continue to make progress.

I will yield the floor and reserve the remainder of my time.

Mr. SPECTER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Who yields time?

Mr. SPECTER. Mr. President, I yield the Senator from Texas 10 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Texas is recognized for 10 minutes.

Mr. CORNYN. Mr. President, we are into the fifth month of the 110th Congress. Even before this Congress convened in January, observers were predicting that judicial nominations would be one of the most contentious issues that we face. But I think by taking a forward-looking approach, the Senate managed to avoid an unnecessary confrontation. I think, by and large, we have started off on the right foot.

Earlier this year, the Washington Post and the Los Angeles Times both applauded the President for the difficult concessions he made in not choosing to renominate certain previous nominees who generated intense opposition. While I thought some of that opposition was mostly unfair and unwarranted, I respect the President's decision to extend an olive branch to the new Democratic majority in the Senate. Those two newspapers also encouraged the new Democratic majority to reciprocate with cooperation and fairness.

In that spirit of cooperation, Senate Republicans received assurances earlier this year from the Democratic majority of a fair and reasonable pace for the confirmation of nominees to the U.S. courts of appeals. I was pleased to hear the majority leader pledge his cooperation and leadership to help this Congress ''at least meet the standards of Congresses similarly situated as ours.'' We saw progress in the first couple of months of this year, with the confirmation of two circuit court nominees.

Today, the Senate will vote to confirm a Third Circuit judge. I welcome today's vote and hope it will be an indication of the majority's intent to keep working with us on the pace necessary to meet the historical average that the majority leader has endorsed.

Yesterday, the distinguished chairman of the Judiciary Committee commented on how he views this progress. I would like to briefly discuss the historical analogy he cited. First, I should note I am proud to continue to closely work on several significant pieces of legislation with the senior Senator from Vermont, Mr. LEAHY. He and I have found common ground on, among other things, historic changes to the Freedom of Information Act and much needed reforms to the U.S. patent system. I look forward to working with the chairman to help make these important bills become law.

The chairman and I tend to part ways on some issues related to judges. I just want to take a moment to comment on the remarks he delivered yesterday on the pace of judicial confirmations. In particular, I am wondering why he chose the year 1996 as the appropriate measuring stick for progress on judges made by this Congress. Of course, there is one obvious parallel between 1996 and the present year, and that parallel is divided government.

In 1996, President Clinton, a Democrat, sat in the White House, and the Senate majority was held by Republicans. But I submit we ought to be in the business of comparing apples with apples. We must look at Congresses similarly situated to this Congress. Point in fact: Looking to ''similarly situated'' Congresses is the very comparison cited by the majority leader.

Mr. President, you will recall the majority leader's commitment to judicial nominations—in his own words—to ''at least meet the standards of Congresses similarly situated as ours.''

Mr. President, by any reasonable measure, the proper comparison—and the one the majority leader has apparently endorsed—is not with a single year but with an entire Congress; specifically, with a Congress the final 2 years of a Presidency and a Senate majority of the opposing party. In fact, we are fortunate to be able to look to historical parallels during the last three Presidencies, not just one.

The landscape we face in the 110th Congress was similarly faced by President Clinton in 1999 and 2000, during the 106th Congress. President Clinton worked with the Republican-controlled Senate during the final 2 years of his Presidency to confirm 15 circuit court judges.

In 1991 and 1992, the 102d Congress, President George Herbert Walker Bush worked with a Democrat-controlled Senate during the final 2 years of his Presidency. President Bush and the Democrat-controlled Senate confirmed 20 circuit court judges in 1991 and 1992.

Finally, in 1987 and 1988, President Reagan finished out his Presidency opposite a Democrat-controlled majority in the Senate. President Reagan and the Democrat-controlled Senate worked together to confirm 17 circuit court judges.

Again, I submit we have to compare apples to apples. When we do that, we see somewhere between 15 and 20 circuit court judges were confirmed during each of those final two years of our last three Presidents. That is the standard that is relevant to this discussion.

