

be repaired. This bill is a strong step in the right direction. We need to protect our borders and look out for American workers, and we also need a responsible way to meet the need for temporary workers, particularly in the agricultural area, where they represent about 70 percent of the U.S. agricultural workforce, with a path to earned citizenship for hard-working, law abiding temporary workers. This bill, the product of bipartisan compromise, takes a commonsense approach to all of these issues.

The comprehensive immigration reform bill before us today would strengthen security at our borders through increased border patrol and heavier fines for employers who violate the law. It would create a sustainable temporary worker program to help fill the lowest wage jobs. It would enforce labor protections for U.S. workers by ensuring that the temporary workers who are certified do not adversely impact them. And it would provide a path to earned citizenship that does not bump anybody who has applied through the legal channels and has been waiting. Undocumented immigrants who have been here for years, set down roots, worked hard, and paid their taxes would go to the end of the line and earn citizenship after perhaps as many as 10 to 15 years.

I am pleased that we were able to include additional protections for U.S. workers in the bill. I supported an amendment introduced by Senator OBAMA that strengthens labor protections for U.S. workers and bars employers from hiring guest workers in areas with a high unemployment rate. This and other amendments will help ensure that we have a well-balanced, and workable guest worker program. In addition to these amendments, I am also pleased that we have maintained the AgJOBS provision within the bill. This provision is a commonsense fix to major problems being faced by those who have the least access to resources: low wage agricultural workers from exploitation which would adversely impact American workers.

I was pleased that the Senate recognized the significant implementation challenges associated with the Western Hemisphere Travel Initiative and accepted an amendment that would extend its deadline. The WHTI requires anyone entering the United States via a U.S.-Canadian land border to have a passport or other acceptable alternative document by January 1, 2008. The amendment accepted by the Senate extends this deadline by 18 months to June 1, 2009.

My home State of Michigan, like other northern border States, enjoys a close economic and social relationship with Canada. The WHTI will play an important role in securing our borders, but it must be implemented in a reasonable, fair, and well thought out manner that minimizes negative impacts on trade, travel, and tourism. By voting to extend the deadline, we are

giving the Departments of State and Homeland Security additional time to study and correct the various implementation issues related to the WHTI.

I am also pleased that the immigration bill addresses another key border issue: the security problem that is posed by trash trucks entering this country. My amendment, which was accepted by the bill managers, would stop the importation of Canadian waste if the Department of Homeland Security can not show that the methodologies and technologies used to screen these trash trucks for the presence of chemical, nuclear, biological, and radiological weapons are as effective as those used to screen for such materials in other items of commerce entering the United States by commercial vehicle.

Finally, I want to thank the managers of this bill for accepting my amendment that would protect thousands of individuals who fled religious persecution in Iraq under Saddam Hussein. Due to delays in the immigration bureaucracy, many of these individuals have not yet had their day in court, and, of those who have, many have been denied asylum based on changed country conditions since the war. My amendment would make these individuals eligible for legal permanent residency if they would have received that status but for the bureaucratic delays.

The comprehensive immigration bill before us will make our borders more secure while creating a workable temporary worker program that protects U.S. jobs. I will support this bill and hope that the conference committee will return a final bill similar to it.

EXECUTIVE SESSION

NOMINATION OF BRETT M. KAVANAUGH TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT—Resumed

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 632, the nomination of Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Arlen Specter, Saxby Chambliss, Larry Craig, Mel Martinez, Elizabeth Dole, Johnny Isakson, Pat Roberts, Ted Stevens, Craig Thomas, Thad Cochran, Chuck Grassley, Judd Gregg, Tom Coburn, Richard Shelby, Lindsey Graham, Orrin Hatch.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination

of Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN, I announce that the Senator from North Dakota (Mr. CONRAD), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

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

The yeas and nays resulted—yeas 67, nays 30, as follows:

[Rollcall Vote No. 158 Ex.]

YEAS—67

Alexander	Dole	McConnell
Allard	Domenici	Murkowski
Allen	Ensign	Nelson (FL)
Bennett	Enzi	Nelson (NE)
Biden	Feinstein	Obama
Bond	Frist	Pryor
Brownback	Graham	Roberts
Bunning	Grassley	Santorum
Burns	Gregg	Sessions
Burr	Hagel	Shelby
Byrd	Hatch	Smith
Carper	Hutchison	Snowe
Chafee	Inhofe	Specter
Chambliss	Isakson	Stevens
Coburn	Kohl	Sununu
Cochran	Kyl	Talent
Coleman	Landrieu	Thomas
Collins	Lieberman	Thune
Cornyn	Lincoln	Vitter
Craig	Lott	Voivovich
Crapo	Lugar	Warner
DeMint	Martinez	
DeWine	McCain	

NAYS—30

Akaka	Durbin	Levin
Baucus	Feingold	Menendez
Bayh	Harkin	Mikulski
Bingaman	Inouye	Murray
Boxer	Jeffords	Reed
Cantwell	Johnson	Reid
Clinton	Kennedy	Sarbanes
Dayton	Kerry	Schumer
Dodd	Lautenberg	Stabenow
Dorgan	Leahy	Wyden

NOT VOTING—3

Conrad	Rockefeller	Salazar
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The PRESIDING OFFICER. On this vote, the ayes are 67, the nays are 30. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Parliamentary inquiry: Is it appropriate now to begin debate on the confirmation of Brett Kavanaugh?

The PRESIDING OFFICER. It is appropriate.

Mr. SPECTER. Mr. President, I support the confirmation of Brett Kavanaugh to the Court of Appeals for the District of Columbia because of his academic achievements, professional work, and potential to be an outstanding Federal judge.

Brett Kavanaugh was an honors graduate from Yale University, was a graduate of the Yale Law School, and a member of the Law Journal there. That is a strong indication of intellectual achievement. He then clerked for

Judge Walter Stapleton of the Court of Appeals for the Third Circuit and then Judge Alex Kozinski of the Court of Appeals for the Ninth Circuit and then clerked for Justice Kennedy on the Supreme Court of the United States. Those are really outstanding credentials, academically and for the beginning career of a young lawyer. He then worked in the Solicitor General's Office, argued a case before the Supreme Court of the United States, and then worked as associate White House counsel and has been Secretary to President Bush.

He had a second hearing which was requested by the Democrats so that he could respond to questions which had arisen in the 2-year interim since his first hearing, and he responded by allaying any concerns about any involvement which he may have had on the subject of interrogation of detainees.

He was asked about any potential participation in the administration's electronics surveillance program. He answered that in the negative.

He responded to questions with respect to the subject of rendition, again with no knowledge on his part of any of that.

He was subject to close questioning about his work with Kenneth Starr on the impeachment proceeding, and he was not in a position of leadership. He was one of several down the tier, with Mr. Starr being Independent Counsel. Mr. Kavanaugh was a deputy, with as many as nine other such deputies on his level.

He was candid in some criticism of the handling of the matter; the public release of the report was not the choosing of Independent Counsel. He testified that he believed that the Independent Counsel statute ought to be changed materially if it was to be revised and that having Mr. Starr both on Whitewater and the impeachment of the President was too much.

He wrote a law review article on the issue of peremptory challenges for Black jurors and took the position that it was inappropriate, should not be done, and displayed in that scholarly aptitude on the journal.

One of the objections raised to Mr. Kavanaugh involved how close he was to the President. But it is hardly a surprise that Brett Kavanaugh would be close to the President because the President selects people in whom he has confidence and who share his approach to jurisprudence, to strict construction, and to not legislating from the bench. That prerogative of the President is what Presidential elections are about.

Some of Mr. Kavanaugh's answers were hesitant, and I think he was very concerned about being very precise in what he had to say. He might have been a little forthcoming, but in a context where there is a question about subsequent investigations, if the control of the Senate changes, in the context of witnesses appearing before grand juries on five occasions, looking

for inconsistencies, it is understandable that he was very cautious in his comments.

I believe that on this record, Brett M. Kavanaugh ought to be confirmed, and I urge my colleagues to vote in the affirmative.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I have some remarks I would like to make on this nomination.

Mr. LEAHY. Will the Senator yield for just a moment? He does have the floor, I fully understand. I assume we would follow the normal order that after the chairman spoke, the ranking member would be allowed to speak.

Mr. CORNYN. I will be glad to defer to the ranking member.

Mr. LEAHY. The Senator from Texas has the floor. He does have the floor.

Mr. CORNYN. Mr. President, I recognize I have the floor and the right to the floor, but I will be glad to accommodate the ranking member and, if I can, by unanimous consent, request that I be recognized after he speaks, I would be happy to relinquish the floor to him.

Mr. LEAHY. I certainly have no objection to that. I assume what we will probably do for the rest of the evening, and I suspect we probably will do the same thing tomorrow—hopefully by tomorrow night or early Saturday we will finish—we will go back and forth. I make a request I be recognized, and upon the completion of my remarks, the distinguished Senator from Texas be recognized.

Mr. DURBIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Only for the purpose of being in the queue after the Senator from Texas, if I can amend the unanimous consent request.

Mr. LEAHY. I ask unanimous consent that Senator DURBIN follow the Senator from Texas.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Reserving the right to object, Mr. President, and I do not wish to object, I presume this is a discussion on the nominee. Senator DAYTON and I have a bill we want to introduce. It will take just 3 or 4 minutes to comment on the introduction.

Mr. LEAHY. Mr. President, I ask unanimous consent that before I am recognized—the Senator from Texas still has the floor—before I am recognized and the Senator from Texas is recognized and then the Senator from Illinois is recognized and then the Senator from Idaho is recognized, that 10 minutes be divided between the Senator from Mississippi and the Senator from Minnesota.

Will that give Senator LOTT and Senator DAYTON enough time?

Mr. LOTT. That will be more than enough time. That is very generous.

Mr. LEAHY. That upon yielding back of the time of the Senator from Mis-

issippi and the Senator from Minnesota, the Senator from Vermont be recognized following the chain we talked about.

The PRESIDING OFFICER. Is there objection?

Mr. CORNYN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. May I just add to that unanimous consent request that Senator HATCH be added as the next speaker on our side of the aisle in the queue?

Mr. LEAHY. I have no objection to that. I think it is quite appropriate.

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

Mr. LOTT. Mr. President, I believe Senator DAYTON will actually introduce the legislation, and I join as a co-sponsor. He will lead off with his remarks, and then I will be honored to follow.

THE PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. DAYTON. I thank the Chair.

(The remarks of Mr. DAYTON and Mr. LOTT pertaining to the introduction of S. 3239 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the Senator from Minnesota and the Senator from Mississippi, and I thank again the distinguished Senator from Texas, who has shown his usual and normal courtesy in allowing me to go next.

The Senate has just passed bipartisan comprehensive immigration reform. I think that is an achievement for all Americans, present and future, who want to keep our country safe, and it fixes what most will acknowledge is a broken system. I mention that because the Senate, Republicans and Democrats, worked together to speak about one of America's top priorities, and it worked. I think the American public understands that. We ought to continue that. We ought to continue that on the path of addressing Americans' top priorities.

We ought to be debating the war in Iraq. None of us can go home without hearing a debate on the war in Iraq, either for or against it. We ought to be debating it on the floor of the Senate. We are, after all, the conscience of the Nation. We should be debating the war in Iraq.

We should debate the rising gas prices. You can't go into a diner in America without hearing a debate on that. They ask the same thing: Why aren't you debating it on the floor of the Senate?

How about the health care costs, which are going up at a time when seniors are faced with what for many of them is an incomprehensible prescription medicine plan. We ought to be talking about that. You can't go to the senior center anywhere in the country without hearing that being debated.

What is wrong with the Senate, the conscience of the Nation, debating it?

How about stem cell research? So many parents of children with diabetes, those who have had paralyzing injuries, they say: Why aren't you at least determining a way to have stem cell research?

What about the reauthorization of the Voting Rights Act? Not only has the Voting Rights Act worked to help those minorities in this country who were denied the right to vote before, but let us make sure that it works in the future for children today, Hispanic children today, African-American children today, the children of all races? How will we guarantee they will have the right to vote? We should reauthorize the Voting Rights Act.

These are all things on which the Senate could come together in a bipartisan fashion. We could have a bipartisan debate. The country would benefit by it. We would be a better body. The country would be better. But instead, it appears that because it is an election year, then we have to go to controversial, polarizing judicial nominations.

This nomination, like the difficult and controversial nominations of Judge Terrence Boyle and Michael Wallace, signifies that the Bush-Cheney administration and those who support it here in the Senate, are more interested in playing partisan election-year politics by heeding the siren call of special interest groups rather than tackling the pressing issues facing Americans today.

Local and national law enforcement have called upon the President to withdraw the nomination of Judge Boyle, as I have, and he would be well advised to do so. The nomination of Michael Wallace received the first ABA rating of unanimously "not qualified" for a circuit court nominee in more than 20 years. The last one to get that rating didn't go through. And the nomination before us today of Brett Kavanaugh is one of the few judicial nominations to be downgraded over time by the ABA.

The Senate's job is to fulfill our duty under the Constitution, not to advance a political agenda. No matter what our political affiliation, we are supposed to consider the interests of all Americans. We have to be able to assure the American people that the judges confirmed to lifetime appointments to the highest courts in this country are being appointed fairly to protect their interests, rather than to be a rubberstamp for whichever President nominated them. Mr. Kavanaugh is a nice young man who was nominated for the U.S. Court of Appeals for the District of Columbia Circuit after working for most of his career in behalf of the Bush-Cheney administration and the Republican Party in partisan, political jobs. Since helping to author the Kenneth Starr Report, he has worked in the office of the White House Counsel and as staff secretary to the Bush-Cheney administration. He was involved in the admin-

istration's use of 750 Presidential signing statements to try to reserve to the President the power to pick and choose which laws passed by Congress he wanted to follow. In other words, he allowed the President to sign a bill but then say: This law may apply to others, but it is not going to apply to the President or anybody else to whom I don't want it to apply. It is the first time in my lifetime a President has stated so emphatically, 750 times: I am above the law. He has helped the President pack the Federal bench with right-wing ideologues.

