I have already thanked a number of people, and I would also like to thank, on Senator Enzi’s staff, Ilyse Schuman, and on my own staff, Stacy Sachs, Molly Nicholson, Jeff Teitz, and Charlotte Burrows, and two of my interns, Ashley Davis and Laura Mounir. I would also like to thank the many other staff members, both on and off the committee, who did such great work on this bill: Carmen Green, Nancy Hardt, Paula Burg, Lisa German, Jessica Gerrity, Dora Hughes, Ed Ramirez, Jim Escudero, Lazarus, Lisa Layman, Jenny Ware, Mary-Sumpter Johnson, Stephanie Carlton, and Jennifer Claypool.

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

Mr. ROBERTS. Mr. President, today the Senate voted to approve S. 1082, the Food and Drug Administration Revitalization Act. I am very pleased the amendment I suggested to improve the drug advertisement provisions in the original bill and gives the FDA the tools they need to protect the public from false or misleading prescription drug advertisements. We believe this amendment is a more commonsense approach to dealing with prescription drug advertisements and ensures the public will get truthful, accurate information about new prescription drugs.

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

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

I suggest the absence of a quorum.

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 I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. I suggest the absence of a quorum.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I rise to take the roll on the Food and Drug Administration Revitalization Act. The legislative clerk proceeded to call the roll.

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

EXECUTIVE SESSION

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

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

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

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

The Senator from Vermont is recognized.

JACK VALENTI

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

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

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

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

I am afraid more than one person in the audience agrees with my mother. When Jack had one of his many retirements, “one of the few people who never retired. He continued to write books. He had one that he just finished before a stroke silenced him a few
weeks ago. I have a copy of his book in my desk on the Senate floor. I have a copy of all his books. They are well written. He had a command of the English language that all of us would like to think we could master with the same level of being an expert. He did it. He was his own speechwriter. Nobody else could begin to match what he did.

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

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

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

There being no objection, the material was ordered to be printed in the RECORD.

(Saturday, April 28, 2007)

WHAT JACK VALENTI TAUGHT US ALL

(BY MATT GERSON)

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

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

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

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

Jack rejected the partisanship that gripped Washington and would warn that “nothing lasts—today’s minority backbencher will be tomorrow’s majority chairman.”

On the day the Motion Picture Association of America headquarters was named the Jack Valenti Building, Sen. Ted Stevens observed, “Jack worked ‘house of aisle’ because he doesn’t see an aisle. It is the root of his success and what others ought to emulate.”

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

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

It was especially fun to watch Washing ton’s men occasionally try to decipher one of his homilies. They eventually got the point and often adopted the line as their own. When a project was in trouble, Jack used to say, “What an ugly, mule in a hallstorm.” [Modified from the original Texas vernacular for a family newspaper.] When prospects got even worse, “The ox was in the ditch.” Everyone could be addressed if you remembered “the three most important words in the English language: Wait a minute.”

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

One paragraph is a must-read for the Blackberry-addicted. Jack quoted Emerson’s observation that “for every gain, there is a loss. For every loss, there is a gain.” While I have not clearly done away from his family, he reminded us that attending one more reception meant missing a meal around the dinner table, and one extra night would mean one less chance to help with homework or watch a soccer game.

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

EVEN NATIONAL GUARD EQUIPMENT STOCKS

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

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

In 2007, White House spokesperson, sitting comfortably at the White House, said: Well, you know, there is no problem. The Guard has considerable equipment stocks still available.

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

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

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

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

I believe there is a problem, on the one hand, and have an arm of the administration, on the other hand, say there is a $24 billion shortfall—to me, that is a problem.

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

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

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

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

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

Let me show you some photographs. You can see from these photographs, these are things our Guard does. You see this capsized tanker, and helicopters trying to rescue the people. Those are National Guard helicopters. Here we have a forest fire close to an urban area, where homes are in danger. You can see an airplane putting down a fire retardant. That is a National Guard airplane.