The facts are what they are. This Congress has confirmed two circuit court nominees. We will shortly confirm our third, and that is a good thing. But the fact is, we are not yet back on pace to reach the output of the last 2 years of the Clinton Presidency—when a 55-member Republican majority in the Senate confirmed 15 circuit court nominees.

There is no satisfactory reason I have heard as to why no circuit court nominees were confirmed in April, or even reported out of committee. The reasons that have been offered—the vacancy rate is not that bad, the President needs to nominate more circuit court judges, and President Clinton was treated worse—are all irrelevant to the majority leader's representations on the Senate floor that this Senate will ''at least'' hit the historical average.

I urge my colleagues on the other side of the aisle to work with us, as we must, and work with the President to get back on track. That is our constitutional duty.

I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, while the Senator is still on the floor, I wish he had heard my statement. I can assure him that neither the chairman of the Judiciary Committee nor the majority leader intends to emulate what the Republicans did, with a pocket filibuster of more than 60 of President Clinton's nominees. I know of nobody on this side of the aisle who expects the Democrats to do a pocket filibuster of 60 of President Bush's nominees, as the Republicans did of President Clinton's.

It is interesting, when I hear this talk about historical averages, they weren't only—when you bring up the number of times there was a Democratic majority with a Republican President, a Republican President was treated far better than the Republicans treated a Democratic President. At no time were the Democrats ever pocket-filibustering 60 of the President's nominees.

There has been talk about President Bush withdrawing some of these nominees he had last year. I point out he had a Republican majority throughout the year, and they didn't pass through many. One was opposed by organizations that had never taken a position on a judge before—the Wildlife Federation—and all the Native American councils. Another one was not only involved in running the torture memos, but after swearing under oath and telling us information, he broke that oath by never giving or bringing the information. That was a person who would not have gotten a majority under a Republican-controlled committee. He would not have gotten out of committee because both Republicans and Democrats would have opposed him. So no big deal withdrawing people who were not going to go forward. In fact, in one instance, because somebody was nominated in the wrong State for a circuit court, that person was withdrawn. We moved very quickly to put the next nominee in that came from the right State.

I remember once that I got criticism from the White House, Karl Rove, and Vice President CHENEY for holding up because a person asked about a nominee. I must admit, to their credit, they withdrew his name after he was indicted and pled guilty to fraud. They are probably kind of happy I didn't let him go forward.

The Senator from Texas says we should compare. I wish he would stay with me one more moment. If the Senator from Texas doesn't want to listen and we have closed minds, I can't do anything about it.

I will say this: I have been chairman for 21 months during President Bush's Presidency. During that time, counting today's, we have confirmed 20 circuit judges and 98 district judges. One of the other chairmen was there for 2 years, there were 18 circuit judges. They were there longer than I have been with less judges; 85 district judges compared to my 98 in less time. Another chairman, 16 circuit judges compared to my 20; 35 district judges compared to the 98 we put through.

What we have done, of course, is the distinguished ranking member, as chairman, put together strenuous debate on two Supreme Court nominees. I think he knows full well the Democrats cooperated with him, whether they supported the nominee or not, to get them through.

Frankly, I am tired of misstatements of the record, and I will take time—I probably will have to have time on every single judge that comes up—to correct that. So people understand, we will not do as the Republicans did and pocket filibuster 60 or more of President Bush's nominees and, secondly, obviously we know when the Republican rule, the Strom Thurmond rule, kicks in next April, that changes all the rules.

I will point out, the proof is in the pudding. In less than 2 years, with the Democrats in control, we have moved faster on the President's nominees than during comparable times with Republicans.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, the subject matter at hand is the confirmation of Ms. Debra Ann Livingston for the U.S. Court of Appeals for the Second Circuit, and I urge my colleagues to confirm her. She has an excellent, outstanding academic and professional record.

