

strengthen the understanding of US legal system.

Yours sincerely,

SHEN DONGEMI,  
Judge of the Intermediate People's Court of  
Wuxi City, Jiangsu Province, P.R. China.

## EXECUTIVE CALENDAR

### NOMINATION OF KIMBERLY ANN MOORE TO BE UNITED STATES CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT

The PRESIDING OFFICER. Under the previous order, the hour of 4:30 p.m. having arrived, the Senate will proceed to executive session to consider the nomination of Kimberly Ann Moore, of Virginia, which the clerk will report.

The assistant legislative clerk read the nomination of Kimberly Ann Moore, of Virginia, to be United States Circuit Judge for the Federal Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 1 hour for debate equally divided.

Mr. LEAHY. If the Senator will yield, after the Senator from Pennsylvania uses whatever period of time he wants, or yields to another, there is half an hour available to the Senator from Vermont; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. Madam President, I urge my colleagues to confirm Professor Kimberly Ann Moore for the U.S. Court of Appeals for the Federal Circuit. Professor Moore has an outstanding academic background. She has a bachelor of science from Massachusetts Institute of Technology, 1990; a master of science from MIT, 1991; and a law degree from the Georgetown University Law Center, cum laude, 1994.

She was an associate at the prestigious law firm of Kirkland & Ellis from 1994 to 1995. In 1995, Professor Moore became a law clerk to Judge Glen Archer, chief judge of the U.S. Court of Appeals for the Federal Circuit, serving from 1995 to 1997. Following her 2-year clerkship, she was an associate professor of law at Chicago-Kent College of Law, from 1997 to 1999. She was an assistant professor of law at the University of Maryland School of Law, from 1999 to 2000 and an intellectual property litigation counsel for Morgan, Lewis & Bockius from 2000 to 2003. From 2000-2004, she was an associate professor of law at George Mason University School of Law, before assuming her current position as Professor of Law at George Mason.

Professor Moore is a board member of the Federal Circuit Bar Association; a board member of Patent Strategy & Management; and a board member of Intellectual Property Owners Education Foundation.

I ask unanimous consent a full copy of her résumé be printed in the RECORD.

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

KIMBERLY ANN MOORE  
UNITED STATES COURT OF APPEALS FOR THE  
FEDERAL CIRCUIT

#### Birth

June 15, 1968, Baltimore, Maryland.

#### Legal Residence

Virginia.

#### Education

B.S., 1990, Massachusetts Institute of Technology.

M.S., 1991, Massachusetts Institute of Technology.

J.D., Cum Laude, 1994, Georgetown University Law Center.

#### Employment

Associate, Kirkland & Ellis, 1994-1995.

Law Clerk, Judge Glenn L. Archer, Chief Judge of the U.S. Court of Appeals for the Federal Circuit, 1995-1997.

Assistant Professor of Law, Chicago-Kent College of Law, 1997-1999.

Assistant Professor of Law, University of Maryland School of Law, 1999-2000.

Intellectual Property Litigation Counsel, Morgan, Lewis & Bockius, 2000-2003.

Associate Professor, George Mason University School of Law, 2000-2004.

Professor of Law, George Mason University School of Law, 2004-present.

#### Selected Activities

Board Member, Federal Circuit Bar Association, 1999-present.

Board Member, Patent Strategy & Management, 2001-present.

Board Member, Intellectual Property Owners Education Foundation, 2005-present.

Board Member, CPR Institute for Dispute Resolution, Judicial Subcommittee, 2003-present.

Member, Georgetown Patent Institute Advisory Board.

Member, Federalist Society.

Member, American Bar Association.

Member, American Intellectual Property Law Association.

Member, Maryland Bar Association.

Mr. SPECTER. She has the potential to make an outstanding judge. I urge my colleagues to vote to confirm.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I concur with the senior Senator from Pennsylvania and will support the President's nominee in this case. I mention that at the outset to advise Senators on this side of the aisle.

I also welcome the distinguished Senator back from his trip. It sounds like it was a substantial trip. I spent August in Vermont, a matter of no great sacrifice I must say, but nevertheless a very busy month.