He has helped design the White House's overbearing secrecy policy. So now we are spending billions of dollars in marking things "top secret," some of which were on Government Web sites for long periods of time until they realized it was pointing out embarrassing mistakes in the Bush-Cheney administration. So they yanked it off the Web sites and marked it "top secret." We even have now the FBI going to a dead journalist—to a dead journalist, Jack Anderson—and pressuring his elderly widow to give up his notes of 20 and 30 years ago because it might prove embarrassing to some in their party.

So my question for this nominee, which is the same question I have asked of all nominees of either party, is whether you will be an independent check and balance.

I recall recommending to President Clinton a well-known Republican from my State for a seat on the Second Circuit Court of Appeals. I did that even though the man is certainly more conservative than I and belonged to the other party. I did it because I knew he would be independent; he would not be a rubberstamp for any President, Republican or Democratic.

Regrettably, Mr. Kavanaugh has failed through two hearings to establish that he has the capacity to be an independent check on his political patron, in this case a President who is asserting extraordinary claims of power. In fact, despite his close ties to the White House's inner circle, he wouldn't even tell us what issues he would recuse himself from hearing as a judge. We asked him specifically: Here is a case where you designed the legal basis for something, and now it comes before you as a judge; would you recuse or rule on work you have done? He wouldn't even acknowledge that he would. Instead we heard from a nominee who parroted the Bush-Cheney administration's talking points on subject after subject. I don't think the Senate should confirm a Presidential spokesperson to be a judge of the second highest court in the land.

After carefully evaluating Mr. Kavanaugh's record and his answers at two hearings, it is clear that he is a political pick being pushed for political reasons. His nomination is a continuation of the Republicans' decade-long attempt to pack the DC Circuit.

You can go all the way back to President Clinton's first term when the Re-

publicans started playing politics with the DC Circuit. They blocked President Clinton's nominees so they could make sure they had a majority of Republican appointees on the court. They were among the 61 of President Clinton's nominees that the Republicans pocket filibustered. And their plan succeeded. After confirming two other nominees last year whom I strongly opposed—Janice Rogers Brown and Thomas Griffith—Republican nominees now comprise a 2-to-1 majority on the second most important court in the land. This is not a court which needs another rubberstamp for this President's assertions of Executive power.

The Republican majority who chose to shrink the court when there was a Democratic President is now bent on packing this court. They want this up-or-down vote even though they didn't apply that standard or anything near it to President Clinton's nominees to the DC Circuit. As I say, they denied 61 of President Clinton's nominees an up-or-down vote. When they stalled the nomination of Merrick Garland to the DC Circuit beyond the 1996 election, even Senator HATCH as chairman of the committee became frustrated. He claimed the way the Republicans were opposing judicial nominees was playing politics with judges, was unfair, and he was sick of it. I wish he had followed through instead of joining with his fellow Republicans in denying 61 judges an up-or-down vote. We did finally get Merrick Garland through, but he was the last one the Republicans were willing to consider for confirmation to this important circuit.

Here we have a person with no real experience other than being willing to take political orders.

Let me tell you about two of the nominees of President Clinton whom the Republicans would not allow to have a vote, a so-called pocket filibuster. One was Elena Kagan. They wouldn't allow her to come to a vote. Some even said: We are not sure of her qualifications. She is now dean of the Harvard Law School. These are the same people pushing a nominee for the Fifth Circuit, as I mentioned earlier, who is rated unanimously unqualified. And they pocket filibustered Alan Snyder. He had served as a clerk to Justice Rehnquist—no screaming liberal he, God rest his soul. Mr. Snyder was an experienced and respected litigator, but he was pocket filibustered. The fact is, for the rest of President Clinton's second term, they blocked all nominees to the DC Circuit, pocket filibustered them all with impunity.

I will give a little background. During the 17 months I was chairman of the Judiciary Committee, I tried to stop the poisonous pocket filibustering. I am a Democrat, and the Bush-Cheney administration is Republican. In 17 months, I moved through, and the Democratic-controlled Senate moved through, 100 of President Bush's nominees. We actually moved them faster than the Republicans had moved them for a Republican President.

But I don't want to say they rubberstamped everybody. They, the Republicans, actually did treat one nominee the same way they treated President Clinton's. It is the way they treated White House Counsel Harriet Miers when the President nominated her.

She is a woman who has not gone to Ivy League schools but has a more impressive background and experience than this nominee—certainly much more legal experience than this nominee. Republicans questioned her qualifications. They demanded answers about her work at the White House and her legal philosophy. They would meet on an off-the-record basis with the press and say what a terrible nomination this was for President Bush to make.

I said: At least let her have a hearing. All Democrats on the committee said: Out of fairness to the President, we ought to let his nominee have a hearing. The Republicans said: She is not going to get a hearing, and they forced the President to withdraw her nomination.

Despite the political battle, as I said when I moved through 100 of President Bush's nominees, I approached the nomination of Mr. Kavanaugh with an open mind. I gave him the chance that Elena Kagan and Alan Snyder never received. In fact, he has had more opportunities than they. He has had an opportunity to demonstrate at not one but two hearings that he could be an independent nominee who deserved to be confirmed.

The Washington Post noted in 2003, when President Bush nominated Mr. Kavanaugh, that he had nominated somebody "who will only inflame further the politics of confirmation to one of this country's highest-quality courts" and concluded that it was "too bad Mr. Bush is too busy playing politics to lead." I agree. Instead of being an uniter, he is being a divider.

I kept an open mind, even though only 1 of the 22 judges appointed to the D.C. Circuit since the Nixon administration, Kenneth Starr, had even less legal experience at the time of his nomination than Kavanaugh. Throughout all Republican and Democratic Presidents, only Kenneth Starr had less experience since President Nixon's time than Mr. Kavanaugh.

I even kept an open mind after Mr. Kavanaugh's nomination was one of the few to be downgraded by the ABA. I can't recall anyone being confirmed after such a development.

But after I saw Mr. Kavanaugh at his recent hearing, I could appreciate one judge interviewed by the ABA peer review subcommittee describing Mr. Kavanaugh as "less than adequate" and someone who "demonstrated experience on the level of an associate." Others interviewed recently raised concerns about Mr. Kavanaugh's ability to be balanced and fair, given his years in partisan positions, working to advance a particular partisan political agenda.

He was described by interviewees as "sanctimonious," "immovable and very stubborn and frustrating to deal with on some issues"—not the qualities that make for a good judge.

Despite the word put out falsely by the Bush-Cheney defenders, it was not a change in membership in the ABA peer review committee that led to his downgrading. Three-quarters of those who previously reviewed this nomination, and continued on the committee, voted to downgrade the rating based on the recent interviews and review.

His response to one very simple question I asked during his most recent hearing spoke volumes. I asked the nominee why he had taken 7 months to answer the written questions submitted to him following his initial hearing in 2004. He repeated the meaningless phrase that he "took responsibility" for such dismissive and irresponsible conduct and, implicitly, for his lack of seriousness about the confirmation. When he did that, it actually elicited laughter from the hearing room but not laughter from me because I felt it was not the first time he "dissembled" in response to my questions.

I suspect the truth is, he made a political calculation and decided to expend his time and effort at his benefactor's reelection campaign during the spring, summer, and fall of 2004 rather than answering the questions legitimately asked by Senators on the Judiciary Committee. He may be brilliant at politics and have powerful supporters, but that doesn't mean he will be a good judge. This is, after all, a vote to determine not who your supporters are or not how good you have been at partisan politics but how good a judge you will be.

In my opening statement at his hearing, I raised a key question regarding this nomination: Will he demonstrate his independence and show he can serve in the last independent branch of the Government? One party controls the White House, the Senate, the House of Representatives. There is only one body left to be independent. That is the courts. Can we look to him to be a check and balance on the President, who is asserting extraordinary claims of power, or on any President?

He could have told us something about his responsibilities as staff secretary or as an associate White House counsel, giving us examples when he showed independence and good judgment, but he didn't. Instead, he appeared at his confirmation hearing to be a spokesman and representative for the administration. Instead of speaking about how independent he would be, he basically over and over again acted like a spokesman for the administration.

Courts are not supposed to be owned by the White House. I don't care which administration is in control of the White House, they are not supposed to control the courts. Over and over he answered our questions by alluding to what the President would want and

what the President would want him to do. We are going to confirm somebody who, in sworn statements, talks about how he would try to make sure he ruled as the President would want him to rule? Have we really sunk that low in the Senate on judicial nominations?

We heard from a nominee who responded not with independent answers but with the administration's talking points. We heard from a young man who, when invited by the chairman to introduce his family, began his remarks not by introducing the family but by thanking the President for nominating him and later emphasized—as if that was a qualification—that he had "earned the trust of the President" and his "senior staff."

I have no problem with the President nominating Republicans—although that seems to be all he will nominate, unlike other Presidents of both parties who have nominated people from both parties—but I expect him to nominate somebody who can be independent and will not have his strings pulled by the White House. It may be useful for advancement within the Bush-Cheney administration in Republican circles, but they are not qualifications for a judge who can be independent if he is asked to rule on this President's or the Bush-Cheney administration's policies.

Senator GRAHAM put the question this way during the course of the hearing: "There is a fine line between doing your job as a White House counsel and being part of the judicial selection team and being a judge yourself. There is a line between being an advocate and being a judge." I don't believe he showed he knows that line. The DC Circuit is too important to pack with those who would merely rubberstamp the Bush-Cheney administration or any administration, Democratic or Republican. We can't rubberstamp an administration's policies.

We had the sudden and basically forced resignation of the President's handpicked head of the CIA, Porter Goss. America witnessed another "heck of a job" accolade to an administration insider leaving a critical job undone. This administration insider—we saw what a great job he did. So, like administration insiders who ran FEMA right after Hurricane Katrina, the President said they had done a heck of a job. I think virtually all Americans, Republican and Democratic, would disagree. In fact, for that matter, this week we learned that the President's Secretary of the Veterans' Administration was in charge when there was the largest theft of private information from the Government ever—the largest theft ever, the loss of information on more than 26 million American veterans.

Compounding the incompetence is the misguided decision by the Veterans' Administration for secrecy in trying to cover it up for the last 3 weeks. Boy, if we don't talk about it, if we cover it up, maybe nobody will know that we lost the critical private information of 26 million veterans.

This is falling on the heels of last year's debacle of the \$1 billion shortfall in the VA's budget for veterans health care by the same leadership, who said: Oh, we have plenty of money when they want to make political points, then quietly to the Congress after, saying: Whoops, we don't. It is a heck of a job. It is just one more heck of a job by this administration.

Maybe we should have a "heck of a job" medal to give to all of these people who get fired for incompetence—give them a "heck of a job" medal—great big thing, you have done a heck of a job. It is a heck of a job on Katrina; it is a heck of a job on rubberstamping nominees for the courts; it is a heck of a job when you lose 26 million records and put these veterans at great risk. Oh, wait a minute. They did say they would have an 800 number. If you are 1 of the 26 million now facing identity theft, maybe lose your car, maybe lose your house, maybe lose your pension, maybe lose your life savings, we have an 800 number for you.

Anybody try to get through to that 800 number? If you do, they tell you go out and buy protection. Whatever happened with "the buck stops here"? It has to be more than photo-ops when you run operations.

What is desperately lacking throughout this administration is accountability. The attack on 9/11 happened on their watch. You don't see accountability. The faulty intelligence, the years of fundamental mistakes in Iraq, hundreds of billions of dollars spent in the war in Iraq, and we were told that we were going to be greeted as liberators and that it would be over in a matter of days. The lack of preparation, the horrific aftermath of Katrina, and on and on—billions spent on homeland security.

First, a crony of the President was going to be put in to run the Department of Homeland Security until they found out the very disturbing things about his personal life; found out things that the administration knew about, that they were trying to keep secret. But when the press found out about it, somebody had an excuse not to go there.

Be ready on a moment's notice if we are ever attacked again, like we were attacked early on in the Bush-Cheney administration. Well, with Katrina, we had days and days and days of notice. It didn't do any good.

I think, speaking in behalf of the President for a moment, it is not all his fault. He has not been helped by the Republican-controlled Congress that won't provide any checks and balances. The Republican controlled Congress won't raise the questions that might be asked, and that, had they been asked, might have forced the administration to do a better job. But the Republican-controlled Congress won't serve as a check and balance, when there are colossal failures of homeland security, or at the VA, or anywhere else. Can we at

least ask for the courts to be a check and balance to preserve our rights and our way of life? If our Government overreaches, at least we can count on the courts to be there to check and balance.

In fact, now that the administration is raiding congressional offices, the Republican leadership in Congress is finally protesting. When ordinary Americans' telephone calls and Internet use is being wiretapped without warrants, that same Republican leadership looked the other way. I guess they had to tread on the toes of Members of Congress before the Republican Congress will say anything.

Last year, when the President nominated Harriet Miers, Republicans questioned her qualifications and demanded answers about her work at the White House and her legal philosophy. They defeated her nomination without a hearing. Now it appears that they are back to their rubberstamping routine with every Senate Republican ready to approve this nomination without question or pause.

Then we ask the question: The President's counsel, the staff secretary, did that nominee act as a check and balance, or will he continue, as he said at his hearing, to do whatever the President wanted?

At his hearing, Senator FEINSTEIN and I gave him another opportunity to answer concern about his loyalty to the President. We asked about recusal. He could have said he would not hear any matter that raised questions about the President's claims of executive power insofar as was involved with the development of the policies and practices of the Bush-Cheney administration. It is almost judicial ethics 101 in the first year of law school. The easy answer is: Of course, I will not rule on that. Of course, I would recuse myself on something I have developed in the White House. He could have walled off matters covered by the Presidential signing statement—750 of them. This President has shown unchecked Executive power exceeding that of Richard Nixon. He could have said that given his role in the development of this administration's secrecy policies he would recuse himself from those questions regarding the right of the American people to know about their Government. It would not only be the right answer, but it would be an easy answer. After all, the administration stacked that court with so many Republicans, he should feel comfortable, but even there he didn't say he would follow basic judicial ethics.

At a time when the Senate should be addressing America's top priorities, the President and his Senate allies instead are trying to divide and distract from fixing real problems by pressing forward with this controversial unqualified nomination.