She was a superb graduate of Princeton, magna cum laude, 1980, Phi Beta Kappa; a graduate of the Harvard Law School in 1984, again, magna cum laude. She was editor on the Harvard Law Review, a law clerk to Judge Lumbard of the Court of Appeals for the Second Circuit. She practiced law with the prestigious firm of Paul, Weiss, Rifkind, Wharton and Garrison. She was an assistant U.S. attorney in the Southern District of New York. She was a commissioner for the New York City Civilian Complaint Review Board for some years, 1994 to 2003, and has been on the Columbia Law School faculty since 1994 as an associate professor, a professor in the year 2000, and

vice dean from 2005 to 2006. She has been rated unanimously well qualified by the American Bar Association. I believe she is an extraordinary prospect to go to the Court of Appeals for the Second Circuit.

There has been conversation, discussion, about the confirmation process. I commend the distinguished chairman for what he has done to date. We work together very closely. In the 109th Congress, he was ranking member. I liked it better when he was ranking member and I was chairman, but we have had bipartisan teamwork.

The record for confirmations of circuit judges in the last 2 years of a Presidential term, when the control of the Senate is in the opposite party, has been in the 15 to 17 range. I am hopeful, perhaps even optimistic, that we can get there this year.

A good bit remains to be done by the administration in submitting nominations. We have some 8 vacancies on the court of appeals which do not have nominations from the White House. Toward that end, there has been a leadership meeting with the White House counsel. We have tried to structure a plan which would enable us to go forward to confirm more circuit judges and to fill the vacancies of district court judges.

Many of these courts are in the category of judicial emergencies. As a practicing lawyer for many years, I can attest firsthand to the importance of having judges on the bench so that litigants can have a speedy disposition of their trials.

There is an adage: Justice delayed is justice denied. I think that is very true.

I ask unanimous consent that the full text of a prepared statement be printed in the CONGRESSIONAL RECORD following my extemporaneous remarks and that the specific text of my introduction be printed in the RECORD. Sometimes comments are made extemporaneous and then the written statement appears in the RECORD. If anybody reads the CONGRESSIONAL RECORD, they must wonder why there is so much repetition, so I would like to have an explanation included.

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

STATEMENT ON THE NOMINATION OF DEBRA LIVINGSTON TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT AND CALLING FOR A FAIR CONFIRMATION PROCESS

(Senator Arlen Specter)

Mr. President, I seek recognition today as the ranking member on the judiciary committee to discuss the state of judicial nominations in the 110th Congress and the nominee pending before the Chamber today.

Today, the Senate will confirm Professor Debra Livingston to the U.S. Court of Appeals for the Second Circuit. She was first nominated over 300 days ago to a vacancy judged to be a ''judicial emergency'' by the nonpartisan Administrative Office of the Courts. She is a very fine choice for this important court and I am glad she will soon bring her much needed skills to the Second Circuit.

Before discussing judicial nominations more generally, I would like to say a few words about Professor Livingston's impressive background as an accomplished attorney, prosecutor, and legal scholar.

She graduated magna cum laude from both college and law school: Princeton University in 1980 and Harvard Law School in 1984. At Princeton, she was elected to Phi Beta Kappa. At Harvard, she was the Editor for the Harvard Law Review. Following law school, Professor Livingston worked as a law clerk to the Honorable J. Edward Lumbard of the U.S. Court of Appeals for the Second Circuit. In 1985, after her clerkship with Judge Lumbard, she joined the firm of Paul, Weiss, Rifkind, Wharton and Garrison as an associate, where she worked on a variety of State and Federal litigation.

The following year, Professor Livingston joined the Office of the U.S. Attorney for the Southern District of New York as an Assistant U.S. Attorney. Her work in the U.S. Attorney's Office focused on criminal trials and appeals. In 1990, she was elevated to serve as Deputy Chief of Appeals, an assignment that had her handling appeals before the Court to which she is now nominated.

After a successful career in the public sector, she briefly returned to Paul Weiss in 1991 before leaving the following year to become a law professor. She worked as an assistant professor at the University of Michigan Law School until 1994, when she joined the faculty of Columbia Law School as an associate professor. She became a full professor in 2000 and in 2004 became the Paul J. Kellner Professor of Law. Her principal areas of teaching at Columbia have been criminal investigations and evidence and she has published numerous articles in the area of criminal law and co-authored the casebook Comprehensive Criminal Procedure.