That made me think, Madam President, when we returned today from recess, we have less than 4 weeks remaining in this legislative session. With so little time remaining, I hope we can join to make real progress on the issues that have languished unresolved, the real issues that matter most to the American people. We spend a lot of time talking about issues that really do not matter to the American people and ignoring those issues that do.

I urge the administration and the Republican leadership of the House and Senate to recognize the failures that have set us back as a nation. We are

ready to work together to rectify those failures.

Secretary Rumsfeld and Vice President CHENEY struck the absolute wrong note when they recently labeled as "appeasers" the majority of Americans who recognize the disastrous war in Iraq as distracting them from winning the war on terror. Basically, they are saying anyone who questions their mistakes or points out their mistakes is nearly treasonous. My God, we have not heard talk like that since the days of King George. And that led to the revolution that made us a country.

Again, this week, the Democratic leadership reached out to the President on this important issue. Rather than name-calling and seeking to divide Americans, rather than fostering fear and seeking to scare Americans into staying the disastrous course on which the Government remains headed, I urge Republican leaders to join to fight a smarter war on terror so we can make America safer.

The cronyism, the incompetence that brought us the devastating aftermath of Hurricane Katrina cannot continue to define Government action. With more Americans in poverty, and extreme poverty, with more children without health care, we must do better. America can do better.

With rising interest rates, rising mortgage rates, rising health care costs, rising insurance costs, we must do better for America's working families. America can do better.

While corporate profits have taken a greater and greater share of our gross national product, wages are stagnant. Those in charge refuse to allow a long overdue raise to the minimum wage. We have just come through a summer of record-high gas prices. For many families, the threat of record-high home heating prices this winter is around the corner. Yet this will be another year in which this administration will not raise the minimum wage.

As we approach the fifth anniversary of the attacks of September 11, 2001, we are more aware of the painful failure of the Federal Government in neglecting to protect the Nation from those attacks. September 11 could have been avoided. Our Government dropped the ball. We did not protect the Nation. In these last 5 years, the administration's decision to send hundreds of thousands of Americans into Iraq, diverting attention and resources from the hunt for Osama bin Laden and the fight against al-Qaeda—those loom largest among the many mistakes they have made which have created a more dangerous and threatening world.

How sad, how discouraging, how needless, and how ominous it has been the past 5 years to see the national and international unity we had after those horrific attacks squandered by this administration's crass politics, their arrogant unilateralism, their misguided policies.

It was around the time of the second anniversary of September 11 that Defense Secretary Rumsfeld put his finger

on a key question in the fight against terrorism, when he asked whether we were creating or eliminating more terrorists through our actions. There can now be little doubt about the honest answer to the question about the actions taken by this administration over the last 5 years. Does anyone doubt the impact of the occupation of Iraq, the images from Abu Ghraib, the international scandal at Guantanamo, and the war profiteering by huge defense contractors?

Our own State Department, the Bush State Department, had to revise its reports on international terrorism in order to reflect a more honest assessment of the growing incidence of terrororism violence.

Hamas and Hezbollah are winning elections, as are hardliners in Iran and elsewhere throughout the Middle East. We see American soldiers, brave American soldiers, trapped in the sectarian violence in Iraq. We see the situation every day in Afghanistan deteriorating.

Meanwhile, we have lost precious time to confront growing threats from Iran and North Korea and the Middle East. They are more threatening than any time in recent memory.

The administration resisted recent efforts to examine what led to the tragic events of September 11. The administration does not want the rubberstamp Congress to ask them what they did, why they allowed September 11 to happen in the first place.

They resisted the creation of a Department of Homeland Security. They resisted the formation of the 9/11 Commission because they knew it would ask the question: Why did September 11 happen during the Bush administration? And they failed to implement many of the Commission's most important recommendations.

Recently, President Bush held a press conference. He conceded what we all know: Iraq had "nothing" to do with the attack on the World Trade Center. Then he skipped quickly over the main reason we went into Iraq; namely, his erroneous contention that Iraq had weapons of mass destruction.