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

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

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

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

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

In the latest supplemental spending bill, which the President seemed happy to veto, I worked with my colleague on the National Guard Caucus, Senator Bond. We cochair the National Guard Caucus. We also serve on the Defense Appropriations Subcommittee. We added $1 billion for Army Guard equipment purchases. That $1 billion was not requested by the administration. We had virtually unanimous support, Republicans and Democrats, in this body for it. It would go directly for dealing with that $24 billion shortfall.

Now, that has been vetoes. We are going to work together in a bipartisan fashion to get it back into whatever spending bill we pass.

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

We have had some pretty vicious storms—one that almost removed the agricultural sector of a major part of our State.

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

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

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

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

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

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

There being no objection, the material was ordered to be printed in the RECORD, as follows:
## FY08 ARNG TOP 25 EQUIPMENT MODERNIZATION SHORTFALL LIST

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Quantity</th>
<th>Quantity</th>
<th>Shortage</th>
<th>POM 08-13</th>
<th>UFR 08-13</th>
</tr>
</thead>
<tbody>
<tr>
<td>HMMWV</td>
<td>48,715</td>
<td>18,611</td>
<td>$4,039</td>
<td>$1,647.0</td>
<td>$2,392.0</td>
</tr>
<tr>
<td>Family of Medium Tactical Vehicles</td>
<td>37,905</td>
<td>30,140</td>
<td>$7,267</td>
<td>$1,699.0</td>
<td>$5,577.1</td>
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<tr>
<td>HTV - HEMTT/LHS/PLS</td>
<td>21,180</td>
<td>14,796</td>
<td>$1,652</td>
<td>$1,059.3</td>
<td>$592.7</td>
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<tr>
<td>M016A3 Light Equipment Transporter</td>
<td>1,591</td>
<td>794</td>
<td>$180</td>
<td>$152.4</td>
<td>$27.6</td>
</tr>
<tr>
<td>Tactical Trailers</td>
<td>5,699</td>
<td>2,984</td>
<td>$177</td>
<td>$10.6</td>
<td>$166.4</td>
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<tr>
<td>M017A2 Dump Truck</td>
<td>544</td>
<td>334</td>
<td>$67</td>
<td>$0.0</td>
<td>$67.0</td>
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<tr>
<td>CH-47F Chinook</td>
<td>159</td>
<td>159</td>
<td>$6,678</td>
<td>$670.6</td>
<td>$6,007.4</td>
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<tr>
<td>Comm Systems (JNN, SINOGARS, HF)</td>
<td>143,815</td>
<td>62,613</td>
<td>$3,997</td>
<td>$988.7</td>
<td>$3,028.3</td>
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<tr>
<td>UAV Systems (Shadow, Raven)</td>
<td>585</td>
<td>575</td>
<td>$462</td>
<td>$307.1</td>
<td>$154.9</td>
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<tr>
<td>Small Arms</td>
<td>209,995</td>
<td>99,129</td>
<td>$380</td>
<td>$240.0</td>
<td>$120.4</td>
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<tr>
<td>ABCS (Suite of Systems)</td>
<td>1,399</td>
<td>800</td>
<td>$166</td>
<td>$20.7</td>
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<tr>
<td>Digital Enablers (Log Automation)</td>
<td>12,167</td>
<td>7,673</td>
<td>$196</td>
<td>$0.0</td>
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<tr>
<td>Movement Tracking System</td>
<td>16,711</td>
<td>12,588</td>
<td>$302</td>
<td>$203.4</td>
<td>$98.8</td>
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<tr>
<td>Night Vision (AN/PAS-13, ANVAS-5)</td>
<td>41,912</td>
<td>33,170</td>
<td>$640</td>
<td>$241.6</td>
<td>$368.5</td>
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<tr>
<td>Tactical Water Purification System</td>
<td>131</td>
<td>128</td>
<td>$61</td>
<td>$38.9</td>
<td>$22.1</td>
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<tr>
<td>Tactical Quiet Generators</td>
<td>10,611</td>
<td>12,748</td>
<td>$324</td>
<td>$118.1</td>
<td>$205.9</td>
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<tr>
<td>All Terrain Crane (ATEC)</td>
<td>174</td>
<td>29</td>
<td>$7</td>
<td>$0.0</td>
<td>$7.0</td>
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<tr>
<td>M9 1AC E SLEP</td>
<td>114</td>
<td>90</td>
<td>$60</td>
<td>$0.0</td>
<td>$60.0</td>
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<tr>
<td>Route and Area Clearance Systems</td>
<td>138</td>
<td>138</td>
<td>$203</td>
<td>$167.8</td>
<td>$35.2</td>
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<tr>
<td>Horizontal Construction Systems</td>
<td>587</td>
<td>332</td>
<td>$141</td>
<td>$111.0</td>
<td>$30.0</td>
</tr>
<tr>
<td>Howitzers (M77A1, M119A2)</td>
<td>499</td>
<td>342</td>
<td>$4,259</td>
<td>$477.4</td>
<td>$3,781.6</td>
</tr>
<tr>
<td>Profiler</td>
<td>65</td>
<td>63</td>
<td>$57</td>
<td>$57.2</td>
<td>$0.0</td>
</tr>
<tr>
<td>LLDR</td>
<td>1,099</td>
<td>1,034</td>
<td>$362</td>
<td>$187.5</td>
<td>$174.5</td>
</tr>
<tr>
<td>Gun Laying Positioning System</td>
<td>455</td>
<td>206</td>
<td>$20</td>
<td>$0.0</td>
<td>$20.0</td>
</tr>
<tr>
<td>Chemical (Detectors, Decon &amp; Shelters)</td>
<td>65,719</td>
<td>52,433</td>
<td>$669</td>
<td>$107.5</td>
<td>$561.5</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>629,982</strong></td>
<td><strong>352,111</strong></td>
<td><strong>$32,967</strong></td>
<td><strong>$4,765.5</strong></td>
<td><strong>$23,890.1</strong></td>
</tr>
</tbody>
</table>