Professor Livingston has received a unanimous ''well qualified'' rating from the American Bar Association, the highest rating that organization gives. I'm sure she will enjoy a strong positive vote today.

Chairman LEAHY must be commended for working with Senators on both sides in order to get us off on the right foot during this Congress. Professor Livingston will be the 18th judge, and the third circuit court judge, confirmed this year. This is, admittedly, a much more auspicious beginning than that made by the Republican controlled Congress during President Clinton's final 2 years in office. That said, much work remains to be done.

The average for similarly situated Congresses in recent times is 17 circuit court confirmations. Despite its slow beginning, even the 106th Congress ultimately confirmed 15 men and women to the circuit courts and a total of 73 article III judges. And this was a historical low point. At the very least, the 110th Congress should meet or exceed this standard.

On several occasions, members of the majority have indicated that we can expect a dramatic slow down in confirmations in the latter part of next year. While I do not agree that historical record supports any kind of ''rule'' in this regard, we do know that the press of a Presidential election has a tendency of slowing down work in the Senate. If nothing else, we can expect the Congress will be in recess for a substantial portion of the second half of next year.

Therefore, in order to meet the standards set by similar Congresses in recent times, it will be necessary for us to confirm approximately one circuit court judge for every month we are in session.

There are five circuit court nominees currently pending before the Judiciary Committee. Three of these nominees are to vacancies designated as ''judicial emergencies'' by the Administrative Office of the Courts. Some of these nominations are being delayed by home state Senators who have not returned blue slips. It has generally been the practice of the Senate to not proceed without the consent of home state Senators. I have urged these Senators to return these blue slips and allow the process to go forward.

Although there is an understandable focus on the circuit courts, it should also be noted that there are 18 district court nominees pending in the Committee, eight of whom have been pending over 120 days, and 14 of whom are awaiting a hearing. These nominations also deserve prompt action.

I said before that Chairman LEAHY deserves to be commended for the progress made so far. The President also deserves to be commended for acknowledging the reality of a Democratic controlled Congress and withdrawing nominations that the other side has adamantly opposed. This was a very productive step that was rightly commended by Senators of both parties and the editorial pages of major newspapers including the Washington Post and the Los Angeles Times.

I have urged the President to build on this precedent by consulting with Senators of both parties as he moves to fill additional vacancies on the federal courts. As of today, eight circuit court and fifteen district court vacancies still do not have nominees. Three additional circuit court vacancies are imminent. In addition, 15 district court vacancies await nominees. The Senate cannot fulfill its duty to provide advice and consent until the President first sends us nominees. I am hopeful he will do so soon.

It will take both Republican and Democratic Senators, and the White House, working together to ensure an orderly confirmation process. Both sides have ample reason to complain about past grievances over the last two decades. But we cannot continue settling old scores. The partisan tit-for-tat over judges got so bad that it virtually paralyzed this body during the last Congress. This environment is deleterious to the Senate, to the nominees, and ultimately to litigants who wait for justice as judgeships go unfilled.

I believe the 110th Congress provides an opportunity to turn the page. Today's confirmation is further evidence that we are off to a good start. I look forward to working with Chairman LEAHY, and all my colleagues, in this effort.

IMMIGRATION

Mr. SPECTER. Mr. President, I now intend to take some of the time allocated for the judicial issue to talk very briefly about the immigration question which is front and center in the Congress today. It is second only to the concerns about the Iraq war and the current funding impasse which we have in the constitutional confrontation between the Congress and the President, and the sustaining of a veto and our efforts to try to work that out.

I believe there is a universal agreement that the immigration situation in the United States today is an unmitigated disaster. Strong language, but not strong enough for what is going on with immigration. We have a porous border and undocumented immigrants are coming into the United States. They pose a security risk. Terrorists are free to wander across our borders and come into our country and pose potentially grave threats to our national security.

We find a significant number of incidents of crime among undocumented immigrants. Crime does not have a sole source, but it is a problem. We definitely need to get a handle on immigration.