A growing roster of conservative Republicans, from William Buckley on, is now acknowledging the failure of this administration's strategy in Iraq.

Even as sectarian violence has continued to grow among Iraqis, as the losses it causes to America continue to mount, the administration tolerates no criticism or, worse yet, listens to no new perspectives on a deteriorating situation. They stubbornly insist: Stay on this uncorrected course for another 2½ years—this from a President who, when he first ran for office, told our country he was against nation building and against foreign military antagonists.

It is difficult to come together and to move forward when the administration will not acknowledge that its historic miscalculations that led to the current situation. When they are not ignoring the past, they simply excuse it. The ex-

cuses for their failures are mockingly the same.

In May 2002, the then-National Security Adviser, now Secretary of State, said:

I don't think anybody could have predicted that these people would take an airplane and slam it into the World Trade Center . . . that they would try to use an airplane as a missile.

Of course, that was not true. The 9/11 Commission showed how the Bush administration had received many of the September 11 warnings that that was exactly what they were going to do.

In September 2005, President Bush responded to the destruction of New Orleans by saying:

I don't think anybody anticipated the breach of the levees.

Of course, that was wrong. Of course, local papers and others had discussed this hurricane disaster scenario and others for years. It was predicted.

And earlier this summer, Vice President CHENEY said about Iraq:

I don't think anybody anticipated the level of violence that we've encountered.

And a military spokesman said:

I don't think anyone could have anticipated the sectarian violence.

Of course, neither of these statements was accurate since sectarian violence was a known risk. It was even a predicted risk from the outset. It is one of the reasons so many opposed going there in the first place.

Just as this administration's justification for U.S. involvement in Iraq continued to shift from one to the next, its excuses ring hollow when they refuse to acknowledge their errors and instead claim infallibility. "Just trust us" long ago proved its failure as a Bush administration policy.

Ours is the strongest military in the world, but there are limits to military power. That military power and resources must never be squandered. Many people who have actively served in the military knew that. The President's father knew that. General Powell knew that. President Eisenhower, the military hero of World War II, a Republican President, knew that.

Unfortunately, this administration, thousands of lives later, hundreds of billions of dollars later, is just beginning to learn it in what has proven to be a disaster of historic proportions.

Imagine how different our situation would be today if we had not shifted our lead forces from Afghanistan to Iraq at the critical moment when we had Osama bin Laden cornered, when we were about to find him. What if the President had done what we unanimously asked him to do, go get Osama bin Laden, the man who engineered September 11. We had him on the run. We let him go, and we went into a futile war in Iraq.

In the years since then, the Iraq war has stretched our military to the breaking point. It has sapped hundreds of millions of dollars and preoccupied our attention. The White House has

even disbanded the intelligence unit that for a year was dedicated to tracking down Osama bin Laden. All those nations that were on our side after September 11, 2001, now do not support us.

What have we done? A diversion to Iraq has only succeeded in creating a new breeding ground for terrorists and in emboldening the rogue states to harbor and supply them. Starting this unnecessary war in Iraq did not make us more secure, it has made us less secure. And worse yet, the Bush administration allowed Osama bin Laden to escape.

We need to adjust our course in order to effectively confront the threat of terrorism. We do not need excuses and name calling. We need honesty and determination. We need not just conventional military might but better intelligence, stronger alliances, repaired alliances, and better information sharing. We need to use our resources for homeland security, to protect our ports, our planes, our industrial plants, and our vital resources.

Let us function as a constitutional democracy and act within a moral framework and legitimate legal rules. Let us be that democratic model to the world that America often has been and should be today. Let us show the strength and resolve of a free people, not a fearful people. Let us set a new direction to counterterrorism on our own terms, with American skill and with American values.

This summer we expressed our gratitude to British authorities for disrupting a plot that reportedly endangered the citizens of both our countries. That episode and the fifth anniversary, next week, of the attacks of 9/11 are reminders there is little margin for error in countering terrorism.

We need to refocus our attention and resources from the divisions that plague Iraq to eliminating the misdirection and mismanagement that still diverts us from an effective international strategy to protect the American people from terrorism. We need to be smarter and stronger to make America safer. We can do better. America can do better.

