than 20 percent of the world's oil but produce less than 3 percent of the world's oil. It is not a change we can make overnight, but if we don't start, the next disaster could make the current one look like a drop in the bucket.

I am tired of waiting for oil companies to get the message. America needs clean alternatives more urgently than ever. In the meantime, those responsible for this terrible oilspill must foot the bill. I am going to do everything I can to make sure they do foot that bill. Taxpayers will not pick up that tab.

This is the final week of what has been a long and productive session. I know everybody is eager to return home to our States and meet with constituents and see our families and honor the sacrifice of our Nation's bravest this Memorial Day, which is 1 week from today.

We have a lot to accomplish between now and then.

One, we must pass a new jobs bill that cuts taxes for middle-class families and small businesses. It includes a host of tax credits, tax extenders, and tax incentives—all of which will help put people back to work. It is something Republicans and Democrats should come together to finish because it is something we can all be proud to support. More than that, it is something each of our States desperately needs.

Two, we have to finish the supplemental war appropriations bill. I have heard some on the other side vow they will stand in the way of this funding. I can think of no worse message to send our troops over Memorial Day than that. I hope Republicans will work with us, not for our sake or their own but for the sake of our Nation's security and all those whose service makes it strong.

Finally, scores of well-qualified nominees have been reported out of committee. They remain on the Senate calendar and are eager to fill these important, vacant positions. They should not be. At this time we have more than 100 nominations on the calendar. During the same period of time in the Bush administration, there were 13—that is 108 to 13. I hope we can confirm many of them this week so they can finally get to work.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business until 3 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Alabama is recognized.

KAGAN NOMINATION

Mr. SESSIONS. Mr. President, Americans cherish and respect their military. They support and celebrate those who wear the uniform and serve our Nation. When our Nation is at war, they understand that this obligation of support deepens. Indeed, just Friday, I got forwarded to me an e-mail from a mother whose son was being deployed to Iraq, and she said that the one thing critical to them was to feel they had the support of the American people.

The American people understand that no matter what your ideology, no matter your view of the conflict we are engaged in, you have to support those whom we in Congress have deployed to execute policies that the President and the Congress have adopted. They didn't adopt the policies; we did. And when we send them, they deserve our support. The American people understand that it is not about politics but about the duty of citizenship—a duty to stand in solidarity with those in harm's way and those who defend our freedoms.

I believe these sentiments—shared by Americans overwhelmingly—are important as we evaluate the conduct of President Obama's Supreme Court nominee, Elena Kagan. They will raise serious questions that really must be answered before we have a final vote. I think it is just as important for me to say that.

Some people have suggested that the issue I am going to talk about is not significant. I think it is. I was involved in the debate of the Solomon amendment. I remember how it happened.

Ms. Kagan, who became the dean of Harvard Law in 2003, kicked the military off Harvard's campus and out of its campus recruitment office. She gave the big law firms full access to recruit bright young associates but obstructed the access of the military as it tried to recruit bright young JAG officers to support and represent our soldiers as they were risking their lives for our country. It was an unjustifiable decision. But rather than acknowledge that Ms. Kagan had acted inappropriately, the Obama administration has instead done something that, to me, is odd: it has tried to defend this indefensible activity—distorting the clear facts in the process. We need to get that straight. As we begin to think about this nomination, we need to understand the facts.

During a recent television interview, Vice President BIDEN actually said that Ms. Kagan was ''right'' to interfere with military recruitment. He then defended her conduct with the suggestion that she was somehow acting under a court order to keep the military people off campus. In reality—let's be correct—I misspoke—to keep the military from utilizing the normal recruitment offices available to every other law firm in America. In reality, the opposite situation is true. Ms. Kagan disregarded the law, really, in essence, in order to obstruct military recruitment during a time of war.

In 1995, Congress passed the Solomon amendment, which required universities to give equal access to military recruiters if they wished to continue to receive taxpayer funding for their university programs.

The passage of the Solomon amendment was a matter of a large national debate. I suspect most Americans have a vivid recollection of those discussions. It was well known that certain law schools, such as Harvard, were blocking the military from going to their recruitment offices and utilizing the resources like any other entity could do.

Administrators at Harvard and other law schools had been restricting access of military recruiters to campuses for several years, citing as their reason their opposition to President Clinton's don't ask, don't tell policy about gays in the military. That was something on which Congress had voted. It is a matter of statutory law, and President Clinton had indicated his support in the way it would be enforced. It came to be fairly settled as a national policy in that regard.

It was Congress's hope that the Solomon amendment would put an end to this obstruction. It basically said: You cannot deny our military the right to come on campus if they are following U.S. law, and still get Federal money. But Harvard persisted nonetheless.