We showed in the recent debate that at least among senior Members—Republican and Democratic Members—we could be uniters and not dividers.

Unfortunately, in this case, the White House wants to be dividers not uniters. And the leadership is ready to cater to the extreme right-wing and special interest groups agitating for a fight on judicial nominations. They made no secret of the reason for pushing nominations to the Senate. They are even willing to hold up confirmation of the new Director of the CIA to vote now instead of a week from now on a nomination that has waited 3 years anyway. They just want to stir up a fight.

Mr. Kavanaugh is a young, relatively inexperienced but ambitious person who, in two hearings, has failed miserably to demonstrate his capacity for independence. I have voted for an awful lot of Republican nominees, and I expect I will in the future. I am not going to vote for any nominee—Republican or Democrat—who has failed to demonstrate his capacity for independence. This nominee has not, and I cannot in good conscious support action on this nomination to one of the Nation's highest courts.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, almost 3 years have passed since Brett Kavanaugh was nominated to the U.S. Court of Appeals for the DC Circuit. I am glad that the time has finally come for an up-or-down vote on his nomination.

Despite the threats of a filibuster and the unwarranted attacks on the nominee's qualifications and character, Brett Kavanaugh will soon be confirmed by a bipartisan majority of this body.

I fully support his nomination, and believe that he will be a valuable addition to the Federal bench. In just a moment, I will outline the reasons why.

But, first, I must say I am troubled that his confirmation has been needlessly protracted and contentious. It is the contentiousness that concerns me most.

Brett Kavanaugh's nomination has routinely been described in the press as "controversial"—not because of any legitimate quality or characteristic of the nominee, but simply because my colleagues on the other side have declared it so.

These individuals have demeaned Kavanaugh as a "crony," a "partisan warrior," and have characterized his nomination as "among the most political in history" and "judicial payment for political services rendered." Yet, a leading Democrat critic during a recent hearing conceded that Brett Kavanaugh has "blue-chip credentials." I don't understand how these comments can be squared with one another.

Mr. President, I have deep concerns about the tenor of many recent debates over this President's judicial nominees. I fear that this confirmation battle is just the latest in a series of bad precedents set in recent years when it comes to confirmation votes on a President's nominees.

The fight over Justice Samuel Alito's nomination is the first example that comes to people's minds, but there are many others. You will recall that during the Alito debate, one of his opponents said, "You name it, we'll do it," to defeat the Alito nomination. Sadly, that statement captured the tone of the Alito confirmation debate—where we saw a distinguished public servant subjected to unwarranted, baseless attacks.

Fortunately, a bipartisan Senate rejected the attempt to filibuster Samuel Alito. Any attempt to filibuster Brett Kavanaugh would surely meet the same fate.

I don't think that I am going out on a limb when I say that neither the Alito nor the Kavanaugh confirmation debates could be considered the Senate's "finest hour." Taken together with many others, these confirmation battles have the potential to paint for the public a distorted picture of our Federal judiciary—and further erode the confidence in our legal system.

The U.S. Senate should take the lead and give the public a more accurate understanding of the judge's role in our constitutional democracy. To achieve that, the judicial confirmation process must be more civil, respectful, and free of partisan politics.

There are many reasons I support this fine nominee.

Brett Kavanaugh is, by any reasonable measure, superbly qualified to join the Federal bench. His legal resume is as impressive as they come—one with a demonstrated commitment to public service. After law school at Yale, where he was an editor of the *Yale Law Journal*, Kavanaugh held prestigious clerkships for three Federal appellate judges—including U.S. Supreme Court Justice Anthony Kennedy. He also served in the Solicitor General's office, the Office of Independent Counsel, and was a partner at Kirkland & Ellis, one of the Nation's elite law firms. Most recently, he was Associate White House Counsel, and is currently Staff Secretary to President Bush, a job whose title belies the very serious and important responsibilities that that individual performs.

Earlier this month, the Judiciary Committee had the good fortune of hearing from Kavanaugh's mentors, two men who know him best. Neither of these men recognized the critics' demeaning description of Brett Kavanaugh as a partisan or as someone with an agenda.

Ninth Circuit Judge Alex Kozinski told the Committee that he "never sensed any ideology or agenda" when Kavanaugh served as his law clerk—perhaps the most important job other than the job of the judge in judicial chambers. Third Circuit Judge Robert Stapleton urged Kavanaugh to consider the judiciary as a career because, in addition to this young clerk's legal acumen, he displayed "no trace of arrogance and no agenda."

Judge Stapleton praised the nominee for appreciating the "crucial role of

precedent in a society that is committed to the rule of law."

Brett Kavanaugh clearly understands the impartiality and independence required of an article III judge. At his first hearing in April of 2004, Mr. Kavanaugh described it best when he said: "I firmly disagree with the notion that there are Republican judges or Democrat judges. There is only one type of judge. There is an independent judge under our Constitution. And the fact they may have been a Republican or a Democrat or an independent in a past life is completely irrelevant to how they conduct themselves as judges."

The independence of our Federal judiciary is, again, using Brett Kavanaugh's words, "the crown jewel" of our constitutional democracy. But I worry that the Senate—perhaps inadvertently—is giving the American people a distorted view of our system. I regret that at the root of these harsh and unfair attacks may be a deep-seated cynicism, namely, that Federal judges are somehow just another branch of the legislature, that they are merely politicians in black robes who are somehow able to inject their own policy agendas into court decisions, thereby rendering the popular phrase "legislating from the bench."

But nothing could be further from the Founders' vision of our judiciary under the Constitution; Federal judges are given life tenure without salary reduction, precisely because we want to ensure they will decide each case, big or small, on its own merit according to the law, according to the facts and not with any agenda.

Judicial independence requires faithful application of the Constitution and the law to each case. I supported Chief Justice John Roberts and Justice Sam Alito because I believe they will respect our Constitution and respect our laws. And I believe Brett Kavanaugh will do the same.

Brett Kavanaugh is a dedicated public servant who will serve this Nation with distinction as a Federal judge. I urge my colleagues to confirm him.

I yield the floor.

The PRESIDING OFFICER. Under the unanimous consent, the Chair recognizes the Senator from Illinois.

Mr. DURBIN. Mr. President, we are considering the nomination of Brett Kavanaugh to the United States Court of Appeals for the DC Circuit. Why are we taking extra time on this nomination? Why are Members coming to the Senate on both sides, some expressing support and others opposition? Why is this different from any judicial nomination? There are two reasons. This is not your normal Federal court. The United States Court of Appeals for the DC Circuit is the second highest court in America. It has been the launching pad for Supreme Court Justices. They consider some of the most complex and technical litigation that faces the Federal bench. It is not just another court.

Second, Brett Kavanaugh is not just another judicial nominee. Brett

Kavanaugh comes to this nomination with not the weakest credentials in the history of this bench, but the second weakest credentials.

Earlier this month, Senator KENNEDY called the Kavanaugh nomination a triumph of cronyism over credentials. Unfortunately, I must agree. The nomination of Brett Kavanaugh is a political gift for his loyal service to this President and his political party. Mr. Kavanaugh is not being given an engraved plaque for his fine service; he is being given a lifetime appointment to the second highest court in the land. By every indication, Brett Kavanaugh will make this judgeship a gift that keeps on giving to his political patrons who have rewarded him richly with a nomination coveted by lawyers all over America.

In light of his thin professional record, Mr. Kavanaugh bears a particularly high burden of proof. I have sat through the hearings with Mr. Kavanaugh. In my estimation, he has not met that burden. He has so little experience as a practicing lawyer, no experience as a judge. He had a special obligation when it came to these nomination hearings to tell us what he believes and what he would do on this important judicial assignment. He failed.

As I said about the DC Circuit, it is not just any court of appeals. It is the first among equals. It is based in Washington, but its rulings affect Americans from coast to coast. It is the court of last resort in some cases involving the air that every American breathes, the water that we give our children, the right of labor organizations to collectively bargain, whether Americans will have access to telecommunications, and even the price we pay for electricity.

The significance of the DC Circuit is seen in the way it has become the farm team for the Supreme Court. Over half of all the Supreme Court nominees during the past quarter century were judges on the DC Circuit where President Bush wants to send his staff secretary, Brett Kavanaugh. If Mr. Kavanaugh is confirmed for the DC Circuit, it would not surprise me if the Republicans would try to elevate him to the highest court in America.

Let's take a look at his experience for this job. Compared to others who have served on this important court, Mr. Kavanaugh's track record just does not stand up. He has never had a jury trial in his life. And he has never had a trial before a judge. I don't believe he has ever taken a deposition. I don't know if he has ever filed a motion in court. There is no evidence that he has any understanding, basic understanding, of trial practice in civil or criminal courts in America.

Think of that for a moment. Though this man has graduated from outstanding schools, he has clerked for important judges, he has never had to roll up his sleeves and represent the client or represent the United States of America or any State or local jurisdiction at a trial.

He has very little experience, of course, on the issues that come before this court. Nearly half of the cases in the DC Circuit Court involve Federal agencies dealing with the environment, electricity, labor unions and telecommunications. Mr. Kavanaugh was asked: Now, in this field of expertise that you want to be a judge in, tell us, what kind of cases have you handled? What kind of experience do you have? What did you bring to this? What kind of wisdom as a judge will you bring to this? He could identify only one case in his entire life that he had ever been involved in that related to any of those four important agencies.

During the 113-year history of the DC Circuit Court there has only been one judge, only one in its history, who has been nominated who had fewer years of legal experience than Brett Kavanaugh. That judge was a man by the name of Ken Starr. No other DC Circuit Court judge in the past 113 years has had less experience than Brett Kavanaugh.

Is that the best we can do? Is that the best the President and the White House can do for the people of America? Give us young men who may have great promise, but little experience? People who may be right on the political issues for this White House but have not demonstrated the wisdom or life experience that qualify them to stand in judgment on critical issues that affect the lives of every single American?

At his second hearing Mr. Kavanaugh tried to assure us that his career in government service was similar to others who have served in the DC Circuit. He compared his background in government service to a former DC Circuit judge by the name of Abner Mikva, who served with distinction on the DC Circuit Court from 1979 to 1995. It was truly a Lloyd Bentsen/Dan Quayle moment that Brett Kavanaugh would suggest that he was in Abner Mikva's league. That comparison is such a stretch.

Judge Mikva had 28 years of legal experience before he was nominated to the DC Circuit. Abner Mikva served for 9 years in Congress, 10 years in the Illinois legislature. He had worked for over 12 years in private practice. As the late Senator Lloyd Bentsen, who just passed away, said, to paraphrase, I know Abner Mikva; Abner Mikva is a friend of mine, and Brett Kavanaugh is no Abner Mikva.

Because of his thin track record as a lawyer, Mr. Kavanaugh had a special burden of proof to be candid and forthcoming with the committee, to tell us who he is and what he stands for. He did not meet that burden. Every time he came close to answering a hard question, he quickly backed away. But he was well-schooled in the process because he spent his time in the White House coaching judicial nominees not to answer questions. Well, he learned as a teacher, and he demonstrated it before the Senate Judiciary Committee.

For example, he would not tell us his views on some of the most controversial policy decisions of the Bush administration—like the issues of torture and warrantless wiretapping. He would not comment. He would not tell us whether he regretted the role he played in supporting the nomination of some judicial nominees who wanted to permit torture as part of American foreign policy, who wanted to roll back the clock on civil rights and who wanted to weaken labor and environmental laws. It would have been so refreshing and reassuring if Brett Kavanaugh could have distanced himself from their extreme views. But a loyal White House counsel is not going to do that. And that is how he came to this nomination. That is how he addressed the Senate Judiciary Committee with his loyalty to the President.

He would not tell us what role he played in the White House's unprecedented efforts to give the President virtually unchecked power at the expense of congressional oversight.

In light of Mr. Kavanaugh's failure to open up to the committee, we have to just guess about his brief career. He co-authored the Ken Starr Report; he represented Elian Gonzales; he worked in Florida on the Bush 2000 recount; he worked with Karl Rove and the Federalist Society to pick ideological judicial nominees. He has been the go-to lawyer time and time again for the far right in American politics. And now he is being handsomely rewarded for his loyalty, for his service to his political party.

Other than his judicial clerkships, Mr. Kavanaugh has only worked for two people during his entire legal career: President George Bush and Ken Starr.

Given this background, I asked Mr. Kavanaugh if he would agree to recuse himself in cases involving the Republican Party or the Bush administration. Clearly, he has a conflict of interest, at least the appearance of a conflict of interest, from all of the years he spent as a loyal Republican attorney. I asked him, Would you step away from cases that directly impact the Republican Party and the Bush administration policies? He refused.

The real question is whether Judge Kavanaugh would be fair and open-minded. And there are new concerns that have been raised about Mr. Kavanaugh's judicial temperament. I saw him at the last hearing with his wife and baby. He looks like a fine father—a beautiful young family. To all appearances, a good person coming from a good family. But those who have watched him in the courtroom have come to different conclusions.

Last month the American Bar Association downgraded Mr. Kavanaugh's rating after conducting additional interviews with judges and lawyers who had actually seen him in the courtroom and worked with him in the limited exposure he has had to America's courtrooms. A judge who was

interviewed by the American Bar Association stated that Mr. Kavanaugh's oral presentation at the hearing was "less than adequate" and that he had been "sanctimonious." That is not a great send-off if a person who is being nominated for a lifetime appointment to the bench, a person who will now stand in judgment not only of other judges but of the counsels and attorneys that appear before him.

A lawyer interviewed by the American Bar Association also said: "Mr. Kavanaugh did not handle the case well as an advocate and dissembled." That doesn't sound very promising for someone seeking a lifetime appointment to the second highest court in the land with some of the most technical and difficult arguments and issues to consider.

One interviewee called Mr. Kavanaugh "insulated." Another person said Mr. Kavanaugh is "immovable and very stubborn and frustrating to deal with on some issues."

Is that what we are looking for in a judge, an insulated person, immovable and stubborn, who dissembles when he is in the courtroom and has a sanctimonious way about him? I can tell you, as a practicing lawyer, that is a judge I would avoid, and most people would avoid nominating that kind of lawyer to become a judge.

