Under the 1998 H–1B bill, the amount of funding for the National Science Foundation (NSF) K–12 activities was fairly small—less than $6 million in FY 2000. Thanks to the leadership of Senator FEINSTEIN and Senator KENNEDY, this legislation would more than double that amount to $15 million.

We can make further progress in our education and training needs by increasing the fee that sponsors pay for H–1B visas. Hopefully, the Conference Committee will increase the fee to $1000 more than tripling the amount made available for job training grants, low income scholarships and NSF enrichment courses—opportunities, which in the long-term, will produce a better trained American workforce. The bill before us today does not increase the fee because the Senate can not originate a revenue measure. However, I supported the bill because of a commitment made by both Republicans and Democrats on the Judiciary Committee to increase the fee to $1000 when the bill goes to conference with the House.

The focus on technology training for teachers addresses a critical need, one that I've fought for in my home state of Michigan. That is why I'm happy to note that we've included language in this bill, which I proposed, with the support of Senator CONRAD, specifying that the NSF should make teacher training in the integration of technology into the math and science curriculum a priority in funding projects from resources provided under this legislation. My office will be working with the National Science Foundation as they develop programs to be funded under this legislation so that investments in such professional development will lead the list of funding initiatives.

This provision is essential if we are going to realize the full potential of our investment in new technology in the classroom. So few of our school districts have been able to offer state-of-the-art training, or any training at all for that matter, to their teaching staff. Last year, a report by Education Week's National Survey of Teachers' Use of Digital Content revealed some startling findings relative to the lack of teacher training in integrating technology into the curriculum. In a national poll of over 1,400 teachers, 36 percent of teachers responded that they received absolutely no training in integrating technology in the curriculum; another 36 percent said they had only received 1 to 5 hours of such training; 14 percent received 6 to 10 hours of such training; and only 7 percent received between 11–20 hours.

This bill is an important step towards addressing this problem, a step that I hope is followed by many others. We are fortunate in my state and across this country to find in the ranks of teachers men and women who are deeply committed to helping America's children learn. I believe we have to match their commitment to our children with our own commitment to helping them acquire the skills they seek to be effective educators in the digital age.

I also supported this bill because it guarantees that H–1B visas will be made available to those working at educational institutions, non-profit organizations, and non-profit or governmental research organizations. Currently, these institutions, who recruit scholars and researchers with the highest possible credentials, are forced to compete with for profit companies for the limited number of visas available, and have had difficulties obtaining H–1B visas for their prospective employees.

Some of those visa holders are people like Thomas Hofweber, a first-year assistant professor in the Philosophy Department at the University of Michigan, who has conducted research in the areas of metaphysics and epistemology and is believed to be among the most talented young metaphysicians in the world. Another H–1B visa holder at Michigan State University's Department of Agricultural Economics is a researcher and teacher in Agribusiness Management and brings an outstanding background in the economics of horticultural enterprises and the management of their labor forces.

It is of great benefit for Michigan students to be able to study with these scholars. I am pleased that universities and research institutions will be able to obtain more needed visas under this bill.

VISA WAIVER PERMANENT PROGRAM ACT

The PRESIDING OFFICER. Under the previous order, H.R. 3767, as amended, is passed.

EXECUTIVE SESSION

NOMINATIONS OF MICHAEL J. REAGAN, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ILLINOIS; SUSAN RITCHIE BOLTON, OF ARIZONA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA; MARY H. MURGUIA, OF ARIZONA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to the consideration en bloc of Executive Calendar Nos. 652, 654, and 655, which the clerk will report.

The assistant legislative clerk read the nominations of Michael J. Reagan, of Illinois, to be U.S. District Judge for the Southern District of Illinois;

Susan Ritchie Bolton, of Arizona, to be U.S. District Judge for the District of Arizona;

Mary H. Murguia, of Arizona, to be U.S. District Judge for the District of Arizona.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, we are here today in the crunch of end-of-session business to debate and take time on four noncontroversial judicial nominees. This debate today was demanded by Senate Democrats who, ironically, have stood in the way of these nominations made by President Clinton, their own President. These are Clinton nominees the Democrats are holding up, Clinton nominees whom Democrats are insisting we take precious time to debate.

For the past few years, Senate Democrats have threatened shutdowns, claimed the existence of a so-called judicial vacancy crisis, and complained of race and sex bias in order to push through President Clinton's judicial nominees. These allegations are false.

First, there is and has been no judicial vacancy crisis. consider, for example, the Clinton administration's statements on this issue. At the end of the 1994 Senate session, the Clinton administration in a press release entitled ''Record Number of Federal Judges Confirmed'' took credit for having achieved a low vacancy rate. At that time, there were 63 vacancies and a 7.4 percent vacancy rate. The Clinton administration's press release declared: ''This is equivalent to 'full employment' in the . . . federal judiciary.'' Today, there are 67 vacancies—after the votes today there will be only 63 vacancies, the same as in the 1994. Instead of declaring the judiciary fully employed as they did in 1994. Democrats claim that there is a vacancy crisis.

In fact, the Senate has confirmed President Clinton's nominees at almost the same rate as it confirmed those of Presidents Reagan and Bush. President Reagan appointed 382 Article III judges. Thus far, the Senate has confirmed 373 of President Clinton's nominees and, after the votes today, will have confirmed four more. During President Reagan's two terms, the Senate confirmed an average of 191 judges. During President Bush's one term, the Senate confirmed 193 judges. After these four judges are confirmed today, the Senate will have confirmed an average of 189 judges during each of President Clinton's two terms.

Second, there has not been a confirmation slowdown this year. Comparing like to like, this year should be compared to prior election years during times of divided government. In 1988, the Democrat-controlled Senate confirmed 41 Reagan judicial nominees. After these four nominees are confirmed today, the Republican Senate this year will have confirmed 39 of President Clinton's nominees—a nearly identical number.