We worked very hard in the 109th Congress in the Senate. I give my colleagues in the House of Representatives credit for working very hard too. We produced a bill out of the Judiciary Committee. It was reported to the floor, and it passed the Senate. It was comprehensive reform, which is what was called for by the President, a bill which would deal with the 11 million undocumented immigrants, would provide for a Guest Worker Program, and would, as a preliminary to secure our borders, provide for employer sanctions if employers hired illegal immigrants.

The House of Representatives chose a different course to provide only for border security, and it was embarrassing, in my judgment, that we were unable to have a conference and pass an immigration bill last year with both Houses—the Senate and House of Representatives—controlled by the Republicans and President Bush, a Republican in the White House. But we find ourselves this year with the unmitigated disaster of immigration, worse now than ever.

There have been major efforts to try to find consensus legislation to present to the Senate for consideration. The first meeting was held on February 13 of this year, and the meetings have been held continuously right up to the present time, almost 3 laborious months. These were not abbreviated meetings. These meetings were held every Tuesday, Wednesday, and Thursday from 4 to 6 o'clock. They were attended by an average of 8 to 10 to 12 Senators. They were attended also by the Secretary of Commerce and the Secretary of Homeland Security, signifying the President's deep concern and deep interest in the issue.

They started off with Republicans meeting separately, and then we moved into bipartisan meetings. Last week, illustratively, we had 12 Senators meeting off the Senate floor for 2½ hours. It is pretty hard to keep 12 Senators in one room for 2½ hours, but we did.

We have come to what has been categorized as a ''grand bargain.'' That is a term one of our most active participants, Senator LINDSEY GRAHAM, gave to it because we had the overall structure of an immigration bill. We did not have all the aspects of it worked out, but we were proceeding to provide for real border security—border security which would increase the number of border guards from 12,000 to 18,000 and border security which would encompass a fence. We cannot have one across the entire border, but we can have a fence to secure our major metropolitan areas, illustratively San Diego and southern Arizona.

We have worked laboriously to craft identification so an employer would know whether an applicant for a job was legal or illegal. When an employer has the opportunity to be certain of the legal status of those he hires, then the stage is set for tough sanctions on employers so that we can reduce the magnet to bring people to the United States for jobs when they are not legally in the United States.

We have provided the mechanism for dealing with the 11 million undocumented immigrants. We have structured a program so it would not be fairly or accurately characterized as amnesty. The requirements of that program are that immigrants learn English, that the immigrants have roots in the United States, that they have held a job for a protracted period of time, that they pay a fine, and that there be a so-called touchback provision. It is still not decided as to the issue of back taxes, but that is a consideration which is on the table. We have provided for a Guest Worker Program which is what it says; that is, people come to the United States for the purpose of filling jobs and then will return to their native homes.

We provided that if there are people living in the United States legally, citizens or legal immigrants, they would have the first opportunity at these jobs.

We have held some 23 meetings over the course of the past 3 months. So I was a little surprised to see the statement by the majority leader at a press conference yesterday. Perhaps it was said partially in jest, but Senator REID pointed out that there had been notice for some 2 months that the immigration bill would be taken up in the last 2 weeks before the Memorial Day recess. Then he said:

> And anyone who thinks that 2 months is not enough time to get ready should get another occupation.

Maybe he said it in humor, but certainly I would fit into that category of looking for another occupation. The distinguished chairman of the committee has elected to have the matter go through the negotiating process which I have just described, so he doesn't have to seek another occupation. But there are many people on both sides of the aisle, under the Reid dictum, who now must seek another occupation.

I think it is a fair representation to say we have worked tenaciously. The problem we face now is that the so-called stakeholders all want more than can be divided from what is available. There are stakeholders who want more green cards and who want the advantages of family admission on a widespread basis, and if it were left up to me alone I would be in favor of the broadest reach of family unification. But if we are to find the realism of enough green cards to accommodate the undocumented immigrants who are going to come through the process at the end of the line, there has to be some give somewhere.

The critics of the immigration bill are descending on us from all sides before we even have an immigration bill. The Hill publication reports today of opposition from Members of the House of Representatives for Senate legislation when we don't even have legislation in existence. One Member of the House is quoted as saying:

> It is important that the Senate knows there will be strong bipartisan opposition to amnesty.