For almost 5 years since the Government failed to protect us from 9/11, Bush administration officials in charge of security have been saying it is not a question of whether al-Qaida will attack us again but when. We need to do better. We need to do better. We should look at the mistakes that allowed 9/11 to happen. We should look at the colossal mistake that allowed Osama bin Laden to escape. We as America need to do better.

Mr. President, how much time remains to the Senator from Vermont?

The PRESIDING OFFICER (Mr. ALEXANDER). Fourteen minutes.

Mr. LEAHY. Mr. President, I do not see others on the floor seeking recognition, so let me continue.

The full agenda before us, as we enter the final weeks of this legislative session, reflects how little this Republican

leadership has accomplished, even when it has control of the White House, a Republican President, rubberstamp Republican leadership in both the House of Representatives and the Senate.

We have had a steady course of misguided priorities, including weeks—weeks—spent on constitutional amendments designed to restrict Americans' rights and the misuse of Congress's time and authority to interfere in court battles over the medical treatment of Terri Schiavo. These distractions have done nothing to help our country but instead cost Americans progress on real issues that matter most.

These failures to focus on our real priorities have left America less secure. I look forward to a representative Congress that focuses on the Nation's real priorities. For example, the Republican-controlled Congress has yet to enact a Federal budget; this notwithstanding that the law required them to do it by April 15 of this year. The Republican leadership of the House and Senate decided to ignore the law and not pass one.

We have passed but one appropriations bill, and we are required by law to pass 13. We have yet to reconcile and enact lobbying reform and ethics legislation. We have yet to deal with the skyrocketing cost of gasoline and health care. We have yet to reconcile and enact a bipartisan and comprehensive immigration reform bill. And the press reports today that the Republican leadership has decided they will not do that. And for the second year in a row, the Republican-led Senate will not even take up the annual intelligence authorization bill so we could vote up or down, even though they have a majority in their own party here.

As we commemorated the 1-year anniversary of Hurricane Katrina last week, we were reminded that the situation in the gulf coast remains a tragedy with serious human consequences. We need to commit ourselves and our resources to helping our fellow citizens who are still in need after the appalling lack of responsiveness by this administration. We need to provide the assistance to that region of our country where rubble remains a fixture of the landscape 1 year later. We are spending tens of millions—hundreds of millions—storing trailers that will never be used. Some contractors have made billions, but people remain homeless. This is our Department of Homeland Security that is supposed to be able to react at a moment's notice if we have a danger. Here, even though they were given days of warning, they did not react. And when they did, it was one fumble after another, while the administration gave statements saying: Everything is under control. It reminds me of the President standing on the aircraft carrier saying: Mission accomplished.

But not just the residents of the Gulf Coast who cannot return to homes or

return to jobs, all Americans have to prepare for the threat of an avian flu pandemic so we do not see the repeat of last winter, when the Government was unprepared for a typical winter flu season. Mr. President, throughout your lifetime and my lifetime, every single year—every single year—we have had a flu season. And last year the administration acted surprised that we had a flu season. We should take action to preserve and improve rather than pollute the environment. Protecting our environment has become a pressing issue that has public safety and serious health consequences for all Americans, today and tomorrow. That demands immediate attention.

We cannot ignore the destruction already wrought by the administration's ill-advised, head-in-the-sand policies. We have to provide resources that our returning veterans need at home. We spend hundreds of millions of dollars for health care facilities in Iraq that will never be used. Yet we are cutting back on health care facilities in America that our veterans need. America can do better. We spend hundreds of millions of dollars, ostensibly, to build schools in Iraq that will never be used, and our schools in America are falling apart without money for them. We can spend hundreds of millions of dollars for law enforcement in Iraq, law enforcement that has proven particularly ineffective, and, at the same time, we are cutting millions of dollars for law enforcement in America, while our crime rates skyrocket. America can do better.

The Senate can make progress, but it has to work together. Today, we consider the nomination of Kimberly Ann Moore for a lifetime appointment to the Court of Appeals for the Federal Circuit. In the weeks before the recess, we confirmed several nominees to the Nation's important circuit courts.