The ABA also stated they were disappointed that Mr. Kavanaugh seemed to have a "lack of interest" in the Manual Miranda "memogate" scandal and that he failed to conduct an internal White House investigation as to whether the scandal had tainted the Bush administration's judicial nomination process.

This issue is one I know pretty well. I was one of two Senators whose computers were hacked into by Mr. Manny Miranda, who at the time was a Republican staff member, who worked at various times for the Senate Judiciary Committee and for the Senate Republican leadership. Mr. Miranda hacked into my computer, my staff computer, and stole hundreds if not thousands of legal documents—memoranda that had been prepared by my staff analyzing issues, analyzing nominees. Mr. Miranda stole these documents and then turned them over to organizations that were sympathetic with his political point of view. There was some question as to whether those documents somehow migrated to the White House decision process—legitimate questions because those were times when many of these nominees were very controversial.

When Mr. Kavanaugh was asked about these things, he was not that interested—either when the ABA asked the questions or when the questions were asked in the Senate Judiciary Committee. Those questions went to the integrity of the process of naming men and women to our Federal judiciary for lifetime appointments. You would believe that Mr. Kavanaugh, in his capacity as White House Counsel,

would have taken that issue much more seriously than he obviously did.

This nominee is not the best person for an important job. Michael Kavanaugh does not deserve a lifetime appointment to the second highest court in the land.

I believe he has a bright future in some other setting. I think after practicing law, actually finding out what it means to represent a client, perhaps going into a courtroom someday, maybe sitting down before a judge, maybe taking a deposition, understanding what it means to file a motion in court, and what that means to go to argue for a hearing, maybe to prepare a legal brief, to argue a point of view, maybe win a few or lose a few, actually go into a courtroom with a client, pick a jury in a civil case, be a prosecutor in a criminal case, watch as the case unfolds before the judge and the jury, watch it go through to verdict, consider whether or not to launch an appeal—the things I have just described are not extraordinary.

This is the ordinary life of practicing attorneys across America. But my life experience, as limited as it was in practicing law, included all of these things. They helped me to understand a judge's responsibility—a trial court judge, even an appellate court judge. This is like sending Mr. Kavanaugh into a setting where he has no familiarity and no experience.

You might say: Well, maybe he will learn on the job. Maybe he will turn out not only to be a good law student but a heck of a judge. Well, it is not a question of trial and error here. It is a question of lifetime appointment. We do not get a makeover on this decision. If this Senate approves Brett Kavanaugh for the second highest court in the Federal judiciary in America, he is there for life.

Maybe he will learn on the bench. Maybe he will turn out to be objective on the bench. Maybe he will move away from a solid legal political background to understand the law. Maybe he will have some on-the-job training as a judge in the second highest court in the land. But is that the best we can do? Doesn't that harken back to other things in this administration that have troubled us—people being appointed to positions they clearly were not qualified for because they were well connected, they knew the right people? That should not be the test for the Federal judiciary. It certainly should not be the test for the second highest court in the land.

I believe the White House, I believe the Republican party, could have done better. There are so many quality judges across America who are Republicans, in my home State of Illinois and in Federal district courts, who could have been nominated for this important and prestigious position. Instead, this nominee falls short. It is no surprise to me that the American Bar Association downgraded his nomination.

I hope if he is approved that in the years to come he will prove me wrong.

At this point, there is little evidence to base that on. But I hope for the sake of this court and for the Federal judiciary that is the case.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. HATCH). The Senator from Idaho.

Mr. CRAIG. Mr. President, we are in a kind of a unique procedure this evening as we debate three nominees who will be voted on tomorrow morning, obviously, the nomination of Brett Kavanaugh being one of them. But another one that is critical to the United States and critical to the public lands domain of our United States and critical to this western Senator and to the western Senator who is presiding at this moment is the nominee for the new position of Secretary of the Interior.

Tonight, I stand to support the nomination of Governor Dirk Kempthorne of my State of Idaho, who will be considered and voted on tomorrow by the Senate. I was extremely proud that our President would recognize, as Secretary Gale Norton stepped down, that it would be right and appropriate to nominate another westerner with the kind of experience westerners uniquely have in the capacity that Governor Kempthorne has had to serve not only as a U.S. Senator but as a Governor in a very large public lands State.

The Department of Interior, of course, is the largest landlord in my State, as is true in the State of Utah. It is through that experience, and working with the Federal Government and working with the Department of Interior, that I believe Dirk Kempthorne, as our new Secretary of the Interior, will do extremely well.

When he came before the Energy and Natural Resources Committee, on which I serve, he came with the support, the bipartisan support, of 40 current sitting Governors of the States of the United States. I am not quite sure I have ever seen that before, that 40 Governors—Democratic and Republican—would step up and say, in behalf of one of their colleagues, that he is qualified and they support him without condition to become the new Secretary of the Interior. Governor Kempthorne developed a close working relationship with these Governors as he served as chairman of the National Governors Association just a few years ago.

I have watched Governor Kempthorne for two terms, or 8 years in my State of Idaho, take very difficult situations and sometimes competing sides and bring them together to resolve a problem and to come out whole and smiling in behalf of their interests and in behalf of the State of Idaho. It is with that kind of style and capacity that Governor Kempthorne comes to the position of Secretary of the Interior.

Dirk Kempthorne has successfully resolved one of the largest tribal water disputes in Idaho history, if not in the West—a tribal dispute we dealt with here on the floor, just a year ago, after

he and others had spent well over 5 years working through all the fine and difficult points of negotiation between very opposing and sometimes conflicting parties as they dealt with that.

When you live in the arid West, as I and the Senator from Utah do, you know how important water is. We find it, obviously, life-sustaining. And if it is not managed well, it can create great conflict or it can change the whole character of an environment or a State. And certainly for the wildlife of our great States, it is critically important habitat.

Here in the East, we worry about too much water. Out in the arid West, we worry about not enough water. And it is with that kind of experience that the Governor comes to the Secretary's position to become one of the Nation's largest water landlords, presiding over the Bureau of Reclamation and all that they do in the Western States and across the Nation in the management of critical water resources and the infrastructure that sustains those resources.

As a U.S. Senator, both the Presiding Officer, the Senator from Utah, and I served with Governor Kempthorne. He introduced and won passage of S. 1, the Unfunded Mandates Reform Act, critical and necessary as we work on legislation here to make sure we do not impact States and create and demand certain things from States that are, if you will, demanded but unfunded as a part of a Federal jurisdiction or responsibility. That is the law of the land today, and it certainly showed his skills as a legislator.

Under the leadership of Governor Kempthorne, the Western Governors' Association developed a 10-year strategy to increase the health of America's forests. Out of that collaborative process, and working with us here, we created the Healthy Forests Act, with the guidance and the assistance of the Bush administration, working cooperatively with public land timber State Senators.

It was one of the first major pieces of legislation passed to manage our forested lands of the Nation in a right and appropriate fashion, to restore health-damaged ecosystems, and to protect and promote the collaborative community effort where community watersheds were involved and at risk as a result of fire. So I was pleased to work with the Governor in his capacity at that time as chairman of the Forestry Subcommittee here in the Senate, and we were able to successfully bring that to conclusion. That is the law of the land today.

Knowing the West, as I said earlier, is critically important to the Secretary of the Interior because he is the landlord for much of the western landscape of our Nation, let alone our crown jewels, our national parks and all that they bring for the citizens of our country.

When he was nominated and we had our first visit, he said: Larry, what

should some of our priorities be? And I said: You come at a unique time to the Department of Interior. Because there is no question, in my mind, at least, this Senator—and in looking at the new energy policy we passed a year ago and all that we have done to get this Nation to producing energy once again—the Governor is the landlord of one of the largest storehouses of energy in this Nation.

The kind of drilling for gas in the Overthrust Belt in the West today that we are now reengaging in, with new environmental standards, to bring billions of cubic feet of gas on line in the upper Rocky Mountain States, is presided over by the Secretary of the Interior.

A debate that has gone on here, somewhat quietly, on the floor of the Senate but will take shape in the very near future dealing with the drilling of gas down in the Gulf of Mexico, off the coast of Florida, in lease sale 181, once again, dealing with offshore resources, is in part if not in whole the responsibility of the Secretary of the Interior.

The oil shales of Colorado that we are working to develop now—a lot of it on our public lands West—is the responsibility of the Bureau of Land Management and the Secretary of Interior.

I believe in the next 2½ years Dirk Kempthorne presides over the Department of Interior as the second Secretary of the Interior of this Bush administration, he will, by his presence and the efforts currently underway, actually produce more energy for this Nation and our Nation's energy consumers than will the Secretary of Energy. It is that kind of uniqueness and the domain over which he presides that makes this position tremendously important.

(Mr. MARTINEZ assumed the Chair.)

Mr. CRAIG. Lastly, the Governor leaves Idaho with a legacy of growing and expanding the Idaho State park system that I know he is very proud of, as am I. And now he steps into the role of really being the caretaker of all of our National Park System. That is so phenomenally important to our country.

The parks we have oftentimes called the crown jewels of the great outdoors of our country. And they truly are that. Whether it is Yellowstone in the West or whether it is the Great Smokies south of us here and slightly to the west or whether it is down in the Everglades of Florida—of which the Presiding Officer is so proud of that great park system—Dirk Kempthorne, as Secretary of Interior, will have a tremendous responsibility over that domain.

Tomorrow, we will vote on Governor Kempthorne, and he will become the next Secretary of the Interior for the Bush administration and for the United States of America. My guess is that vote will be a resounding vote because when he left here as a Senator, he left in a tremendous state of good will with

his colleagues. He has returned as a nominee to visit with, I believe, nearly all of us to assure us that he will be here to listen and to work with us in his role and responsibility as our new Secretary of the Interior.

So as an Idahoan and as a U.S. Senator, I am tremendously proud that our President has nominated and we, tomorrow, will confirm Dirk Kempthorne as our next Secretary of Interior.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise in strong support of the confirmation of Brett Kavanaugh to serve on one of the most important courts in our judicial system, the U.S. Court of Appeals for the District of Columbia Circuit. Brett Kavanaugh is an extremely bright, hard-working, ethical lawyer. I have known him for many years.

His father Ed Kavanaugh served as head of a major trade association here in Washington for many years, and he is known by my colleagues in Congress as a straight shooter. In this case, the apple did not fall far from the tree. Brett's mother Martha served for many years as a State court judge in Montgomery County, MD, and I am sure serves as a great model of judicial temperament and jurisprudential excellence and fairness for her son.

Brett Kavanaugh was nominated to the DC Circuit Court of Appeals in July of 2003. That is almost 3 years since he was nominated. Due in large part to the delay tactics employed by some earlier this month, Mr. Kavanaugh was the subject of a highly unusual second hearing on his nomination. Interestingly, when he was the nominee for the same court, Chief Justice Roberts was also subjected to a second hearing before the Judiciary Committee. Frankly, it may be the case that in each of these two circumstances, the second hearing tells us more about the partisan nature of the judicial confirmation process than it reveals about the qualifications of the nominees.

I might add that in both second hearings, both of these people, now Chief Justice Roberts and Brett Kavanaugh, came off very well, without one touching by anybody who was trying to do away with them.

I hope that the 14-year time period between Chief Justice Roberts' first nomination and confirmation to the DC Circuit is not matched or exceeded by the Kavanaugh nomination. Since he was nominated almost 3 years ago, Mr. Kavanaugh has become a husband and father. Let us pray that he does not become a grandfather before he gets a vote in the Senate.

This is a good day because not only can we see the light at the end of the tunnel, but we can actually get through the tunnel and complete action on this nomination that has languished for nearly 3 years. Now that Mr. Kavanaugh has once again answered questions at the unusual second hearing—and as was the case with his

first hearing, some of the questions were not posed to him in the most civil fashion—and now that he has been reported to the floor by the Judiciary Committee, it is my hope he will soon have the up-or-down vote he deserves on the floor of the Senate.

I commend the manner in which Chairman SPECTER has brought this nomination through the Judiciary Committee and on to the floor. In the sunshine of the hearing room, it became ever more apparent that there are no serious objections to this nomination. Brett Kavanaugh is a highly qualified nominee and a proven public servant. Mr. Kavanaugh's education, employment history, and record of public service should speak for themselves.

Brett Kavanaugh is a local guy. He went to high school at Georgetown Prep in Bethesda, MD, where he was educated by the Jesuits. From what I can tell, he heard the call of St. Ignatius to be a true man for others. I suspect that many of my colleagues, especially those Jesuit-educated Members, appreciate that background.

He went to Yale University for college. Having excelled there, he went on to Yale Law School, where he was editor of the "Law Review." That is no small achievement. It shows that he was an excellent student, one of the best.

He went on to not one but two circuit court clerkships. You don't get those clerkships unless you are one of the best. A judge really gets to know his clerks. They work in close quarters together. The judge has a true opportunity to get the measure of the man. Brett Kavanaugh's former employers, these judges, his mentors, thought so much of Brett that they came to Washington to testify at his confirmation hearing earlier this month. That is the second confirmation hearing. They did not mince their words.

This is what Judge Walter Stapleton, one of most respected judges in the Third Circuit Court of Appeals, had to say about his former clerk:

I am confident that Mr. Kavanaugh's perspectives on both life and the law will result in his becoming what I regard as a "judge's judge." His personal confidence is matched by his humility, and his legal acuity by his good, common sense judgment. When he served as my clerk, no case was too small to deserve his rapt attention and, without exception, he initiated his evaluation of a case with no predilections. His ultimate recommendation resulted from a careful case-by-case analysis of the facts and an objective application of the relevant precedents. He is firmly committed to the proposition that there must be equal justice for all and that this can be a reality only if all of our courts faithfully and objectively apply the statutory declarations of Congress and the teachings of the Supreme Court.

That is what I would call a ringing endorsement, a refutation of everything that has been said by the other side—and by a great judge, by the way, who knows a lot about judging and knows a lot about character.