**Quantity Required** = Endstate FY08 ARNG Requirements (MTOE or like AC) to fully modernize the ARNG.

**Quantity Shortage** = Quantity Required - On-Hand - Programmed (2-year Equipment Distribution Plans).

**Shortage (SM)** = Quantity Shortage x Per Unit Cost.

**POM 08-13 ($M)** = Total procurement funding stream from FDIFS (did 10 JAN 07) by Army Program Element (APE) for respective equipment systems.

**APRN** = Type of Appropriation (OPA = Other Procurement Army, ACFT = Aircraft, WTCV = Weapons & Tracked Combat Vehicles).

**UFR 08-13 ($M)** = Shortage dollar amount – POM 08-13 dollar amount.
ARNG Equipping Requirements versus Resources
ARNG Equipping Requirements Overview

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

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

FY13 ARNG AC Like MTOE Requirements
The ARNG has a $23.6 UFR after FY13 $13.1B against this equips ARNG to 90%

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

v5 8 FEB 07

NGB-ARQ
### ARNG UFR to reach 90%: $13.1B

<table>
<thead>
<tr>
<th>Equipment Category</th>
<th>Required Quantities (000)</th>
<th>On Hand Quantities (000)</th>
<th>Quantities Delivered FY 07-08 (000)</th>
<th>Shortfall Quantities before FY 08-13 (000)</th>
<th>Shortfall before FY 08-13 ($M)</th>
<th>Procurement Program FY 08-13 ($M)</th>
<th>Post FY 08-13 Shortfall ($M)</th>
<th><em>UFR to S-1 Floor (90%)</em></th>
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<td>15.04</td>
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<td>0.59</td>
<td>5.87</td>
<td>$1,949.18</td>
<td>$2,312.76</td>
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<td>AVN</td>
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<td>30.38</td>
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<td>$3,596.72</td>
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<td>17.02</td>
<td>23.95</td>
<td>148.71</td>
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<td>$2,021.18</td>
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<td><strong>Totals</strong></td>
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<td><strong>$22,194.19</strong></td>
<td><strong>$13,182.22</strong></td>
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*In addition to the fall current funds programmed through FY13, an additional UFR of $13.18B is required to get the ARNG to 90% EOH (S-1). It will take approximately $24B to reach 100%. All figures are based on FY 08 Costs and don't include "Grow the Army" Costs.*
### Essential 10 Key Enablers: DSCA Prioritized Buy List