Working together, the Senate confirmed two circuit nominees and two Federal trial court nominees in a matter of minutes in one afternoon. That, I might point out, is the kind of progress we can make when the President nominates qualified, consensus nominees.

When she is confirmed, Ms. Moore will be the 7th circuit court nominee and the 30th judge overall confirmed this year. Compare this with those left unconfirmed in the 1996 congressional session, when Republicans controlled the Senate and they stalled the nominations of President Clinton. And in that year, Republicans would not confirm a single appellate court judge—not one. Here, today, we will have our seventh appellate court judge. I think of the 61–61—judges of President Clinton who were pocket filibustered by a Republican-controlled Senate.

I think of the irony that in the 17 months of President Bush's term in office when the Democrats controlled the Senate, we actually confirmed President Bush's judges faster than has been done under a Republican-controlled

Senate. You would not know that from the speeches that are made.

But today is a day to congratulate Ms. Moore on her confirmation. I hope she will be the kind of judge who will apply the law fairly and protect the rights of all litigants appearing in her courtroom. There are some superb people on that court. I think of such people as Judge Richard Linn. He should be a model for her as to the kind of judge this Nation deserves. He is one of the more senior members of that court. That is the kind of person I hope she will emulate.

Mr. President, how much time remains to the Senator from Vermont?

The PRESIDING OFFICER. Six minutes.

Mr. LEAHY. Mr. President, of course, again, I will yield the floor if somebody else seeks time.

I do not mean this in an unfair way because the distinguished Presiding Officer, of course, is not allowed to speak. I commend him. He comes from a wonderful State. It has been my privilege to visit there. I suspect it is a lot like Vermont. You have a chance to go into these small towns and cities, to go to county fairs and meet people. I have known the Presiding Officer to be a very accessible person when he was a Governor, when he was a member of the Cabinet, and now as a Senator. I try to do the same thing in my own State.

During this past month, I have gone all over the State of Vermont. I have talked to people. I have attended funerals of brave soldiers killed in Iraq from Vermont. Vermont has lost more soldiers per capita than any other State in the country. And it is interesting, in a small State such as ours, as to the people you see at these funerals, everybody knows everybody else. I walk out and I see people whom I went to grade school with or people who knew my parents or I knew them or their families. We are there, and the other Members of the congressional delegation, the Governor, and nobody goes by a title. Our adjutant general is usually referred to as Mike. I am called Pat. There is Jim and Bernie and so on.

We're a very proud State. We're a very patriotic State. We're a very honest State. We're the 14th State in the Nation, and we have answered the call. People wonder if maybe the call has been distorted this time. They wonder what this war does for our security. As I said earlier, I believe it has made us less secure as a nation, not more secure. They wonder where the failures were in Government that allowed 9/11 to happen in the first place. And, of course, as more information has come out, it could have been avoided, should have been avoided, should have been avoided. And they wonder if the lessons have been learned about that.

They see Homeland Security that should be able to respond to any emergency, even that on a second's notice, and yet they see that it failed to respond to Katrina there was all kinds of

notice. They see Republicans and Democrats joined together saying: Go get Osama bin Laden. And the administration does not get Osama bin Laden. Instead, they divert those forces to go into Iraq in a war we did not need and one that has made us less secure. They even disbanded the special intelligence unit that has been tracking Osama bin Laden.

But worse yet—and I heard this from Republicans and Democrats alike in my State—when the Secretary of Defense and others in the administration say if you raise questions, if you point out their mistakes, somehow you are aiding the enemy, however defined, that you are not being patriotic. I am reminded to paraphrase Mark Twain. He said: Love your country. Question your Government.

A lot of people in my State—Republicans and Democrats—say there is a great deal to question today.