Finally, in 2002, I believe it was the Air Force that made an official complaint. The Department of Defense spoke up. It quoted the statute that had been passed in the U.S. Code, title 10. They quoted it to Harvard and said: If you continue to deny entrance of our military personnel to the recruiting centers, you get no more Federal money. At that point, the principle evaporated. This great principle on which they were standing, a little money dangled in front of them and they folded on this point.

Dean Clark, Ms. Kagan's predecessor at Harvard, got the message, and he complied. The restrictions on the military recruitment were lifted.

This means that when Ms. Kagan became dean of Harvard, the military had full, open, and equal access to campus facilities. That is the policy she inherited; that is the policy she deeply opposed; and that is the policy she set about to reverse.

Ms. Kagan began her efforts to reverse the policy when she joined 53 of her academic colleagues in filing a brief to challenge the Solomon amendment. This case had been filed in another circuit, not Harvard's. If their efforts in this legal attack were successful, they would again obstruct the military's access on campus, and they could do so without losing Federal funds. That is what she wanted, no doubt about that.

Initially, the Third Circuit Court of Appeals, not her circuit, heard the case, and they issued a 2 to 1 decision that ordered the district court in New Jersey to issue a preliminary injunction suspending enforcement of the

Solomon amendment in that district in New Jersey. The injunction was to take effect after a certain time period. I believe 50 days. But that injunction was never issued, even in that one district of New Jersey, because the Supreme Court of the United States undertook to hear the case, and the court of appeals, respecting the Supreme Court's view, eliminated their order staying the enforcement of the Solomon amendment.

I note, even if the Third Circuit's ruling had not been stayed, it would have applied only to the Third Circuit, not to Harvard. Remember, the Solomon amendment was a duly enacted law passed by the Congress.

Fully understanding all of this, as the trained and educated dean she was, Dean Kagan still used this ruling as a pretext to deny the enforceability of the Solomon amendment on the Harvard campus, again kicking the military out of the campus recruiting office. It did not apply. It was never made applicable and certainly not made applicable to the Harvard campus. But yet she used that as a pretext to carry out her desires about the don't ask, don't tell policy.

But I am told: Don't worry about that, JEFF. They could still talk to veterans groups on campus. They were not barred from campus. They just could not use the center for recruiting, but they could still talk to people on campus, and it is not so important. Well, if it is not so important, why did Dean Kagan go to such great lengths to have the law overturned, even risking Harvard's financial support? It was important.

Barred from institutional access, the military now had to work through a student group, the Harvard Law School Veterans Association. The veterans association, however, did not believe this was fair to them. They had courses to attend and school work to do. They wrote to their classmates about Dean Kagan's decision and explained they were unable to fill the role of the military recruiters that she had excluded. This is what they said:

> Given our tiny membership, meager budget, and lack of any office space, we possess neither the time nor the resources to routinely schedule campus rooms or advertise extensively for outside organizations, as is the norm for most recruiting events.

But Dean Kagan still did not relent. Only when the military again threatened to cut off money to Harvard did she give in. This was the second time they had to make this threat. This statute says the Secretary of Defense shall notify them that they will no longer get Federal funds if they do not allow recruiters on campus.

Ms. Kagan reversed Harvard's existing policy in order to obstruct the access of the military recruiters. She disregarded a congressional statute. Eventually, her view was rejected by the Supreme Court.

So what happened when the Third Circuit case got to the Supreme Court? She filed a brief with a group of other academics attacking the Solomon amendment. What happened? By an 8-to-0 vote, the U.S. Supreme Court rejected her brief.

According to Dean Kagan, actions she took against the military were motivated by her opposition to don't ask, don't tell. But somehow her fierce opposition was not enough to prevent her, I note parenthetically, from serving as a loyal aide to the man who created the policy, President Clinton. No, instead she directed her punishment to the military that had nothing to do with it. The soldiers, the recruiters who wanted to come on Harvard campus had nothing to do with establishing this don't ask, don't tell policy. It was Congress's law. It is statutory, and President Clinton endorsed it with his don't ask, don't tell enforcement strategy. It was the law of the land. It was not a policy dreamed up by some general somewhere. She knew that.

Ms. Kagan's conduct may have been applauded by some in the progressive circles of academia, but I think the American people would be uneasy about it. They are not sympathetic to the actions she took against the brave men and women who defend the rights and freedoms of Ms. Kagan, of Harvard professors, and of all Americans.

Dean Kagan has no judicial record to examine, and she has very little experience as a lawyer. One of the most prominent features of her legal experience and her tenure at Harvard is scarred by her open mistreatment of the military and her disregard for very clear law. I wish it were not so, but it is.