<table>
<thead>
<tr>
<th>ITEM</th>
<th>PRIORITY 1</th>
<th>PRIORITY 2</th>
<th>PRIORITY 3</th>
<th>PRIORITY 4</th>
<th>RATIONALE/JUSTIFICATION</th>
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<tr>
<td><strong>Joint Force Headquarters</strong></td>
<td><strong>Miscellaneous Equipment</strong>&lt;br&gt;$5,000,000.00</td>
<td>$5,000,000.00</td>
<td>$5,000,120.00</td>
<td>$5,000,111.00</td>
<td>Provides the tactical user with an interface to strategic data networks, and interoperability with commercial, joint, combined and coalition communications systems across multiple security levels. Enables enterprise situational awareness via a suite of systems that receive and transmit CAISR information.</td>
</tr>
<tr>
<td><strong>Command and Control (C2)</strong></td>
<td><strong>Joint Network Nodes (JNN)</strong>&lt;br&gt;$33,300,000</td>
<td>$16,950,000</td>
<td>$16,950,000</td>
<td>$16,950,000</td>
<td>Provides tactical users with an interface to strategic data networks, and interoperability with commercial, joint, combined and coalition communications systems across multiple security levels. Enables enterprise situational awareness via a suite of systems that receive and transmit CAISR information.</td>
</tr>
<tr>
<td></td>
<td><strong>Army Battle Command Systems (ABCS)</strong>&lt;br&gt;$7,808,500</td>
<td>$7,233,000</td>
<td>$5,638,100</td>
<td>$4,645,800</td>
<td>Provides tactical users with an interface to strategic data networks, and interoperability with commercial, joint, combined and coalition communications systems across multiple security levels. Enables enterprise situational awareness via a suite of systems that receive and transmit CAISR information.</td>
</tr>
<tr>
<td></td>
<td><strong>Standard Army Management Information System (STAMIS)</strong>&lt;br&gt;$25,727,620</td>
<td>$20,550,810</td>
<td>$21,560,810</td>
<td>$15,953,980</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
</tr>
<tr>
<td></td>
<td><strong>Unmanned Aerial Vehicle - SHADOW</strong>&lt;br&gt;$15,000,000</td>
<td>$15,000,000</td>
<td>$15,000,000</td>
<td>$15,000,000</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
</tr>
<tr>
<td><strong>Communications</strong></td>
<td><strong>Aviation</strong></td>
<td><strong>Helicopters - Black/Mules</strong>&lt;br&gt;$953,016</td>
<td>$1,151,720</td>
<td>$1,151,720</td>
<td>$1,151,720</td>
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<tr>
<td></td>
<td><strong>Helicopters - NAVSTAR GPS Aviation Systems</strong>&lt;br&gt;$1,835,130</td>
<td>$1,235,130</td>
<td>$1,235,130</td>
<td>$1,235,130</td>
<td>Provides modern equipment and interoperability to ARNG aircraft.</td>
</tr>
<tr>
<td></td>
<td><strong>Oral Support Teams and Force Protection</strong></td>
<td><strong>NBC Shelters</strong>&lt;br&gt;$5,502,000</td>
<td>$6,288,000</td>
<td>$7,600,000</td>
<td>$7,600,000</td>
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<tr>
<td></td>
<td><strong>NBC - Joint Services Transportable Decentralization System</strong>&lt;br&gt;$990,000</td>
<td>$990,000</td>
<td>$1,195,000</td>
<td>$1,195,000</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
</tr>
<tr>
<td></td>
<td><strong>NBC Radiation/Chemical Detectors</strong>&lt;br&gt;$682,160</td>
<td>$682,160</td>
<td>$682,160</td>
<td>$682,160</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
</tr>
<tr>
<td><strong>Engineer</strong></td>
<td><strong>Heavy Construction Equipment - Horizontal (Dumps, Graders, Excavators)</strong>&lt;br&gt;$18,151,880</td>
<td>$12,579,000</td>
<td>$12,579,000</td>
<td>$11,653,388</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