Well, we don't even have a bill that could be accused of having included amnesty, and the outline which we are considering and contemplating is certainly not amnesty by any fair interpretation.

The majority leader has said he intends to file under rule XIV today and go to the legislation on Monday. As I said yesterday, there is strong opposition to such a practice, at least on this side of the aisle. It is my hope that we will not face a contested motion to proceed. It is my hope we will not face the threat of a filibuster against the motion to proceed, which would doom immigration reform.

We have encapsulated our views in a letter, following the majority leader's news conference of today, where a number of us are asking that we rethink the schedule we have. If we bring last year's Senate-passed bill to the floor, it is going to have substantial opposition. That has already been announced on both sides of the aisle. Both Democrats and Republicans who supported it last year are opposed to it. If we start there, the floor action is likely to be a free-for-all.

I understand the problems of Senate scheduling, but I also understand the vicissitudes, problems, and pitfalls of proceeding where you don't have the structure of a bill which can be reasonably and realistically debated, with amendments, and then decided upon. We don't even have 2 weeks. We have to act on the supplemental before the Memorial Day recess if we are to provide the troops with the funding they need.

So it is my hope the current process can be allowed to continue. There has been a massive good-faith effort by Republicans and Democrats meeting for very protracted periods of time to come to agreement on a bill and to reduce it to written form. I will concede that there has been a lot of wheel spinning in the process which we have undertaken. Perhaps it was an error to abandon the traditional committee process. But that is where we are, and we need more time to flesh out the grand compromise, the grand bargain which we have structured so far.

If we are not able to legislate, we are not going to be able to provide for people who are interested in bringing 11 million undocumented immigrants out of the shadows, which is the main benefit that comes from those who want to proceed in the traditional American way to welcome the immigrants under a systemized plan. If we don't have comprehensive reform, we are not going to provide the border controls and the employer sanctions to stop illegal immigration.

It may be this is our last best chance. I would urge all sides to take a deep breath and to rethink positions on all sides and try to find a rational, bipartisan way to proceed.

Mr. President, how much time remains on my side?

The ACTING PRESIDENT pro tempore. The Senator has 58 minutes remaining.

Mr. SPECTER. Fifty-eight minutes remaining.

Mr. LEAHY. Mr. President, how much time do I have?

The ACTING PRESIDENT pro tempore. The Senator from Vermont has 49½ minutes.

Mr. LEAHY. Mr. President, I know the Senator from Pennsylvania has the floor, but the Senator from New York wants to speak briefly, and I have also been advised there are a number of Republicans who want to go to a burial service. So just so people can plan, as soon as the Senator from New York has finished his speech, which will be very brief, I am prepared to yield back our time to accommodate those who wish to go to the burial service.

Mr. SPECTER. Mr. President, do I understand the Senator from Vermont, the distinguished chairman, is proposing a grand bargain?

Mr. LEAHY. No, sir.

Mr. SPECTER. A grand bargain which would allocate 1 minute to Senator SCHUMER, and then all time yielded back?

Mr. LEAHY. I am told the Senator wishes 2 minutes.

Mr. SPECTER. Sounds excessive to me, but I will go along. When he finishes his speech, if we are prepared to yield back time, I will consider the proposal for the grand bargain.

The ACTING PRESIDENT pro tempore. The Senator from Vermont yields time.

Mr. LEAHY. Mr. President, I yield to the grand marshal.

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I thank my colleagues, and Raskolnikof as well, since he made the grand bargain once before. It didn't work out so well, so I would say to my colleague from Pennsylvania, I hope his grand bargain works out better than Raskolnikof's grand bargain.

Anyway, I rise to speak on our nominee, the confirmation of Debra Livingston. She is a legal superstar from my home State of New York, and she is nominated to the Second Circuit Court of Appeals.