Judge Alex Kozinski on the Ninth Circuit Court of Appeals had a similar

experience during Mr. Kavanaugh's time with him. This is what he had to say at his hearing:

I must tell you that in the times that I had Brett clerk for me, I found him to be a positive delight to have in the office. Sure . . . he is really bright, and he is really accomplished, and he is a really excellent lawyer. But most, virtually all, folks who qualify for a clerkship with a circuit judge these days have those qualities.

. . . Brett brought something more to the table. He, first of all, brought what I thought was a breadth of mind and a breadth of vision. He didn't look at the case from just one perspective . . .

Brett was very good in changing perspective. Sometimes I'd take one position and he'd take the opposite, and sometimes we'd switch places. He was very good and very flexible that way. I never sensed any ideology or any agenda. His job was to serve me and to serve the court, and to serve the people of the United States in achieving the correct result at the court. He always did it with a sense of humor and a sense of gentle self-deprecation.

These are strong words of support from another great circuit court of appeals judge on the Ninth Circuit Court of Appeals which is on the far west of this country. And these words describe precisely the type of qualities we want in members of the Federal judiciary.

Mr. Kavanaugh went on from those clerkships with these great circuit courts of appeal judges to bigger and better things. He worked in the office of the Solicitor General of the United States. There is hardly any one in this body who can claim that experience. He clerked for Supreme Court Justice Anthony Kennedy. Only the best and brightest lawyers win these types of challenging and prestigious assignments.

Mr. Kavanaugh went on to become a partner in one of the greatest law firms in the country, Kirkland & Ellis, a leading national law firm. That doesn't happen to somebody who is as described by some of my partisan colleagues on the other side.

Brett Kavanaugh left the no doubt financially lucrative practice at Kirkland & Ellis and returned to public service. He is a public servant. For the last 6 years, he has worked at the White House, first in the White House Counsel's Office—you don't get there unless you are really good—and currently as staff secretary to the President of the United States. Pretty impressive stuff. Some people say just a secretary. Come on, this is a person who vets the documents the President sees. It is a person you trust, whom the President trusts. It is a person with wisdom and decency and magnanimity. Nevertheless, some opponents of this nomination are suggesting that somehow Mr. Kavanaugh is unqualified to serve on the DC circuit. Come on.

Let us be clear. Mr. Kavanaugh has been practicing law for 16 years. He has argued civil and criminal matters before trial courts, appeals courts, and even the U.S. Supreme Court. I have heard Senators on this floor criticizing him for not having been a judge, not

having been on the court, not having argued all kinds of cases. He has. I don't know what they have been reading, but they sure as heck haven't been reading the transcript or don't know what is going on here. Very few lawyers ever argue a case before the Supreme Court. Mr. Kavanaugh has done so.

The vast majority of his legal practice has been as a public servant. I remember a time when public service was applauded and valued, as it should be. My colleague from Arizona, Senator MCCAIN, should be commended for reminding young men and women how crucial it is for citizens to transcend their own immediate needs and wants and to serve something larger than themselves. That is what Brett Kavanaugh has done with his life. Yet instead of applauding him, some attack him. For some, his public service has become a liability. I wish I was kidding, but I am not making this up. You have heard it here tonight. Apparently some believe Mr. Kavanaugh is just too political.

His great, alleged sins were to work for the Office of the Independent Counsel in the investigation of the White-water matter and later to work for President Bush. Although I think most fair observers would have to say that both of these demanding jobs are professional achievements, some are trying unfairly to use political innuendo to tar and feather this fine young lawyer. But that dog just won't hunt.

As a lawyer in the Office of the Independent Counsel, an office created by Democrats in the wake of Watergate, he worked on an investigation initiated by a Democratic President and his Attorney General. Nobody has ever suggested that his work was anything but professional. He was not a political partisan. Yet some people are hyperventilating as though the President nominated some partisan hack to a lifetime position on the Federal bench. I know Brett Kavanaugh. I have known him for years. I can tell you, he will be neither a partisan nor a hack on the bench. He has all the capacities and qualities to become a great judge.

This false charge of partisanship should be recognized for what it is—an absolute fabrication. You heard what two Federal judges for whom he clerked had to say about Mr. Kavanaugh. It doesn't get much better than that.

Another variation on this attack against Brett is the claim that he does not have adequate judicial experience. We need to put this in perspective. On the DC Circuit, only 4 of the 20 judges confirmed since President Carter's election served previously as judges. Then, all of a sudden, it is a bad thing because Brett Kavanaugh has not had experience as a judge. President Clinton nominated and the Senate confirmed—this is a Democratic President—32 lawyers with no prior judicial experience, including Judges David Tatel and Merrick Garland to the DC

Circuit. Good judges. Are we to believe that those who make these arguments also believe that Chief Justice Earl Warren, Justice Hugo Black, and even Chief Justice Marshall were somehow lacking because they had not been involved in politics and had no prior judicial experience?

I could go on and name a whole bunch of other Supreme Court Justices who never had any prior judicial experience, some of whom are revered as the greatest Supreme Court Justices in history. It is very unfair to use that argument, as has been used in countless numbers of cases for President Bush's nominees and, I might add, President Reagan's as well. It was not that long ago that the minority leader publicly urged the President to nominate individuals with a diversity of experience rather than just looking to prior judicial service. Well, Brett Kavanaugh fits this bill.

His background as staff secretary may prove to be particularly good judicial training. In a letter signed by eight individuals who served as either counsel or deputy counsel to the President, this is how they described that role he fulfilled:

The importance of this position, as well as its substantive nature, is not always well known or understood outside the White House. As Staff Secretary, Mr. Kavanaugh is responsible for ensuring that all relevant views are consistently and accurately presented to the President. The ability to assess presentations of differing arguments on a wide range of topic areas is a skill that would serve him well on the D.C. Circuit.

I concur. I ask unanimous consent that the full letter be printed in the RECORD.

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

WILEY REIN & FIELDING LLP,  
Washington, DC, May 5, 2006.

Hon. ARLEN SPECTER,  
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN SPECTER: We are writing to offer our strong support for the confirmation of Brett Kavanaugh to the United States Court of Appeals for the D.C. Circuit. We have each served as Counsel or Deputy Counsel to the President, and believe that Mr. Kavanaugh has the qualifications and experience necessary for the D.C. Circuit.

As former Counsel and Deputy Counsel to the President, we understand the importance of judicial appointments, particularly those to the federal courts of appeals. In our view, Mr. Kavanaugh possesses all of the requisite qualifications for such an appointment, including outstanding academic credentials, keen intellect, a calm and thoughtful demeanor, and exceptional analytical skills. He has extensive relevant professional experience, including arguments before the Supreme Court of the United States and the federal courts of appeals.

We would also like to emphasize the critical nature of the position that Mr. Kavanaugh currently holds as Staff Secretary. The importance of this position, as well as its substantive nature, is not always well known or understood outside the White House. As Staff Secretary, Mr. Kavanaugh is responsible for ensuring that all relevant views are concisely and accurately presented

to the President. The ability to assess presentations of differing arguments on a wide range of topic areas is a skill that would serve him well on the D.C. Circuit.

Mr. Kavanaugh would be a fair and impartial judge, dedicated to the rule of law. He possesses the highest personal integrity and is exactly the type of individual this country needs on the federal appellate bench. We urge the Senate to act promptly to confirm him to the U.S. Court of Appeals for the D.C. Circuit.

Sincerely,

FRED F. FIELDING,

On behalf of: Arthur B. Culvahouse, Jr.,  
Peter J. Wallison, Phillip D. Brady,  
Richard A. Hauser, Timothy E. Flanagan,  
David G. Leitch, John P. Schmitz,  
Jay B. Stephens.

Mr. HATCH. So with few rounds left, some activist groups opposing this nomination claim that Mr. Kavanaugh is too young and too inexperienced. It really is time for these folks to get a grip. Brett was nominated when he was 39 years of age. Today, as a result of several years—actually 3—of delay and obstruction, he is 41. All three of the judges Brett clerked for were nominated before the age of 39. Justice Kennedy was 38, sitting on the Supreme Court today. Judges Kozinski and Stapleton were 35 when they were put on the bench.

Several of my colleagues on the Judiciary Committee were elected in their early thirties. I don't think they would allow others to charge that they were too immature for the work. If James Madison could be the principal drafter of the Constitution in his midthirties, I think a man in his early forties, with 16 years of legal practice, and tough legal practice at that, is sufficiently mature to serve on the Federal bench.

I believe it is clear that most of the arguments marshaled against Mr. Kavanaugh are nothing more than a combination of hokum and downright hogwash. So it is not a surprise that the American Bar Association has repeatedly found him qualified for this position. Let me explain what that means.

After an extensive review, the American Bar Association gives ratings to all of the President's judicial nominees, and the judicial committee factors in these ratings when evaluating judicial nominees. A rating of qualified means this from the ABA:

The nominee meets the committee's very high standards with respect to integrity, professional competence, and judicial temperament, and that the committee believes that the nominee will be able to perform satisfactorily all of the duties and responsibilities required by the high office of a Federal judge.

What qualified nominee has demonstrated more professional excellence? Brett Kavanaugh has been reviewed by the ABA on three separate occasions. On each occasion, he has been found qualified to serve in this position. Twice he received a rating of majority well qualified, minority qualified. In his most recent rating, he received a rating of majority qualified and minority well qualified. Much has

been made of that, some calling it a downgrade. Come on. Over the last 3 years, he received 42 individual ratings by members of the American Bar Association, and all, with no exceptions in these 42 ratings, found him—all of them found him qualified for this position.

Some will try to make hay out of his most recent rating. Keep your focus on the fact that everybody from the ABA who ever evaluated Kavanaugh's ability to serve on the Federal bench found him fully qualified to do the job. Some of those doing the rating gave him the highest rating of well qualified. Nobody from the ABA ever found him to be not qualified to be a Federal judge. There is good reason for that. They would not dare do that with a person of his ability—although they did in one other case recently.

Frankly, I have always been skeptical of the ABA ratings. We have had some great committee ratings and some lousy ones. The lousy ones are where they allow politics to enter into it. Many Democrats consider the ratings of the American Bar Association their gold standard. Whenever the Democrats have called something their gold standard, I have found it useful to scratch beneath the surface because you will find that it is only goldplated. Nevertheless, the Judiciary Committee looks to the evaluations of the American Bar Association because these evaluations can often provide useful information.

I would like to commend the many men and women of the ABA who volunteer their time and energy to compile these ratings. These are volunteers. In my experience, however, the system is not infallible. For example, Judges Richard Posner and Frank Easterbrook received mixed qualified/not qualified ratings when they were nominated by President Reagan. This was a great and unpleasant surprise to those of us who were confident they would do excellent work on the bench, and many were convinced that those ratings were issued for ideological reasons. Today, these two judges are among the most frequently cited members of the Federal judiciary, and their work is widely admired all over the legal profession and all over the Federal courts.

Just recently, to show you how bad it can get, Michael Wallace, a nominee to the Fifth Circuit, seems to have fallen victim to an ideological review process by the ABA. He graduated at the top of his class at Harvard and went on to the Virginia Law School, where he distinguished himself. He clerked not only for the Mississippi Supreme Court but also for the late Chief Justice Rehnquist—positions that the average lawyer can only dream about. Yet he was given a unanimously not qualified rating. I am very curious about the facts surrounding that rating, and I suspect that part of that comes from the fact that he was chairman of one of the major legal entities in this country and they didn't like the way he chaired it, even though he is a brilliant man.

I also looked at every person on the rating committee for Brett Kavanaugh, and all rated him qualified, and most rated him well qualified, and there were a number who were partisan Democrats. There is no question about it, as shown by their schedule of donations. Maybe that had something to do with the downgrading that some on the other side have talked about, even though he was found qualified by every one of those 42 raters.

I understand that some are suggesting that past battles over particular public policy issues might have something to do with Wallace's rating and also with Kavanaugh's rating. In practice, it is sometimes hard to see clearly because the ABA rating system generally operates under a principle of anonymity. It is virtually impossible to find out who said what about whom, and try to figure out whether it was fair and objective or with an eye toward evening up old scores.

While the ABA rating system is murky in some respects, the bottom line with respect to the ABA rating of Brett Kavanaugh is that he was rated three times and found qualified by everybody who rated him each time—even though some of them on the present committee are very partisan.

Remarkably, some are trying to distort Mr. Kavanaugh's positive ABA rating and recommendation into a negative rating. As Tom Sawyer remarked in *Huckleberry Finn*, you can't pray a lie.

This is an important nomination because the DC Circuit Court of Appeals is such an important court. It reviews many matters relating to the actions of powerful Federal agencies. Many of its decisions will never be reviewed by the Supreme Court.

It is important to have judges on the DC Circuit Court, like Brett Kavanaugh, who understand the proper role of judges and the judiciary. For too long, some Federal judges have been permitted to run roughshod over the traditions of the American people.

My colleague from West Virginia, Senator BYRD, recently introduced a constitutional amendment that would reestablish the Constitution's traditional meaning on school prayer. In recent years, some Federal judges have taken such a radical view of the Constitution's establishment clause—one that is not only at odds with the views of the Founders but with the current views of a majority of Americans in nearly every State—that the Constitution's commitment to the free exercise of religion is now endangered. The results of this corrupted constitutional interpretation were manifest most prominently in the decision in *Santa Fe Independent School v. Doe*, where the court determined that a voluntary student-led prayer before a high school football game somehow violated the Constitution. A voluntary school prayer. We should applaud Senator BYRD for seeking to reestablish the Constitution's traditional meaning.

The meaning of our constitutional and statutory laws has been twisted by some judges on issue after issue. It happened when the Supreme Court discovered rights to abortion and later to burn the American flag and completely overturned the statutes of almost every State in the Union—certainly 49 of them. It can happen again today, as liberal activist groups are urging judges to promote same-sex marriage in State and Federal courts. That is another illustration.

Our judges must show a proper respect for the Constitution. The Constitution is not owned by the courts or controlled by judges. No less than judges, Members of this body take an oath to support the Constitution. The judiciary is a creature of the people and their Constitution, and the judiciary should not be a forum for wholesale social changes initiated by special interest groups and opposed by ordinary Americans.