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<tr>
<td></td>
<td><strong>Heavy Construction Equipment - Vertical (RTCH, ATLAS)</strong>&lt;br&gt;$19,004,072</td>
<td>$19,004,072</td>
<td>$19,004,072</td>
<td>$19,004,072</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
</tr>
<tr>
<td><strong>Logistics</strong></td>
<td><strong>Generators - Small/Medium</strong>&lt;br&gt;$5,348,830</td>
<td>$5,348,830</td>
<td>$5,348,830</td>
<td>$5,348,830</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
</tr>
<tr>
<td></td>
<td><strong>Liquid Logistics - Water Purification</strong>&lt;br&gt;$6,451,500</td>
<td>$8,070,000</td>
<td>$8,070,000</td>
<td>$10,707,500</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
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<tr>
<td></td>
<td><strong>Liquid Logistics - Tank Water</strong>&lt;br&gt;$4,840,000</td>
<td>$4,840,000</td>
<td>$4,840,000</td>
<td>$4,840,000</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
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<tr>
<td><strong>Maintenance</strong></td>
<td><strong>STAMIS - Standard Army Maintenance System (SAMS)</strong>&lt;br&gt;$967,458</td>
<td>$967,458</td>
<td>$967,458</td>
<td>$967,458</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
</tr>
<tr>
<td><strong>Medical</strong></td>
<td><strong>HMMWV Ambulance</strong>&lt;br&gt;$13,435,000</td>
<td>$13,435,000</td>
<td>$13,435,000</td>
<td>$13,435,000</td>
<td>Provides patient transport/evacuation capability.</td>
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<tr>
<td><strong>Security</strong></td>
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<td>$264,610</td>
<td>$264,610</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
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<td></td>
<td><strong>Night Vision - Driver's Vision Enhancements (DVE)</strong>&lt;br&gt;$4,026,820</td>
<td>$4,026,820</td>
<td>$4,026,820</td>
<td>$4,026,820</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
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<td><strong>Transportation</strong></td>
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<td>$101,580,000</td>
<td>$101,580,000</td>
<td>$101,580,000</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
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<td></td>
<td><strong>FMV - Trucks</strong>&lt;br&gt;$60,451,329</td>
<td>$60,451,329</td>
<td>$60,451,329</td>
<td>$60,451,329</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
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<td></td>
<td><strong>HTV - HEMTT Tanker / Wrecker / LMT</strong>&lt;br&gt;$42,833,720</td>
<td>$42,833,720</td>
<td>$42,833,720</td>
<td>$42,833,720</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
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<td></td>
<td><strong>HTV - PLS Truck / Trailer /怎么说 / OUC</strong>&lt;br&gt;$56,768,600</td>
<td>$56,768,600</td>
<td>$56,768,600</td>
<td>$56,768,600</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
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<tr>
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<td><strong>MTV - MLRS Light Equipment Transporter</strong>&lt;br&gt;$11,350,000</td>
<td>$11,350,000</td>
<td>$11,350,000</td>
<td>$11,350,000</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
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<td></td>
<td><strong>MTV - Tactical Trailers</strong>&lt;br&gt;$11,510,000</td>
<td>$11,510,000</td>
<td>$11,510,000</td>
<td>$11,510,000</td>
<td>Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation.</td>
</tr>
</tbody>
</table>