I hope they will continue to do so. I hope they will never fail to do so. I hope that those people who have the audacity in America—the freest democracy on Earth—that those leaders in our Government who have the audacity to question the patriotism of Americans who question their mistakes will themselves be quiet and leave—leave the stage.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. WARNER. Mr. President, I support the President's nomination of Kimberly Ann Moore of Falls Church, VA, to be a U.S. Circuit Court Judge for the Federal Circuit. I was pleased, along with Senator ALLEN, to introduce Ms. Moore to the Judiciary Committee on June 28, 2006, and it is my privilege to speak again on her behalf.

All of us recognize the importance of the position to which President Bush has nominated Ms. Moore. The U.S. Court of Appeals for the Federal Circuit stands as one of the 13 Federal Circuit Courts of Appeals that operate just under the U.S. Supreme Court. The Federal Circuit, which consists of 12 judges, is a unique court in that it has nationwide jurisdiction in a variety of subject areas, including international trade, government contracts, patents, trademarks, certain money claims against the U.S. Government, and veterans' benefits cases.

Given the court's highly technical jurisdiction, there is no doubt that serving on the U.S. Court of Appeals for the Federal Circuit is a challenging task. In my view, based on Ms. Moore's educational background and her legal and technical expertise, she is clearly up to the task.

Ms. Moore received her undergraduate degree in 1990 in electrical en-

gineering from the prestigious Massachusetts Institute of Technology. A year later, she earned her masters of science and earned an impressive grade point average of 4.8 out of a 5-point scale. The nominee then went on to graduate cum laude from Georgetown University Law Center in 1994.

Subsequent to graduation, Ms. Moore entered private practice where she worked as an associate at the well-respected law firm of Kirkland & Ellis. While at the firm, Ms. Moore specialized in intellectual property litigation.

In 1995, the nominee left private practice to serve as a law clerk for the Honorable Glenn L. Archer, Jr., then-chief judge of the U.S. Court of Appeals for the Federal Circuit. Ms. Moore served a 2-year clerkship on the court.

After her clerkship, the nominee joined the faculty at the Chicago-Kent College of Law and, later the University of Maryland School of Law. At both law schools, Ms. Moore taught patent and trademark law. Beginning in 2000, Ms. Moore spent 3 years as an intellectual property litigation counsel at the firm of Morgan, Lewis & Bockius in Washington DC. At the same time, however, she still managed to work in academia, teaching law as an associate professor at the George Mason University School of Law. In 2004, Ms. Moore became a full professor of law at George Mason University where she teaches intellectual property law.

It is impressive to note that throughout her legal career the nominee has written and delivered over 60 published articles, books, and speeches, mostly in the realm of intellectual property law. Moreover, Ms. Moore has earned accolades from the National Law Journal, which recently selected her as one of the 100 most influential lawyers in America.

In my view, Ms. Moore is obviously very well qualified to serve as a judge on this prestigious court. I look forward to the Senate confirming this fine nominee overwhelmingly.

Mr. ALLEN. Mr. President, I am pleased today to urge my colleagues to support the confirmation of Kimberly Moore to be a circuit judge on the U.S. Court of Appeals for the Federal Circuit.

Kimberly Moore is a Falls Church, VA resident and a full tenured law professor at George Mason University.

Among other cases, the Federal Circuit hears all patent appeals from the district courts and the U.S. Patent and Trademark Office. Kimberly Moore is uniquely qualified to serve on this distinguished court.

First, Ms. Moore has a strong technical background with two degrees from the Massachusetts Institute of Technology, a bachelor of science in electrical engineering, and a master of science and work experience as an engineer with the Naval Surface Warfare Center.

Also, Ms. Moore has a great deal of experience with the Federal Circuit itself. She is on the board of governors

of the Federal Circuit Bar Association, has been editor-in-chief of the Federal Circuit Bar Journal for 8 years, and has been selected as a mediator in the Federal Circuit's Pilot Appellate Mediation Program.

As a professor, Kimberly Moore has taught courses in patent law, patent litigation, trademark law, and Federal circuit practice. In fact, she coauthored the casebook "Patent Litigation & Strategy," with the current chief judge of the Federal Circuit, Paul Michel, and a prominent practitioner, Raphael Lupo. Kimberly Moore has written more than a dozen law review articles on patent law and litigation and spoken at more than 40 conferences on patent topics.