I have no doubt that Brett Kavanaugh understands that fundamental distinction between judging and lawmaking. Let me read for the record what was said by Neal Katyal, a Georgetown University Law Center professor, former attorney to Vice President Gore, and former Clinton administration official. Let me read his expressed strong support for Mr. Kavanaugh. He says:

I do not believe it appropriate to write to you unless I feel strongly about a particular nominee. I feel strongly now: Brett Kavanaugh should be confirmed to the United States Court of Appeals for the DC Circuit. . . . Mr. Kavanaugh would be a welcome, terrific addition to the United States Court of Appeals.

He didn't allow his own partisan feelings to be interjected into this very important decision of whom we should support for the court.

I am fully supportive of Brett Kavanaugh's nomination. I look forward to his long career on the bench. I urge my colleagues to give his nomination the support it deserves.

#### NOMINATION OF DIRK KEMPTHORNE

Mr. President, having spoken about Mr. Kavanaugh, I wish to take a minute or two to speak about my friend, Dirk Kempthorne, who will be voted upon tomorrow, as I understand it, as well.

Dirk Kempthorne served with us in the Senate. I have been here for 30 years, and I have to say that he was one of the finest people with whom I have ever served. He was decent, honorable, and hard-working. He was a person who was honest. This is a man who became a great Governor. He did a great job while he was here. He was only here a short time in the Senate, but it was long enough for those of us who knew him to establish in our minds and in our experience the fact that he was and is a great human being.

He is nominated now for Secretary of the Interior, and I hope everybody in this body will vote for him tomorrow.

You cannot do better. The man is honest, decent, honorable, and will work with all of us in the Senate, not just Republicans. And he is from the West. He understands the problems of Federal lands. He understands the problems that confront the West. He understands the problems of energy. He understands the problems of the environment. He understands the problems of national parks. You can go right down the list.

This man has tremendous experience and has been a wonderful Governor of Idaho, our neighboring State. He and his wife are two of the best people I know. I hope everybody will vote unanimously in his favor tomorrow, or whenever we have that vote.

#### NOMINATION OF MICHAEL V. HAYDEN

Finally, I thank the leadership for expeditiously scheduling the confirmation vote for General Michael V. Hayden of the U.S. Air Force to be Director of the Central Intelligence Agency. In particular, I thank Intelligence Committee Chairman ROBERTS for organizing the open and closed hearings last week before our committee. The committee has a heavy work schedule, but nothing should be more important than moving forward an important nomination like this one.

I also recognize the work of my other colleague, Senator WARNER, for expediting this nomination through his committee. Air Force GEN Michael Hayden has spent his life in the service of our great country. I honor his dedication. He has honored us with his dedication.

In my opinion, he brought enormous distinction to the uniform he wears, and his contributions have served the security of this Nation, particularly since the attacks of 9/11. They have made a profound difference in our ability to defend ourselves in a war unlike any we have been forced to fight.

He was before us last year, and he is well known to this body. When last we saw him, he was to become the first deputy of an organization formed by the Congress, the Office of the Director of National Intelligence. In the legislation that created this office, we tasked it and its first officeholders with the enormous job of weaving together the disparate but impressive elements of the American intelligence community. Our concept was to create a whole that would be greater than the sum of its parts, but we left the work in the hands of the first Director, Ambassador Negroponce, and his deputy, the man whom the President now nominated to head the CIA.

As a longtime military officer, as one who spent most of his life as an intelligence consumer and a distinct part of his life in both the human and technical practices of intelligence, and now as an architect of the new intelligence structure, General Hayden is an individual exceptionally prepared to take on the responsibility of transforming the CIA.

It is my hope and expectation that, under the leadership of General Hay-

den, the talents and capabilities of the CIA not only make the difference in winning this current war on global terrorism but remain central to facing all of the challenges that loom before us once this particular conflict is won.

We have the very real possibility of conflicts with Iran and North Korea. We must face the fact that the day may come when we are faced with the threat of armed groups from Latin America.

What the CIA does today, if the lessons and experience it gathers from its contributions are conveyed to its new cadres, will play a key role in managing the conflicts of tomorrow. Let's hope none of these potential conflicts become such, and I really don't believe we need to allow them to become such.

Reform of the intelligence community, in which the CIA has and should maintain a central position, is already well underway, in part due to the creation of the Office of the Director of National Intelligence and also due to the oversight by the Senate Intelligence Committee in insisting that the flaws in the intelligence process we have revealed be redressed.

The DNI was created to coordinate the elements of the community, as well as to advance a reform agenda for the community as a whole, and in each of its elements.

Reform, particularly in time of war, is never easy, and it is much more complicated than creating a new bureaucratic structure. It requires creating a new culture that brings a common, professional set of doctrines and values to all components of the community that builds on the extraordinary capabilities that exist, while assembling new hybrid excellencies within an entity whose effectiveness must become greater than the sum of its parts.

General Hayden comported himself with great probity in his confirmation hearing last week and rendered honest and detailed answers to a great range of questions in both the open hearing and in the executive hearing. The general's lifetime experience has prepared him for taking this post, and I have the highest regard for him.

I might add that one of the first decisions that he will have made will be choosing Mr. Kappas to be his Deputy. I have been checking with many leaders in the CIA and elsewhere, and they say Mr. Kappas is an outstanding person who can help bring about an esprit de corps that may be lacking.

Having said all this, I want to praise Director Goss. I served with Porter Goss when he was chairman of the Intelligence Committee in the House. He is a wonderful man. He did a great job in helping to change some of the mindsets at the CIA. He made a very distinct imprint on the CIA for good, and we will miss him as well. But it should not be construed that General Hayden is replacing him because he didn't do the job. Porter said he wasn't going to stay there an excessively long time.

I have to say that I believe that as great as Porter Goss is and was, General Hayden will be a good replacement. He is one of the best people who has ever served this country. He has spent a lifetime in intelligence. He is one of the few people who really understands it all, and he is a straight shooter. He tells the truth; he tells it the way it is. He is an exceptionally decent, honorable man, and his wife is a very honorable and good person as well, as are his children.

So I hope all of us will consider voting for General Hayden. He is worth it. We should vote for him. We should be unanimous in the selection of a CIA Director, but even if we are not, I hope the overwhelming number of Senators will vote for this great general, this great intelligence officer, this great person who we all know is honest, decent, and capable.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I have been waiting some time to talk about General Hayden. I note the presence of the distinguished chairman of our committee, a committee on which I am proud to serve. Given the fact we are starting a discussion of General Hayden to head the Central Intelligence Agency, I ask unanimous consent that Chairman ROBERTS be allowed to speak at this time and that I be able to follow the chairman after he has completed his remarks.

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

The Senator from Kansas.

Mr. ROBERTS. Mr. President, I thank the Senator from Oregon for allowing me to go first as chairman of the committee. Senator WYDEN is a very valued member of the committee with very strong and independent views but has always contributed in a bipartisan way on behalf of our national security.

Good evening, Mr. President. The hour is a little late. Actually, the night is young, but I am not. Nevertheless, I am going to try to be pertinent on a matter that is of real importance, and that is, in fact, the nomination and hopefully what we expect to be the confirmation of GEN Michael V. Hayden to serve as Director of the Central Intelligence Agency.

As chairman of the Select Committee on Intelligence, I rise tonight and associate myself with the remarks made by Senator HATCH, who is another very valued member of the committee, in strong support of the nomination of General Hayden to be the next Director of the Central Intelligence Agency.

He is eminently qualified for this position. He is a distinguished public servant, as has been noted, who has given more than 35 years of service to his country.

Senator HATCH referred to our hearings both open and closed that we held last week. It was my goal as chairman to ensure that every Senator had

enough time to ask any question they wanted or to express any concern they had on their mind in regards to this nomination and the qualifications of this man. I think we accomplished that. We gave every Senator 20 minutes and then another 20 minutes, and then in a regular order, additional time.

I might add, Senator WYDEN certainly took advantage of that. After over 8 hours, the general, the chairman, and other members of the committee finally concluded.

I think it was a good hearing. I think it was a good open hearing and a good closed hearing. General Hayden certainly distinguished himself, and he showed the committee that he will be an outstanding choice for CIA Director.

General Hayden entered active duty, in terms of background, with the U.S. Air Force in 1969 after earning both his bachelor's and master's degree from Duquesne University in his hometown of Pittsburgh.

He has had a lengthy and diverse career. He has served as Commander of the Air Intelligence Agency and as Director of the Joint Command and Control Warfare Center. He has been assigned to senior staff positions at the Pentagon, at the headquarters of the U.S. European Command, the National Security Council, and at the U.S. Embassy in the People's Republic of Bulgaria. General Hayden has also served as the Deputy Chief of Staff for the United Nations Command and U.S. Forces in Korea and, more importantly, he has served most recently at the highest levels of the intelligence community. From 1999 to 2005, General Hayden was Director of the National Security Agency.

Finally, in April of last year, following intelligence reform and a great deal of committee action in regards to the Intelligence Committee to determine the accuracy of our 2002 NIE, National Intelligence Estimate, and then we went through intelligence reform, we had the 9/11 Commission, we had the WMD Commission appointed by the President, he was unanimously confirmed by this body to serve in his current position as the Principal Deputy Director of National Intelligence. He had that kind of background, had that kind of expertise, had that kind of experience.

Given his experience at NSA and the Office of the Director of Intelligence, I don't think there is any question General Hayden is well known to the Intelligence Committee. He has briefed us many times. I don't know of anybody in any hearing or briefing who has done any better. It is because of his qualifications and my experience working with him that I support his nomination.

This nomination comes before the Senate at a very crucial time. We are a nation fighting a war in which the intelligence community is on the front lines. The CIA is an integral and very vital part of the intelligence community. We need strong leadership in order to protect our national security.

When General Hayden takes the helm at the Agency, he is going to find a number of issues that will demand his attention. These are the same issues that we touched on and asked the general to respond to during his confirmation hearings.

First, he must continue to improve the Agency's ability to provide public policymakers with high-quality analytic products.

The Senate Intelligence Committee's July 2004 report on intelligence related to Iraq's WMD programs did conclude that the agencies of the intelligence community did not explain to policymakers the uncertainties behind their Iraq WMD assessments.

Analysts must also observe what I refer to as the golden rule of intelligence analysis, and we asked this specifically of the general: Tell me what you know, tell me what you don't know, tell me what you think and, most importantly, make sure that we understand the difference.

It will be up to General Hayden to ensure that the CIA analysts adhere to this rule in the future.

Second, General Hayden must improve the CIA's ability to collect what we call humane intelligence. He can begin by ensuring that the Agency is more aggressive in its efforts to penetrate hard targets and in the use of very innovative collection platforms.

Third, General Hayden, it seems to me, must improve information access—not information sharing, information access. There is a big difference. We on the Intelligence Committee will look to the general to ensure that appropriately cleared analysts community-wide, with a need to know and the proper training have access to the CIA's intelligence information in its earliest form, while at the same time protecting sensitive sources and methods.

No doubt the general will face a number of significant tasks, but based on his record as a manager, his qualifications, and his demonstrated leadership, I believe he is the right choice to lead the CIA. The Senate should expeditiously confirm him and let him get to work over at Langley.

Mr. President, I strongly support the nominee, and I urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I am next in line, but I understand the majority leader and the distinguished Senator from Nevada wish to have a brief colloquy. I will defer to them and pick up when they are finished.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, I ask unanimous consent that during this evening's session, it be in order for Senators to speak in executive session on the Kavanaugh nomination No. 632, or the Hayden nomination No. 672; provided further, that following disposition of the Kavanaugh nomination, the

Senate proceed to a vote on the Hayden nomination No. 672; further, if No. 672 is confirmed, then the Senate immediately proceed to a vote on the confirmation of Calendar No. 693; I further ask unanimous consent that following those votes, Senator NELSON of Florida be recognized to speak up to 5 minutes, and the Senate then proceed to a cloture vote with respect to Executive Calendar No. 630, Dirk Kempthorne to be Secretary of the Interior; provided further, that if cloture is invoked, Senator LANDRIEU be recognized for up to 10 minutes, and the Senate then proceed to an immediate vote on the confirmation of the nomination of Dirk Kempthorne.

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

Mr. FRIST. Mr. President, what all this means is that by this agreement, we will allow Senators to speak tonight on either the Kavanaugh nomination or the Hayden nomination. We will convene tomorrow morning at 8:45. It is our hope that we will be able to vote on the confirmation of the Kavanaugh nomination after convening. We will then proceed to the votes on the Hayden nomination and the cloture vote on the Kempthorne nomination. Senators, therefore, can expect three early rollcall votes during Friday's session.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, before he leaves the Chamber, I simply wish to say to the distinguished chairman of our committee that I thank him for his kind and gracious introductory remarks to me. As he knows, sometimes we agree, as we did in the effort to make public the CIA inspector general's report on 9/11. I appreciated working with the distinguished chairman on that matter. Sometimes we disagree, as we do tonight with respect to the nomination of General Hayden, but Chairman ROBERTS has always been courteous and fair in our committee and essentially to every member. I thank him for that as he leaves the Chamber tonight. Clearly, Chairman ROBERTS and Senator HATCH, two distinguished members of our Intelligence Committee, want no part of it, but there are those who want to turn the Hayden nomination into a referendum on who is toughest on terrorism, Republicans or Democrats. These people do America a disservice. I know of no Senator who sympathizes with a terrorist. I know of no Senator who wishes to coddle al-Qaida. I know of no Senator who is anything other than a patriot.

Unfortunately, this nomination is being used to divide the Senate and the American people on the issue of terrorism. Just this past Monday, the Washington Post newspaper reported that the White House:

Seems eager for a battle over the nomination of Air Force GEN Michael V. Hayden as CIA Director.

The article goes on to say:

The White House hopes voters will see the warrantless surveillance program Hayden started as head of the National Security Agency as tough on terrorism rather than a violation of civil liberties.

I believe the American people deserve better than the White House agenda of false choices. I believe one can fight the terrorists ferociously and protect the liberties of law-abiding Americans. I believe the Senate should not be bullied into thinking that security and liberty are mutually exclusive, and I believe that millions of Americans share that view. From the days of Ben Franklin, security and liberty in America have been mutually reinforcing, and it is our job to maintain this sacred balance.