**Total**<br>$500,000,000 | $500,000,000 | $500,000,000 | $500,000,000 | Provides the capability to monitor and record the exposure of individual personnel to gamma and neutron radiation. |
Mr. LEAHY. Mr. President, I suggest the absence of a quorum, with the time to be charged to both sides. The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll. The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the pending judicial nomination. The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays are ordered.

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

Professor Livingston is the Paul J. Kellner Professor of Law and vice dean of the Columbia Law School, where she has been a professor for 13 years, teaching criminal procedure, evidence, and national security law. She previously taught at the University of Michigan Law School. Prior to her academic career, Professor Livingston served as a Federal prosecutor and deputy chief of appeals for the U.S. Attorney’s Office for the Southern District of New York and worked in private practice for the Wall Street law firm of Paul, Weiss, Rifkind, Wharton & Garrison. I congratulate Professor Livingston and her family on what I am sure will be her confirmation today. Coincidentally, this is the anniversary of the date 6 years ago, in 2001, on which this President began his assault upon the courts by announcing his first list of nominees. With the help of Senate Republicans, this President has sought to pack the courts and tilt them in one direction. To a great extent, he has succeeded. After Republican Senators stalled President Clinton’s nominees to the Fourth, Fifth, Sixth, D.C., and other circuits, the Senate proceeded to confirm this President’s nominees to the very vacancies that had previously been maintained by pocket filibuster in the Senate.

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

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

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

It is true that during the last 2 years of this President’s father’s term, a Democratic-led Senate confirmed an extraordinary number of circuit nominees—20—in fact. That action was reciprocated by the Republican majority during the Clinton years. It is true that during the last 2 years of the Reagan administration, a Democratic-led Senate confirmed 17 circuit court nominees. That action was not reciprocated by the Republican majority during the Clinton years.

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

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

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

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

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

By contrast, during the last Congress of the Clinton administration, the one in which a Republican-led Senate confirmed 15 circuit judges, circuit court vacancies skyrocketed from 17 to 26. This rise in circuit vacancies had nothing to do with Congress creating additional circuit judgeships, however. Un-likewise, during the last Congress of the Bush administration, during the Clinton administration the Republican-led Congress refused to act in accordance with the previous 6-year cycle for reviewing needed judgeships. No single new circuit judgeship was created during the Clinton administration that I can recall. Instead, the Republican-led Senate engaged in strenuous efforts to keep circuit judgeships vacant in anticipation of a Republican President. Indeed, at the beginning of the 106th Congress, the last in the Clinton Presidency, 17 circuit court nominees were returned to President Clinton without action. More circuit nominees were returned without action that Congress than were acted upon by the Senate for the first time in modern history.

Likewise, during the last Congress of the first term of President Clinton, the one in which a Republican-led Senate confirmed only 11 circuit judges, circuit court vacancies went up, from 16 to 19. Again, this was without the addition of new circuit judgeships. Despite the carping and the clamor, the vacancies on the circuit courts have gone from 26—where a Republican-led Senate forced the circuit vacancies at the end of the Clinton administration—steadily downward during the Bush administration. With the confirmation of Judge Livingston, circuit vacancies will be at half that amount today 13—and approaching a historic low.

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

This will be the 20th circuit court nomination confirmed while I presided as Judiciary chairman. It is a little
known fact that during the more than 6 years of the Bush Presidency, more circuit judges, more district judges and more total judges have been confirmed while I served as Judiciary chairman than during either of the two Republican chairmen working with Republican senators.

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

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

This President has shown that he would rather pick political fights than confirm good judges. He has pocket filibustered more than 60 of the last Congress’s nominees with the cooperation of the Republican majority. This was the case with the nomination of Randy Smith for an Idaho vacancy; the nomination of Judge Smith for an Idaho vacant seat, with the cooperation of the Republican majority, was tabled by the Senate. Those two newspapers also encouraged the new Democratic majority to reciprocate with cooperation and fairness.