As a lawyer, Kimberly Moore has consulted with firms on patent cases and appeals to the Federal Circuit. She has also served as an expert witness in dozens of patent cases. In fact, just this month, Kimberly Moore was named one of the 100 most influential lawyers in America by the National Law Journal.

I am pleased that President Bush has chosen to nominate someone with such a strong background in patent law to the Federal Circuit. Kimberly Moore will be an excellent addition to the court.

I strongly support the confirmation of Ms. Kimberly Moore to be circuit judge of the U.S. Court of Appeals for the Federal Circuit and urge my colleagues to support this confirmation.

Mr. SANTORUM. Mr. President, I am happy to see that we are scheduled to confirm today the nomination of Kimberly Ann Moore, of Virginia, to be U.S. Circuit Judge for the Federal Circuit. It is about time that we get back to confirming judges, and I am glad to see that our leader is putting this issue back on the Senate's agenda.

It is of utmost importance that the Senate continue to confirm President Bush's judicial nominees. Just last month, we saw what can happen when an ideologically driven activist judge attempts to create national security policy. Judge Anna Diggs Taylor, a Federal district judge in Michigan appointed by President Carter in 1979, ruled that the Terrorist Surveillance Program was unconstitutional. This program, administered by the National Security Agency, has been a critical component in ensuring the safety of millions of Americans. Despite that, Judge Diggs Taylor ruled that the program, which the Government only uses to intercept international telephone and internet communications, violates the first and fourth amendments to the Constitution, the Administrative Procedures Act, and the Separation of Powers doctrine, in other words the veritable legal kitchen sink.

While some on the other side of the aisle have rejoiced in this decision, this opinion has been attacked from both ends of the political spectrum. The Washington Post, in an editorial on August 18, noted that the decision is neither careful nor scholarly, and it is

hard-hitting only in the sense that a bludgeon is hard-hitting. The angry rhetoric of U.S. District Judge Anna Diggs Taylor will no doubt grab headlines. But as a piece of judicial work—that is, as a guide to what the law requires and how it either restrains or permits the NSA's program—her opinion will not be helpful.

Legal scholars have also criticized Judge Diggs Taylor's opinion. Let me give you just a few of these criticisms. David B. Rivkin, a former Justice Department official in Reagan's and George H.W. Bush's administrations, noted in a New York Times op-ed on August 18 that "[i]t is an appallingly bad opinion, both from a philosophical and technical perspective, manifesting strong bias."

Harvard Law Professor Laurence Tribe has written "[i]t's altogether too easy to make disparaging remarks about the quality of the Taylor opinion, which seems almost to have been written more to poke a finger in the President's eye than to please the legal commentariat or even, alas, to impress an appellate panel . . . ."

Howard Bashman, an appellate attorney and editor of the How Appealing legal blog, wrote in the New York Times on August 19 that "[i]t does appear that folks on all sides of the spectrum, both those who support it and those who oppose it, say the decision is not strongly grounded in legal authority."

UCLA Law Professor Eugene Volokh wrote on his widely read blog: "the judge's opinion . . . seems not just ill-reasoned, but rhetorically ill-conceived. . . . [B]y writing an opinion that was too much feeling and too little careful argument, the judge in this case made it less likely that the legal approach she feels so strongly about will ultimately become law."

In contrast to Judge Anna Diggs Taylor, both of President Bush's nominees to the Supreme Court, Justices Roberts and Alito, understand that it is not the role of the judicial branch to make policy. During his confirmation hearings last year, Supreme Court Chief Justice John Roberts said, "I don't think you want judges who will decide cases before them under the law on what they think is good, simply good policy for America." He also noted, "[T]he Court has to appreciate that the reason they have that authority is because they're interpreting the law, they're not making policy, and to the extent they go beyond their confined limits and make policy or execute the law, they lose their legitimacy, and I think that calls into question the authority they will need when it's necessary to act in the face of unconstitutional action."

Similarly, Justice Samuel Alito remarked during his confirmation hearing that "results-oriented jurisprudence is never justified because it is not our job to try to produce particular results. We are not policy makers and we shouldn't be implementing any sort of policy agenda or policy preferences that we have."