This is harder to do now because across America there is less trust and there is more fear. The lack of trust has been fed by the Bush administration telling the public that they have struck the right balance between security and liberty, but then we have had one media report after another that contradicts that claim.

When the media reports come out, the administration says it can't say anything because responding would help the terrorists, but then the administration responds in multiple forums to get out the small shards of information that they believe is helpful to their point of view.

The increased fear among our people is nourished by the fact that there are no independent checks on the Government's conduct, as there have been for more than 200 years in America. Law-abiding Americans have no reason to be confident that anyone is independently verifying reports about the administration's reported surveillance of their personal phone calls, e-mails, and Internet use.

All of this mistrust and fear has translated into a lack of credibility. The administration has given us, by words and deeds, a national security routine: Do one thing, say another.

An absolute prerequisite to running intelligence programs successfully is credibility. Despite the scores of talented, dedicated, patriotic people working at Langley today, the failings of the Agency's recent leadership have left the Agency's credibility diminished.

The Agency is now looking at the prospect of its fourth Director since 9/11. The last Director brought partisanship and lost talented professional staff as a result. The Agency's No. 3 man, who resigned this month, is being investigated by the FBI for links to the bribing of a former Congressman. It is long past time to get it right at the CIA.

This will be the second time I have voted on a Hayden nomination. The first time around, when he was nominated to serve as Deputy National Intelligence Director, I voted for the General. In my view, General Hayden's technical knowledge is not in question. He has always been personable in any

discussions the two of us have had, and he has always been extremely easy to talk to.

But since I last voted for him, information has come to light that has raised serious questions about whether the General is the right person to lead the CIA. There are serious questions about whether the General will continue to be an administration cheerleader; serious questions regarding his credibility; serious questions about his understanding of and respect for constitutional checks and balances, and the important accountability in Government that they create.

Here are the facts: Last December, the New York Times reported that since 9/11, the National Security Agency, which General Hayden was in charge of at the time, initiated a warrantless wiretapping program. General Hayden, reported once more in the media to be the architect of the program, became the main public spokesperson in its defense. At a White House press conference in December of 2005 and at subsequent events, including a speech at the National Press Club this past January, the General vigorously defended the administration's warrantless wiretapping program.

Even before the war in Iraq, I was concerned about politicizing intelligence. Since then, I think they are only additional grounds for concern.

At his confirmation hearing, General Hayden said he wants to get the CIA out of the news. To me, this was a curious statement, given all the time he has spent on the bully pulpit defending the President's warrantless wiretapping program. Inevitably, any political appointee will have an allegiance to the White House that appointed him or her. But when it comes to positions in the intelligence community, I believe that this allegiance, regardless of whether a Republican or a Democrat is in the White House, should go only so far.

It is not good for our great country to have a CIA Director who jumps into every political debate that comes up here in Washington, D.C. It is not good for our great country to have a CIA Director who willingly serves as an administration cheerleader. It is not good for our great country to have a CIA Director who gets trotted out again and again and again to publicly argue for the President's controversial decisions. Politicizing the position renders the CIA Director less effective and less credible.

Inevitably, Americans will begin to see the Director as an administration defender rather than a conveyor of the unvarnished truth. And in our next CIA Director, we need more truth and we need less varnish.

My second concern rises out of the first. Not only has General Hayden raised questions through his words and actions about politicizing intelligence, but, unfortunately, even when he says something, you cannot trust, based on his words, that what he says is credible.

At the National Press Club speech he gave in January defending the NSA warrantless wiretapping program, the General repeatedly stated that the program was limited to international to domestic, or domestic to international calls. For instance, he said:

There is always a balancing between security and liberty. We understand that this is a more—I'll use the word "aggressive"—program than would be traditionally available under FISA. It is also less intrusive. It deals only with international calls.

Later, General Hayden said:

That is why I mentioned earlier that the program is less intrusive. It deals only with international calls.

He explained:

The intrusion into privacy—the intrusion into privacy is significantly less. It is only international calls.

He added:

We are talking about here communications we have every reason to believe are al-Qaida communications, one end of which is in the United States.

At the conclusion of the Press Club address, he was asked by a reporter:

Can you assure us that all of these intercepts had an international component, and that at no time were any of the intercepts purely domestic?

The General said:

The authorization given to NSA by the President requires that one end of the communications has to be outside the United States. I can assure you by the physics of the intercept, by how we actually conduct our activities, that one end of these communications are always outside the United States of America.

With those final words, the speech and the press conference concluded.

But then, just weeks ago, Americans read in the USA Today newspaper that the NSA, according to the paper, was also gathering basic information concerning hundreds of millions of innocent Americans' domestic phone calls. I cannot confirm or deny what was in that article, but I can tell you when I opened the paper that morning and read the article, it raised serious concerns for me about whether the General had been misleading.

Unfortunately, this is not a single incident in an otherwise perfect record. There is a pattern of saying one thing and doing another when it comes to the General. For instance, General Hayden said he received legal authority to tap Americans' phone calls without a warrant in 2001. A year later, in 2002, the General testified before Congress's joint 9/11 inquiry that he had no authority to listen to Americans' phone calls in the United States without first obtaining enough evidence for a warrant. As conceded by the General himself, at the time he made these statements to Congress, the NSA was in fact doing the very thing he led us to believe it could not: engaging in warrantless wiretapping on persons here in our country.

When I asked the General to explain these contradictions at his confirmation hearing, I didn't get much of a re-

sponse. At best, I got a nonanswer that reflected the General's skill in verbal gymnastics, but not the type of candor that America needs in its next CIA Director.

There is another example that I want to talk briefly about, Mr. President. When General Hayden came before the Senate Intelligence Committee last year in conjunction with his nomination to serve as a deputy to Ambassador Negroponte, I asked him about the NSA Trailblazer Program. This had been one of the General's signature NSA management initiatives, one that had been again reported as one designed to modernize the Agency's information technology infrastructure. In response to my questions—I want to be specific about this because there has been a lot of discussion about it—among a variety of other comments the General made about the Trailblazer Program, at page 44 of the transcript of that 2005 hearing that was held to approve General Hayden to be the deputy to Mr. Negroponte, the General said with respect to the Trailblazer Program:

A personal view, now—looking back—we overachieved.

Now, I cannot go into detail here on the Senate floor because of the classified nature of the information involved, but suffice it to say today the press is reporting that the program is belly-up and the press is reporting that it is a billion dollars worth of junk software.

I take my constitutional responsibility to give advice and consent to the President's nominations very seriously. Last Monday, after the hearing, I did something that I do not customarily do. I reached out to the general once more in an effort to try to find grounds for supporting his nomination. In my office I asked that he keep the Senate Intelligence Committee fully and currently informed of all intelligence activities other than covert actions.

In writing, the general responded:

Regarding communications with Congress on critical issues, if confirmed as Director of the Central Intelligence Agency I intend to have an open and complete dialog with the full membership of the committee, as indicated by 501(C) 502 and 503 of the National Security Act as amended.

So far, so good. But then the general added:

As you understand, there will continue to be very sensitive intelligence activities and operations such as covert actions that, consistent with legislative history and long-standing practice, is briefed only to leadership of the committee. On those rare occasions, communications with those Members will be exhaustive.

So once again the bottom line, General Hayden's response is ambiguous. If confirmed he intends to sometimes inform Congress and at other times only inform certain Members, without explaining how this will be decided or what his role in the decision will be.

Read his response from Monday and you still can't determine when he will

brief members of the Senate Intelligence Committee on the activities of the CIA, and when they will be learning about them by reading the morning newspaper.

As I stated, the CIA is looking at the prospect of its fourth Director in this dangerous post-9/11 world. Serious reform is needed to get the Central Intelligence Agency headed in the right direction. To make this happen, America needs a CIA Director who says what he means and means what he says. Unfortunately, time and time again, General Hayden has demonstrated a propensity for neither. His words and acts on one occasion cannot be reconciled with words and acts on another. He is a man with a reputation for taking complicated questions and giving simple answers.

Unfortunately and repeatedly, when I have asked him simple questions, he has given me complicated answers, or nothing at all.

Americans want to believe that their Government is doing everything it can to fight terrorism ferociously and to protect the legal rights and civil liberties of law-abiding Americans. But right now millions of Americans are having trouble locating the checks and balances on Executive power. They don't know what the truth is and they are very concerned about what is next.

I believe it is time for the Senate to break that cycle. I remain concerned that what has happened at the National Security Agency under General Hayden will be replicated at the Central Intelligence Agency. For that reason, I oppose the nomination.

I yield the floor.

The PRESIDING OFFICER (Mr. DEMINT). The Senator from Illinois.

Mr. DURBIN. Mr. President, let me commend my colleague from the State of Oregon, a member of the Senate Intelligence Committee, a committee on which I served for 4 years. Senator WYDEN's statement is consistent with his service on that committee. It shows that he takes that assignment very seriously, he does his homework on a very challenging committee assignment, and that he has given great thought and reflection to this important decision about whether General Hayden should be named to head the CIA.

Senator WYDEN and I have discussed this nomination. There are some things he cannot share with me because they were learned behind closed doors in the Senate Intelligence Committee, but I have become convinced, as well, that General Hayden, despite his many great attributes and good qualifications, is not the right person for this appointment.

When we reflect on America since 9/11, there are many things that are very clear. First, this country was stricken in a way that it has never been stricken since the War of 1812, when the British invaded the United States, invaded this Capitol building, sacked and burned it. We found 3,000 in-

nocent Americans destroyed on American soil—a gut-wrenching experience that we will never forget. It changed America and it called on the President, on the leadership in Congress, to summon the courage to respond.

In the days that followed that horrible event, there were some inspiring images. We can recall the videotape of firefighters ascending the stairway into the World Trade Center, to certain death, braving what they knew was a terrible disaster to try to save innocent lives.

We can recall the President of the United States going to the rubble of the World Trade Center in New York and in a few brief moments rallying America and the world behind our cause.

We can remember Members of Congress standing just a few feet away from this Senate Chamber, Members of Congress who hours before had been locked in partisan combat, who put it all aside after 9/11, sang “God Bless America,” and said: What can we do to save America?

After that, the response around the world; this great, giant, the United States of America, having suffered this terrible loss, was able to count its friends and allies very quickly. So many nations stepped forward and said: We are with you. We will help you. We understand that you must bury your dead and grieve your losses, but then you must defend yourself and your Nation for its future, and we will be there.

It was an amazing outpouring of support for our great country. It was a wonderful, encouraging moment.

The President came to this Congress and gave a speech shortly after 9/11 that I will say was one of the best I had ever heard, summoning us to gather together as a nation to defend ourselves against this threat of terrorism. Then, of course, we considered the PATRIOT Act. We changed the laws of America so our Government would have new tools to pursue the terrorists. It passed with an overwhelming bipartisan vote, very quickly, and we started to roll up our sleeves and take on this task.

At the time I was a member of the Senate Intelligence Committee. I realized then more than ever how important that committee was. Intelligence is the first line of defense, and good intelligence used wisely can protect America from terrorism and from enemies who would inflict great casualties and pain on us.

Then, a few months later, came a new challenge, a challenge we had not anticipated on 9/11. The President and this administration told us that the real battle was against Saddam Hussein in Iraq. I remember sitting in that Senate Intelligence Committee just days before the vote on the Senate floor about the invasion of Iraq and turning to a staffer who said to me: Senator, something is unusual here. This is the first time we have ever considered any kind of effort of this magnitude without asking the intelligence

agencies of the United States to tell us what they know so we can gather information from every source and make a conscious and sensible judgment about what we should do. It is called a National Intelligence Estimate, an NIE.

So at my staffer’s prompting, I requested a National Intelligence Estimate, as did Senator GRAHAM of Florida. It turned out it was routine to produce them, but no one had taken the time to do that before the invasion of Iraq.

In very short order, just a few weeks, a National Intelligence Estimate was submitted to the Intelligence Committee. There were claims in that NIE that turned out to be false, but at the time we didn’t know it. There were claims about weapons of mass destruction that threatened the safety of the United States of America. There were claims of capacities and capabilities by Saddam Hussein in Iraq that were greatly exaggerated. There were claims that Saddam Hussein and the Iraqis were producing nuclear weapons which could be used against the United States. Leaders in the White House were telling us they were fearful of mushroom clouds that could result in a nuclear holocaust. All of this was given to the American people and the Intelligence Committee.

The sad reality was when we sat in the Intelligence Committee behind closed doors, we knew that the American people were not getting the full story, that in fact even within this administration there was a dispute as to the truth of these statements, statements given every day and every night by the leaders of this administration.

We know what happened. We invaded Iraq. Saddam Hussein, in a matter of weeks, was gone as their dictator, and we came to learn that all of the claims about weapons of mass destruction were false, totally false. The American people had been misled.

There is nothing worse in a democracy than to mislead the people into war, and that is what happened. We learned, as well, that there were no nuclear weapons. All those who claim there was a connection between 9/11 and Saddam Hussein could find no evidence. The statements made by the President in his State of the Union Address that somehow or another Saddam Hussein was obtaining yellowcake or the makings of nuclear weapons from Africa turned out to be false, and the President had to concede that point.

Then, in light of it, we decided it was time to take a look. The Intelligence Committee on which I served decided to ask two questions: First, did our intelligence agencies fail us? Did they come up with bad information when they should have given us good information and good advice? Were we, in fact, misled into this war by that information? And second: Did any member of this administration misuse that intelligence information, use it in a fashion that did mislead or deceive the American people? Those were two spe-

cific assignments accepted by the Senate Intelligence Committee. I served on the committee while we were in the process of meeting that obligation. We came to learn the first assignment was exactly right. The Senate Intelligence Committee concluded, as did the House, that our intelligence agencies had failed us. Our first line of defense had failed us, giving us information that was totally flawed, information which was not reliable, information which never should have resulted in the invasion of Iraq.

The administration had argued that we have a new foreign policy, a preemptive foreign policy. We can’t wait to be attacked, the President said, we have to attack first if there is a threat. It turns out the information used to measure that threat was wrong, in the invasion of Iraq.