In that spirit of cooperation, Senate Republicans received assurances earlier this year from the Democratic majority of a fair and reasonable pace for the confirmation of nominees to the U.S. courts of appeals. I was pleased to hear the majority leader pledge his cooperation and leadership to help this process and, for “at least meet the standards of Congresses similarly situated as ours.” We saw progress in the first couple of months of this year, with the confirmation of two circuit court nominees. Today, the Senate will vote to confirm a Third Circuit judge. I welcome today’s vote and hope it will be an indication of the majority’s intent to keep working with us on the pace necessary to meet the historical average that the majority leader has endorsed.

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

Yesterday, the distinguished chairman of the Judiciary Committee commented on how he views this progress. I would like to briefly discuss the historical analogy he cited. First, I should note I am proud to continue to closely work on several significant pieces of legislation with the senior Senator from Vermont, Mr. Leahy. He and I have found common ground on, among other things, historic changes to the Freedom of Information Act and much needed reforms to our FOIA system. I look forward to working with the chairman to help make these important bills become law.
The chairman and I tend to part ways on some issues related to judges. I just want to take a moment to comment on the remarks he delivered yesterday on the pace of judicial confirmations. In particular, I am wondering why he chose the year 1996 as the appropriate measuring stick for progress on judges made by this Congress. Of course, there is one obvious parallel between 1996 and the present year, and that parallel is divided government.

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

Mr. President, you will recall the majority leader’s commitment to judicial nominations—but in his own words—to “at least 15 to 20 circuit judges, congressmen confirmed two circuit judges. We will shortly conclude our discussion. The Senate has confirmed 20 circuit judges and 98 district judges. One of the other chairman was there for 2 years, there were 18 circuit judges. They were there longer than I have been with less judges: 85 district judges compared to my 98 in less time. Another chairman, 16 circuit judges compared to my 20; 35 district judges compared to the 98 we put through.

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

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

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

I yield the floor.

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

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

She was a superb graduate of Princeton magna cum laude, 1980, Phi Beta Kappa; a graduate of the Harvard Law School in 1984, again, magna cum laude. She was editor on the Harvard Law Review, a law clerk to Judge Lumbard of the Court of Appeals for the Second Circuit. She practiced law with the prestigious firm of Paul, Weiss, Rifkind, Wharton and Garrison. She was an assistant U.S. attorney in the Southern District of New York. She was a commissioner for the New York City Civilian Complaint Review Board for some years, 1994 to 2002, and has been on the Columbia Law School faculty since 1994 as an associate professor, a professor in the year 2000, and
Before discussing judicial nominations more generally, I would like to say a few words about Professor Livingston’s impressive background as an accomplished attorney, prosecutor, and educator.

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

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

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

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

Chairman LEAHY must be commended for working with Senators on both sides in order to get us off on the right foot during this Congress. Professor Livingston will be the 18th judge, and the third circuit court judge, confirmed this year. This is, admittedly, a welcome development. I think it is much more than the Republican controlled Congress made under President Clinton’s final 2 years in office. That said, much work remains to be done. The average for similarly situated Congresses in recent times is 17 circuit court confirmations. Despite its slow beginning, even the 106th Congress ultimately confirmed 15 men and women to the circuit courts and a total of 73 article III judges. And this was a historical low point. At the very least, the Senate should meet the standard. In addition, 15 district court vacancies still have not been filled. Three additional circuit court vacancies are imminent. In addition, 15 district court vacancies have been pending more than 120 days, and 14 of whom are awaiting a hearing. These nominations also deserve prompt action.

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

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

IMMIGRATION

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

I believe there is a universal agreement that the immigration situation in our United States is an unmitigated disaster. Strong language, but not strong enough for what is going on with immigration. We have a porous border and undocumented immigrants are coming into the United States. There is a security risk. Terrorists are free to wander our borders and come into our country and pose potentially grave threats to our national security.
We find a significant number of incidents of crime among undocumented immigrants. Crime does not have a sole source, but it is a problem. We definitely need to get a handle on immigration.