This matter does raise questions of whether Dean Kagan would be able to serve all Americans as a responsible, impartial jurist or whether she would bring her ideological agenda to the bench and attempt to get around the Constitution and the laws of the United States to effectuate what she thinks might be a better policy. That is the question I think is legitimate to ask, as well as to ask, in a serious way: What were you thinking when you punished our men and women in uniform because you did not like what Congress and your President—President Clinton—did with regard to their policies on gays in the military?

It is not a small matter. I believe this decision was clearly wrong. I believe it was not lawful. I believe it was not good policy. We will need to talk about that as we go forward and to hear a sincere explanation from the nominee.

This is not something from which we cannot learn. It is not necessarily the decisive matter in this person's nomination. But it is not correct to say it is an insignificant matter. It is a significant matter, a very significant matter. And it is a matter of significance such that whoever comments about it, even if it is the Vice President of the United States, they should be accurate. They should not be inaccurate, as has happened repeatedly from my observation in the media, as well as my good friend, our former colleague, Senator BIDEN, who also served on the Judiciary Committee. It is time we get these facts straight.

I also wish to express a concern about one more matter. During her time in the Clinton White House, 1995 to 1999, Dean Kagan, now Solicitor General Kagan, served in the White House Counsel's Office and later as Director of Domestic Policy Council in the White House. That is one of the few extensive public records she has. We need to obtain the documents relating to that service in advance of the hearings that now have been set for June 28. I think it is a rush to get ready for June 28, but I told Senator LEAHY, our chairman, that he is the boss, and we will try to be ready by the 28th. But we both know it is important to have these documents in time to examine them before the committee hearing because so little other documents exist as to her record.

All the documents that have been requested I believe the committee is entitled to see. Senator LEAHY has joined with me. We worked together on this. It appears President Obama has decided not to assert any claims of Executive privilege that would block the production of any of these documents. We received a letter from the Clinton Library on Friday where these records are held indicating that they understand President Obama will not make any claims of privilege.

The White House recognizes these documents are an important part of Ms. Kagan's record. In fact, after she was nominated, the White House sent a public letter to the National Archives asking for release of documents relating to her service in the Clinton White House. They included all of her e-mail documents in their request. But the White House request and media requests under FOIA are different from the committee request.

So last week, Chairman LEAHY and I sent a letter to the Clinton Library requesting these documents.

I appreciate the leadership of Senator LEAHY, who has been through so many of these confirmation matters—this is consistent with our history—and I appreciate his efforts on the letter and to get this information. But I would note there are important distinctions between the Obama White House's request and the committee's request.

First, the restrictions that apply to run-of-the-mill Freedom of Information Act requests do not apply when the committee requests document. Second, under the Presidential Records Act, President Clinton would normally be able to block the release of certain documents for up to 12 years. But under the PRA, the committee's request overrides any attempt by President Clinton to block the release of these records. Faced with a committee request, the only basis for withholding documents is executive privilege, and

President Obama has apparently decided not to do that.

So the concern is that last week the director of the library was quoted in the Los Angeles Times as saying that it would be ''very difficult'' for them to comply by the June 28 hearing date. The director said, ''there are just too many things here,'' and that ''these are legal documents and they are presidential records, and they have to be read by an archivist and vetted for any legal restrictions. And they have to be read line by line.''

In the letter we received on Friday, the library indicated they will start delivering documents by June 4—3 weeks before the hearing—and then they will make additional deliveries on a rolling basis. They did not tell us by when they will provide all the documents. I know they have a hard job. Maybe they have to do all these things, but the fact is we have a deadline that has been set by Chairman LEAHY to start the hearing on June 28, and we are not able to, in my view, conduct a good hearing if we don't have the documents.

So I am trying to make clear to my colleagues that we are heading toward what could be a train wreck. I don't believe this committee can go forward without these documents in the request and have an accurate hearing. The public record of a nominee to such a lifetime position as Justice on the Supreme Court is of such importance that we cannot go forward without these documents. I hope we will get those in a timely fashion. If not, I think we will have no choice but to ask for a delay in the beginning of the hearings.

I thank the Chair, and I yield the floor.

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

WALL STREET REFORM

Mr. LEVIN. Mr. President, among the most difficult issues we dealt with in the debate over the Wall Street reform bill we approved last week is that of proprietary trading and conflicts of interest in the financial system. This trading, often involving risky investments with large amounts of borrowed money, was a significant contributor to the financial crisis of 2008—a crisis from which we have yet to fully recover. The bill the Senate has approved includes important language dealing with proprietary trading and with conflicts of interest.