Mr. President, 23 of us in the Senate voted against the use of force in Iraq, 22 Democrats and 1 Republican. We believed then, most of us, that the information being given to the American people was misleading, the intelligence information was not accurate.

It turns out that our estimate was true. It turns out that our invasion of Iraq was based on false pretenses and on intelligence information that was fatally flawed.

The second investigation to be undertaken by the Senate Intelligence Committee, promised more than 2 years ago, was that we would look into the misuse of this intelligence by members of this administration. That is a tough thing to ask a Senate Intelligence Committee, led by a Republican chairman, to do, because it is likely to bring some embarrassment to the administration of the President.

Unfortunately, as I stand here today, the promise of almost 2 years ago to complete this second phase has not been completed. We still don’t know if members of this administration misused the intelligence.

But there are things that we do know, things that are very clear. It is clear that in the lead-up to the invasion of Iraq and afterwards there was a separate intelligence agency created in the Department of Defense by a man named Douglas Feith that became virtually a renegade, independent operation. It was not working in concert with other agencies of our Government gathering intelligence. That is inconsistent with what we hoped to be a coordinated intelligence effort in our Government. But Secretary Rumsfeld, who enjoyed the confidence of the President, was able to initiate this intelligence operation in defiance of many other intelligence agencies. We know that for a fact.

Then we came to learn several other things. We learned that after 9/11, the Bush administration, for the first time in modern history, decided that they needed to rewrite the standards of interrogation for detainees. For decades we had held to the standard of the Geneva code, which basically said that we

would not engage in torture, cruel, inhuman, or degrading treatment. But the infamous Bybee memo, exchanged at the time with Alberto Gonzales, then-White House Counsel, and many others, was at least a suggestion that we could breach those rules and change those rules. That conversation, in closed sections of the White House, took place without the knowledge of the American people. But then the terrible disclosure at Abu Ghraib torture, inhuman treatment perpetrated, sadly, by those who were in the service of the United States.

It was clear then that the issue of torture was one that was front and center for us as a Nation to face during this time of terror. So with this torture issue before us, we also had other things to consider.

Not long thereafter came the news that this administration was engaging in activities which clearly were beyond the law—the so-called warrantless wiretaps of Americans. You see, under the laws of the United States and under our Constitution, one cannot invade through a wiretap the privacy of another without court approval. No executive branch office, Department of Justice, or FBI can engage in a wiretap without the approval of a court order or, when it comes to questions of international security, foreign intelligence gathering, through the FISA court, a special court created for that purpose. Those are the two options.

But this administration said that it was above the law; that it didn't have to answer to those courts; that it didn't have to work through those courts; it could engage in warrantless wiretaps through the National Security Agency, an agency administered by General Hayden.

Several weeks ago, USA Today disclosed more information indicating an invasion of privacy where the telephone records of innocent American people are being gathered by the same agency, the National Security Agency, in an effort I cannot describe in detail because I have not been briefed, but in an effort to find some intelligence information.

Now comes the nomination of General Hayden to become Director of the Central Intelligence Agency after all of this experience.

Let me say at the outset that I respect General Hayden. He is a man who has served his country with distinction for over three decades. Many say—and I cannot disagree—that he is one of the brightest minds when it comes to intelligence, and the agencies that he has worked with in the past are clear evidence of that.

I honor and appreciate his service. I know he is a man of considerable knowledge and formidable intellect. He is well versed in the questions of intelligence, particularly in the most technical areas. However, I have three primary reservations about this nomination.

First, I am concerned about the role of General Hayden in the NSA's

warrantless wiretapping of American citizens.

Second, I am concerned about how the CIA will treat detainees in their custody and how they will implement the clear prohibition on torture and cruel, inhuman, or degrading treatment standard that was passed last year in the McCain amendment, which I cosponsored, by a vote of 90-9 on the floor of the U.S. Senate.

I am also concerned about the issue of the General's independence, not merely his independence as an individual but his ability to stand up to the Department of Defense and the likes of Secretary Rumsfeld, and separate defense intelligence operations under Douglas Feith. I raised these concerns when I met with General Hayden, and they were echoed by many members of the committee during the hearings.

First, I would like to address the issue of surveillance of American citizens.

As Director of the NSA, General Hayden presided over a program that carried out warrantless wiretaps on innocent Americans. Those wiretaps did not have judicial approval, nor did they have meaningful congressional oversight. Precious few Members of Congress were briefed about the wiretaps, and they were sworn to secrecy about this procedure.

General Hayden has stated that the Attorney General and other legal authorities within the administration had concluded that such actions were proper and legal. In fact, I have seen no evidence of that whatsoever.

We created the FISA court to issue warrants for such surveillance. If the administration believes the FISA court is not sufficient in this age of terrorism and high technology, the administration should come to Congress and ask us to change the laws, as we did with the PATRIOT Act.

In addition to warrantless wiretaps, General Hayden reportedly oversaw a program that assembled an enormous database, the largest in the history of the world, of literally millions of calls made by Americans to Americans in the United States. Tens of millions of Americans appeared to have been included in this database. And most of us in Congress learned about it on the front page of USA Today.

I am disturbed about the role that General Hayden played in overseeing these practices. It is certainly critical that the Director of the CIA protect our security but also not endanger our liberties.

Second, I am concerned about the way the CIA will treat detainees. When the McCain amendment was pending, it was opposed openly by Vice President RICHARD CHENEY who said that he believed intelligence agents—those working for the CIA—should not be bound by the provisions of the McCain amendment. We disagreed. We passed, on the floor of the Senate, as I said earlier, by a vote of 90-9, clear standards barring

torture, cruel, inhuman and degrading treatment. I believe that we should never engage in that treatment—and that is what the McCain amendment requires. Senator MCCAIN said it well last year, and I quote him. He said, "It's not about who they are. It's about who we are."

I believe we should have one clear, uniform interrogation standard that applies to all United States personnel—those in uniform and those in a civilian capacity.

I was disturbed when General Hayden was meeting with me and did not appear to share that view. He was evasive. While he said that we must establish clear guidelines, he indicated he might prefer to have one standard for the military and another standard for intelligence personnel. He said he wanted to study the question, but that two sets of rules might be appropriate.

I disagree. There is only one standard. It should be clear and unequivocal.

Finally, there is the question of independence. The Pentagon controls an estimated 80 percent of the intelligence budget. That fact alone makes it critical for the CIA to vigorously defend its independence over the Department of Defense. We need an independent voice at the CIA.

I note that last year's intelligence authorization bill, as passed by the Senate Intelligence Committee, stated that the Director of the CIA should be appointed from "civilian life."

That bill in the end never reached the floor of the Senate for a vote, but we should nevertheless consider that recommendation seriously.

General Hayden assured me that he stood up to Secretary Rumsfeld in the FISA operation when he disagreed with him, and that he will continue to do so.

Colleagues on the Intelligence and Armed Services Committee, whom I deeply respect, including Senator LEVIN of Michigan, have concluded that General Hayden will assert that independence and stand up to the Pentagon. I certainly hope he does.

Within the Bush administration, the question of the independence of intelligence agencies is particularly important. That is because the intelligence process has been abused.

This administration clearly politicized and distorted the use of intelligence to promote the false premise that Saddam Hussein was tied to the 9/11 attacks and that Iraq was developing weapons of mass destruction, including nuclear weapons. We know now that was false.

In 2002, the administration undermined the independence and credibility of the intelligence process by creating the Office of Special Plans at the Pentagon under the leadership of Under Secretary of Defense Douglas Feith. Several of us addressed this issue as part of the Intelligence Committee's 2004 Report on the Prewar Intelligence Assessments on Iraq. And Senator LEVIN joined me in this.

We wrote:

The Intelligence Community's findings did not support the link between Iraq and the 9/11 plot [that] administration policy officials wanted [in order] to help galvanize support for military action in Iraq. As a result, officials under the direction of Under Secretary Feith took upon themselves to push for a change in the intelligence analysis so that it bolstered administration policy statements and goals.

I asked General Hayden about Douglas Feith and the Office of Special Plans. To his credit, he was critical of that operation. He said it was not legitimate "alternative analysis," and he described the troubling pattern in which preconceptions shaped the search for intelligence.

General Hayden reiterated his discomfort with the Feith approach in testifying before the Intelligence Committee. I hope that when he is confirmed, as I am certain he will be, that General Hayden will go even further in opposing efforts to subvert the intelligence process.

Today, we face even graver dangers than we did in 2003 when Under Secretary Feith was operating his own intelligence shop.

The war in Iraq has claimed over 2,400 American lives, and there is no end in sight.

Iran has pursued three different methods of enriching uranium and has experimented with separating plutonium, moving closer to the possible development of nuclear weapons.

Osama bin Laden is still at large; al-Qaida has splintered in different and dangerous directions, and North Korea is expanding its nuclear arsenal.

All these issues make it extremely important that our intelligence community conduct independent, accurate, trustworthy analysis. And it is critical that we operate within the bounds of our own Constitution and our laws.

We should not have one standard for the military and another for the intelligence community, a position once argued as high in this administration as Vice President CHENEY. We should not engage in torture or hold detainees indefinitely without of charging them with a crime.

Just 2 weeks ago, the President of the United States said it would soon be time to close Guantanamo. That certainly is something that many of us believe is in order. Those who are dangerous to the United States should be charged and imprisoned. Those who have no value to us from an intelligence viewpoint should be released, if they are not a danger to the United States.

We cannot ignore the fundamental privacy rights of American citizens and the moral values and rights reflected in the treatment of those detainees.

General Hayden will be taking charge of the CIA, by many reports at a time when the Agency is demoralized. He will have to oversee critical reforms.

Last December, members of the 9/11 Commission handed out report cards on reform for the Bush administration. They gave the CIA an "incomplete" in terms of adapting to its new mission.

I hope General Hayden can change that. I hope that he will be the independent voice that we need.

I yield the floor.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

#### VOTE EXPLANATION

• Mr. SALAZAR. Mr. President, I was necessarily absent during the vote on final passage of S. 2611, the comprehensive immigration reform bill, because I was traveling to Colorado to attend my youngest daughter's high school graduation. I want the RECORD to reflect that had I been here, I would have voted in favor of the bill. The legislation that passed the Senate will help this country to reestablish meaningful control of our borders. It will promote real law and order at ports of entry and in the interior, improving employer verification mechanisms and establishing a tough but fair path to citizenship for qualified immigrants. It rejects the idea that America can be the country we wish to be while tolerating a permanent underclass, a shadow society, within our midst. It is my hope that the most important elements of this comprehensive bill will be retained in conference with the House, and will be sent to the President's desk for signature.

Mr. President, I was also necessarily absent during the cloture vote on the nomination of Brett Kavanaugh to be a U.S. Circuit Judge for the DC Circuit. I want the RECORD to reflect that had I been here, I would have voted in favor of invoking cloture. •

#### HONORING OUR ARMED FORCES

LIEUTENANT ROBERT KENNETH THOMPSON

STAFF SERGEANT GREGORY WAGNER

Mr. THUNE. Mr. President, in the spirit of Memorial Day, which is fast approaching, I rise today to pay tribute to two sons of South Dakota who dedicated and ultimately sacrificed their lives for their country. These men died on battlefields far from home, to protect us and to advance the cause of freedom. LT Robert Kenneth Thompson and SSG Gregory Wagner both died in service to this great nation at very different times in America's history. They fought in conflicts many years apart, but both understood the importance of preserving and promoting freedom. On this Memorial Day, it is appropriate to remember not only those who have fallen in the present conflict in Iraq, but those who have fallen in previous conflicts as well.

LT Robert Kenneth Thompson of Flandreau, SD, was inducted into the United States Army on December 27, 1948. At the time of his death, LT Thompson was on assignment fighting in the Korean conflict. He was killed in action on February 12, 1951 north of Hoengsong, Korea while serving as a member of Battery A, 503rd Field Artillery.

Lieutenant Thompson had served in the United States Army for just over 2 years before his life was cut tragically short. LT Thompson dedicated his life to his country. He selflessly answered when duty called, even though it meant leaving his family behind. LT Thompson's patriotism and courage will not be forgotten.

Lieutenant Thompson is survived by his wife Doris and daughter Vicki. Today we remember his selfless dedication and service to all Americans, and his sacrifice will always have meaning to all future generations of Americans, as long as our Republic exists.

SSG Gregory Wagner of Alexandria, SD, was a full-time heavy mobile equipment repairer for the National Guard in Mitchell's Battery A, 147th Field Artillery and was deployed with the Yankton, SD unit. As a member of the Battery C, 1st Battalion, 147th Field Artillery, he was chosen as the Task Force 519th Military Police Battalion "Hero of the Week", having distinguished himself with his remarkable achievements. His mission in Iraq involved training and educating the Iraqi police force.

SSG Wagner made the ultimate sacrifice on May 8, 2006 during his service in Iraq. He was honored with a Bronze Star and a Purple Heart. He will be remembered for his loyalty and dedication to his family, friends, fellow service-members, and his country.

SSG Wagner was a devoted, small-town guy who graduated from Hanson High in 1989. He was an admirer of his father, Charles Wagner, who served in the military as a sergeant in the U.S. Army. Each year at the Memorial Day services in Alexandria, SD, Charles would read the roll of soldiers. When he passed away, Greg stood in his place. My heart goes out to his mother, Velma, to all his siblings, and to his community as SGT Wagner's name is read at this year's Memorial Day service.

LT Thompson and SSG Wagner both laid down their lives for their country, and to free others from tyranny. While we are currently engaged in a very different kind of war, nothing has changed in that which we are ultimately trying to protect. For my freedom and for your freedom and to spread this freedom across the globe, our soldiers have risked and sacrificed their lives. On this Memorial Day, as we pause to reflect on those who have died so that we all might live in freedom, we can do no more to honor them than to remain dedicated to the same principles for which they stood and devoted their lives.

#### MEMORIAL DAY 2006

Mr. DOMENICI. Mr. President, I would like to pay tribute to those men and women of the United States Armed Services who have given their lives to defend our Nation and the ideals it represents.

Numerous times in the history of our Nation, the men and women of our