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

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

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

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

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

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

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

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

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

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

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

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

The critics of the immigration bill are descending on us from all sides beforehand we even have an immigration bill. The Hill publication reports today of opposition from Members of the House of Representatives for Senate legislation when we don’t even have legislation in existence. One Member of the House is quoted as saying, “It is important that the Senate knows there will be strong bipartisan opposition to amnesty.”

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

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

We have encapsulated our views in a letter following the Leader’s news conference of today, where a number of us are asking that we rethink the schedule we have. If we bring last year’s Senate-passed bill to the floor, it is going to have substantial opposition. The Administration has been announced on both sides of the aisle. Both Democrats and Republicans who supported it last year are opposed to it. If we start there, the floor action is likely to be a free-for-all. We understand the problems of Senate scheduling, but I also understand the vicissitudes, problems, and pitfalls of proceeding where you don’t have the structure of a bill which can be reasonably and realistically debated, with amendments, and new decisions. We don’t even have 2 weeks. We have to act on the supplemental before the Memorial Day recess if we are to provide the troops with the funding they need. And I would hope our process can be allowed to continue. There has been a massive good-faith effort by Republicans and Democrats meeting for very protracted periods of time to come to agreement on a bill and to reduce it to written form. I will concede that there has been a lot of wheel spinning in the process which we have undertaken. Perhaps it was an error to abandon the traditional committee process. But that is where we are, and we need more time to flesh out the grand compromise, the grand bargain which we have structured so far.

If we are not able to legislate, we are not going to be able to provide for people who are interested in bringing 11 million undocumented immigrants out of the shadows, which is the main benefit that comes from those who want to proceed in the traditional American way to welcome the immigrants under a systematized plan. If we don’t have significant reform, we are not going to provide the border controls and the employer sanctions to stop illegal immigration.
It may be this is our last best chance. I would urge all sides to take a deep breath and to rethink positions on all sides and try to find a rational, bipartisan way to proceed.

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

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

Mr. SPECTER. Fifty-eight minutes remaining.

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

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

Mr. LEAHY. No, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The clerk will call the roll.

The assistant legislative clerk pro tempore. The roll called.

The bill clerk called the roll.

The following Senators were previously notified of the Senate’s action.

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

[Rollcall Vote No. 158 Ex.]

YEAS—91

Akaka
Alexander
Allan
Baucus
Bayh
Bennett
Biden
Bingaman
Baucus
Boxer
Brown
Bunning
Burr
Byrd
Cantwell
Cardin
Carper
Casey
Chambliss
Clinton
Coburn
Cochran
Coleman
Collins
Conrad
Corker
Corzine
Craig
Cruz
Dodd
Domenici
Dorgan
Durbin
Ensign
Feingold
Fischer
Frist
Gallager
Gillibrand
Gingrich
Grassley
Greene
Gregg
Graham
Harkin
Hatch
Hutchison
Inhofe
Isakson
Johnson
Kennedy
Kerry
Klobuchar
Kohl
Kyl
Landrieu
Lautenberg
Leahy
Lieberman
Lincoln
Lott
Lugar
Martinez
McConnell
McCollum
McGovern
Mikulski
Monroe
Nelson (FL)
Nelson (NE)
Obama
Obama
Obey
Oletha
Pell
Perdue
Peters
Pryor
Reed
Reid
Santorum
Saxby
Sessions
Shelby
Smith
Snowe
Specter
Stabenow
Stennis
Sununu
Tester
Thomas
Thune
Voinovich
Warner
Webb
Whitehouse
Wyden

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid on the table. The President will be immediately notified of the Senate’s action.

LEGISLATIVE SESSION

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2008

Mr. CONRAD. Mr. President, I ask unanimous consent that the Senate proceed to the House message to accompany S. Con. Res. 21, the budget resolution; provided further that the motion to disagree to the House resolution be in order, and that no amendments be in order to the motions: No. 1, Senator Kyl, relating to the estate tax: No. 2, Senator GREGG,