In the hope of strengthening that language, Senator MERKLEY and I introduced an amendment which would have made Congress's intent clear: to end risky proprietary trading at commercial banks, to demand that the largest nonbank financial institutions maintain sufficient capital for their trades to prevent taxpayer bailouts, and to end the outrageous and destructive conflicts of interest which marked so much of Wall Street's behavior leading up to the crisis.

It is this last issue on which I have focused much of my attention. As we move toward negotiations between the House and Senate and final passage of a Wall Street reform bill, hopefully the final product will deal with these conflicts of interest. Failure to do so would accept the status quo under which Wall Street firms can assemble complex financial instruments, instruments they have financial incentives to see fail, sell those instruments to clients, and then profit by betting against the products they built and sold.

The hearings I chaired in the Permanent Subcommittee on Investigations probing the causes of the financial crisis exposed recklessness and greed up and down the financial system. In our last hearing, examining the role of investment bank Goldman Sachs in the crisis, we demonstrated how Goldman profited by betting against financial instruments it had assembled.

In late 2006, Goldman Sachs made a strategic decision to begin unloading mortgage-related holdings and to short the mortgage market; that is, to bet against the market and to profit from its fall. To do so, Goldman assembled a series of financial instruments it would profit from if there were a collapse of the mortgage market.

One e-mail chain from May 2007, for instance, shows how Goldman bet against certain mortgage-backed securities that it had assembled and sold to investors. In the e-mails, Goldman employees discussed how certain securities that Goldman had underwritten and were tied to mortgages issued by Washington Mutual Bank's subprime lender, Long Beach, were losing value. Reporting the wipeout of one security, a Goldman Sachs employee then reported the ''good news''—that the failure would bring the firm $5 million from a bet that it had placed against the very securities it had assembled and sold.

In addition to shorting existing mortgage-backed securities, Goldman constructed a series of even more complicated financial instruments to bet against the mortgage market. These were known as collateralized debt obligations or CDOs. One example is a synthetic CDO put together in late 2006 known as Hudson Mezzanine. A synthetic CDO is a financial instrument whose value is based on a collection of referenced assets, but it does not contain the assets themselves. It is essentially a bet on whether referred-to assets will rise or fall in value.

Goldman constructed this $2 billion CDO to reflect the value of subprime mortgage securities similar to those that Goldman held in its own inventory. Goldman's sales force was told that Hudson Mezzanine was a top priority and it worked aggressively to sell Hudson securities to clients around the world. Internal e-mails released by our Permanent Subcommittee on Investigations showed that one Goldman client was unhappy that the firm was spending so much time on Hudson and not on a deal the client wanted to make. In the documents Goldman used to sell Hudson Mezzanine to clients, the firm even suggested to investors that Goldman stood to benefit if the investment performed well, telling those customers: ''Goldman Sachs has aligned incentives with the Hudson project by investing in a portion of the equity.''

In fact, that was not true. Goldman Sachs' interests were not aligned with its customers. They were in conflict. Goldman was the sole counterparty in the Hudson CDO and made a $2 billion bet; that is, a $2 billion bet, that the assets referenced in the CDO would fall in value. Goldman won that bet big time. The CDO, filled with toxic subprime assets that Goldman had selected, assembled, and sold, began losing value. When Goldman first sold the securities to its clients, more than 70 percent of Hudson Mezzanine had AAA ratings, but within 9 months those AAA ratings were downgraded, and within 18 months Hudson was downgraded to junk status, and Goldman cashed in at the expense of its clients.

To sum up, in late 2006, Goldman decided to bet against the housing market it had helped to create. It shorted mortgage-backed securities it had sold to investors, and designed and built CDOs that enabled it to make billions of dollars in bets against the housing market and its own CDOs, collecting money when the products it had peddled to its clients failed.

That kind of proprietary trading is not ''market making.'' It is not matching buyers and sellers. It is one firm acting as a principal looking out for its own self-interest and making bets that were collected at the expense of its clients. Goldman served its own interests, and if clients got burned in the process, so be it.

But Goldman's actions did more than hurt its clients. It helped undermine an entire financial market which, in turn, damaged numerous financial institutions that ended up requiring a $700 billion taxpayer bailout to stop the bleeding. Hudson Mezzanine and other synthetic vehicles Goldman used to bet against mortgages were particularly damaging because they were not constrained by the number of mortgages in the market. They contained no real assets but were strictly bets on whether referenced assets would fall in value. The creation and sale of those synthetic instruments presented money-making opportunities for Goldman but magnified the risk in the financial system and made the crisis more severe when it hit.

It is time for Congress to put an end to the conflicts of interest that undermine our financial markets and pit investment banks against their clients.

The Merkley-Levin amendment contained a provision targeted at cleaning up this mess and preventing it from happening again. It would have barred any financial institution that underwrote an asset-backed security