Let me just say we in New York have a system in place for nominating Federal judges that works. The President and I work together to name highly qualified consensus candidates to the Federal bench. There is often rancor when it comes to judges from other parts of the country, but there has been very little when it comes to New York. It shows that when both sides wish to compromise, we can probably get there. That is because in New York we have an effective and bipartisan way to select qualified and, almost without exception, moderate candidates for the bench.

Ms. Livingston is squarely in that mold. Her career so far has spanned private practice, criminal prosecution, and academia, so she has a deep understanding of the law gained from many perspectives, from the courtroom to the classroom. Ms. Livingston is a graduate of Princeton University, received her J.D. from Harvard Law School—also my alma mater—where she served as an editor of the Harvard Law Review.

From 1986 to 1991, Ms. Livingston was an assistant U.S. attorney in the Southern District, where she prosecuted public corruption cases and served as deputy chief of appeals. Before and after her time as a prosecutor, Ms. Livingston was an associate at one of the very prestigious law firms in New York, Paul, Weiss, Rifkin, Wharton, and Garrison. She is currently the vice dean and Paul J. Kellner professor of law at Columbia University, where she focuses on criminal procedure, evidence, and national security.

I think it is great that we will have an appellate judge who has both a scholarly mind and practical courtroom experience. It is a perfect combination, in my view, for an appeals court judge. I hope my colleagues will join me in voting for her confirmation.

In keeping with the prelude to the grand bargain, I yield the floor.

Mr. LEAHY. Mr. President, I am prepared to yield back time.

Mr. SPECTER. Sealing the grand bargain, I, too, yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. All time having been yielded, the question is, Will the Senate advise and consent to the nomination of Debra Ann Livingston, of New York, to be U.S. circuit judge for the Second Circuit? On this question the yeas and nays were previously ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON), the Senator from Michigan (Mr. LEVIN), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Michigan (Mr. LEVIN) would vote ''yea.''

Mr. LOTT. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from Idaho (Mr. CRAPO), the Senator from North Carolina (Mrs. DOLE), the Senator from Arizona (Mr. MCCAIN), the Senator from Kansas (Mr. ROBERTS), and the Senator from Louisiana (Mr. VITTER).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) would have voted ''yea.''

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

The result was announced—yeas 91, nays 0, as follows:

[Rollcall Vote No. 158 Ex.]

YEAS—91

Akaka	Dorgan	Menendez
Alexander	Durbin	Mikulski
Allard	Ensign	Murkowski
Baucus	Enzi	Murray
Bayh	Feingold	Nelson (FL)
Bennett	Feinstein	Nelson (NE)
Biden	Graham	Obama
Bingaman	Grassley	Pryor
Bond	Gregg	Reed
Boxer	Hagel	Reid
Brown	Harkin	Salazar
Bunning	Hatch	Sanders
Burr	Hutchison	Schumer
Byrd	Inhofe	Sessions
Cantwell	Inouye	Shelby
Cardin	Isakson	Smith
Carper	Kennedy	Snowe
Casey	Kerry	Specter
Chambliss	Klobuchar	Stabenow
Clinton	Kohl	Stevens
Coburn	Kyl	Sununu
Cochran	Landrieu	Tester
Coleman	Lautenberg	Thomas
Collins	Leahy	Thune
Conrad	Lieberman	Voinovich
Corker	Lincoln	Warner
Cornyn	Lott	Webb
Craig	Lugar	Whitehouse
DeMint	Martinez	Wyden
Dodd	McCaskill	
Domenici	McConnell	

NOT VOTING—9

Brownback	Johnson	Roberts
Crapo	Levin	Rockefeller
Dole	McCain	Vitter

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid on the table.

The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

Mr. GREGG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2008

Mr. CONRAD. Mr. President, I ask unanimous consent that the Senate proceed to the House message to accompany S. Con. Res. 21, the budget resolution; provided further that the motion to disagree to the House amendment be agreed to, the motion to agree to the request of the House for a conference be agreed to, and the motion to authorize the Chair to appoint conferees be agreed to; provided further that prior to the appointment of conferees, the following motions to instruct conferees be in order and that no amendments be in order to the motions: No. 1, Senator KYL, relating to the estate tax; No. 2, Senator GREGG,