Yes, Justices Roberts and Alito have it right. It is not the role of a judge to seek to replace the legislature, or the President, State legislatures, and the Governors, township supervisors, county councils with his or her own views. It is the role of a judge to apply the law and to do justice based on the facts in solving the dispute that has been presented.

A court is not a place for zealous advocates to impose their will upon the American public. It is not a place for people who believe their views as judges are superior to the views of the democratically elected officials in this country—better put, that their views are better than the people's views because we are, in fact, accountable to the people we represent. It is and should continue to be a place for those public servants who seek to do justice under the law and facts of each case and a place to interpret the law, rather than make law.

The PRESIDING OFFICER. Under the previous order, the question is, Will the Senate advise and consent to the nomination of Kimberly Ann Moore, of Virginia, to be United States Circuit Judge for the Federal Circuit?

Mr. THOMAS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Florida (Mr. MARTINEZ) and the Senator from Pennsylvania (Mr. SANTORUM).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Hawaii (Mr. INOUYE), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from New Jersey (Mr. MENENDEZ), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

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

The result was announced—yeas 92, nays 0, as follows:

[Rollcall Vote No. 231 Ex.]

YEAS—92

Akaka	Cochran	Grassley
Alexander	Coleman	Gregg
Allard	Collins	Hagel
Allen	Conrad	Harkin
Baucus	Cornyn	Hatch
Bayh	Craig	Hutchison
Bennett	Crapo	Inhofe
Bingaman	Dayton	Isakson
Bond	DeMint	Jeffords
Boxer	DeWine	Johnson
Brownback	Dodd	Kennedy
Bunning	Dole	Kerry
Burns	Domenici	Kohl
Burr	Dorgan	Kyl
Byrd	Durbin	Landrieu
Cantwell	Ensign	Leahy
Carper	Enzi	Levin
Chafee	Feingold	Lincoln
Chambliss	Feinstein	Lott
Clinton	Frist	Lugar
Coburn	Graham	McCain

McConnell	Rockefeller	Stevens
Mikulski	Salazar	Sununu
Murkowski	Sarbanes	Talent
Murray	Schumer	Thomas
Nelson (FL)	Sessions	Thune
Nelson (NE)	Shelby	Vitter
Pryor	Smith	Voinovich
Reed	Snowe	Warner
Reid	Specter	Wyden
Roberts	Stabenow	

NOT VOTING—8

Biden	Lieberman	Obama
Inouye	Martinez	Santorum
Lautenberg	Menendez	

The nomination was confirmed.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action and the Senate will now resume legislative session.

#### DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2007—Continued

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 4882

Mrs. FEINSTEIN. Mr. President, I call up amendment No. 4882.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself and Mr. LEAHY, proposes an amendment numbered 4882.

The amendment is as follows:

(Purpose: To protect civilian lives from unexploded cluster munitions)

At the end of title VIII, add the following:

SEC. 8109. No funds appropriated or otherwise made available by this Act may be obligated or expended to acquire, utilize, sell, or transfer any cluster munition unless the rules of engagement applicable to the cluster munition ensure that the cluster munition will not be used in or near any concentrated population of civilians, whether permanent or temporary, including inhabited parts of cities or villages, camps or columns of refugees or evacuees, or camps or groups of nomads.

Mrs. FEINSTEIN. Mr. President, on behalf of the Senator from Vermont and myself, I offer an amendment to the Defense appropriations bill to address a humanitarian issue that I have actually thought a great deal about over a long period of time; that is, the use of the cluster bomb. The human death toll and injury from these weapons is felt every day, going back decades. Innocent children think they are picking up a play toy in the field and suddenly their arm is blown off.

I believe we need to take a look at our policies and adjust them. Specifically, our amendment would prevent any funds from being spent to purchase, use, or transfer cluster munitions until the rules of engagement have been adopted by the Department of Defense to ensure that such munitions will not be used in or near any concentration of civilians, be it permanent or temporary, such as inhabited