In May, at a Judiciary Committee hearing, Senator BIDEN, the former chairman of the Judiciary Committee, said: ''I have told everyone, and I want to tell the press, if the Republican Party lets through more than 30 judges

this year, I will buy you all dinner.'' When he said this, Senator BIDEN apparently believed that the confirmation this year of more than 30 judges would be fair. Well Senator BIDEN owes some people some dinners, maybe everybody in the press. After the votes today, the Senate this year will have confirmed 39 judicial nominees.

The 1992 election year requires a bit more analysis.

The Democrat-controlled Senate did confirm 64 Bush nominees that year, but this high number was due to the fact that Congress had recently created 85 new judgeships. Examining the percentage of nominees confirmed shows that compared to 1992, there is no slowdown this year. In 1992, the Democrat-controlled Senate confirmed 33 of 73 individuals nominated that year—or 45 percent. This year, the Senate will confirm 25 of 44 individuals nominated in 2000—or 57 percent. Those who cite the 1992 high of 64 confirmations as evidence of an election-year slowdown do not mention these details. Nor do they mention that despite those 64 confirmations, the Democrat-controlled Senate left vacant 115 judgeships when President Bush left office—nearly double the current number of vacancies.

Senate Democrats often cite Chief Justice Rehnquist's 1997 remarks as evidence of a Republican slowdown. Referring to the 82 vacancies then existing, the Chief Justice said: ''Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal Judiciary.'' Senators who cite this statement, however, do not also cite the Chief Justice's similar statement in 1993, when the Democrats controlled both the White House and the Senate: ''There is perhaps no issue more important to the judiciary right now than this serious judicial vacancy problem.'' As the head of the judicial branch, the Chief Justice has continued to maintain pressure on the President and Senate to speedily confirm judges. He has not singled out the Republican Senate, however. Selective use of his statements to imply that he has is inappropriate.

The Chief Justice made additional comments in 1997, which also undermine the claim of a vacancy crisis. After calling attention to the existing vacancies, he wrote: ''Fortunately for the Judiciary, a dependable corps of senior judges has contributed significantly to easing the impact of unfilled judgeships.'' The 67 current vacancies, in other words, are not truly vacant. There are 363 senior judges presently serving in the federal judiciary. Although these judges' seats are technically counted as vacant, they continue to hear cases at reduced workload. Assuming that they maintain a 25 percent workload (the minimum required by law), the true number of vacancies is less than zero.

Third, allegations of race or sex bias in the confirmation process are absolutely false. Just this month, for example, President Clinton issued a statement alleging bias by the Senate. He said: ''The quality of justice suffers when highly qualified women and minority candidates are denied an opportunity to serve in the judiciary.'' The White House, though, also issued a statement boasting of the high number of women and minorities that Clinton has appointed to the federal courts: ''The President's record of appointing women and minority judges is unmatched by any President in history. Almost half of President Clinton's judicial appointees have been women or minorities.'' The Senate, obviously, confirmed this record number of women and minorities. That is hardly evidence of systemic bias—or any bias at all.

Last November, Senator JOSEPH BIDEN, former chairman of the Judiciary Committee, stated:

> There has been argumentation occasionally made . . . that [the Judiciary] Committee . . . has been reluctant to move on certain people based upon gender or ethnicity or race. . . . [T]here is absolutely no distinction made [on these grounds]. . . . [W]hether or not [a nominee moves] has not a single thing to do with gender or race. . . . I realize I will get political heat for saying that, but it happens to be true.

I personally appreciated Senator BIDEN's comments on that, while others were trying to play politics with these issues. He knows how difficult it is under the circumstances to please both sides on these matters. The chairman takes pain from both sides on these matters. There is no question there are some on our side who have wanted to slow down this process, and others on the other side have wanted to speed up the process. The important thing is that we do a good process. That is what we have tried to do.

The statistics confirm Senator BIDEN's position. Data comparing the median time required for Senate action on male versus female and minority versus non-minority nominees shows only minor differences. During President Bush's final two years in office, the Democrat-controlled Senate took 16 days longer to confirm female nominees compared with males. This differential decreased to only 4 days when Republicans gained control of the Senate in 1994. During the subsequent 105th and 106th Congresses, it increased.

The data concerning minority nominees likewise shows no clear trend. When Republicans gained control in 1994, it took 28 days longer to confirm minority nominees as compared to non-minority nominees. This difference decreased markedly during the 105th Congress so that minorities were confirmed 10 days faster than non-minorities. The present 106th Congress is taking only 11 days longer to confirm a minority nominees than it is to confirm non-minority nominees.

These minor differences are a matter of happenstance. They show no clear trend. And even if there were actual differences, a differential of a week or two is insignificant compared to the average time that it takes to select and confirm a nominee. On average, the Clinton White House spends an average of 315 days to select a nominee while the Senate requires an average of 144 days to confirm.

Under my stewardship, the Judiciary Committee has considered President Clinton's judicial nominees more carefully than the Democratic Senate did in 1993 and 1994. Some individuals confirmed by the Senate then likely would not clear the committee today. The Senate's power of advice and consent, after all, is not a rubber stamp.

But there is no evidence of bias or of a confirmation slowdown. Senate Democrats claim that Republicans have politicized the confirmation process. Republicans, though, have not levied false charges or used petty parliamentary games.

In conclusion, it always is the case that some nominations die at the end of the Congress. In 1992, when Democrats controlled the Senate, Congress adjourned without having acted on 53 Bush nominations. Currently there are only 38 Clinton nominations that are pending before the Judiciary Committee.

It is not the end of the line for nominees that do not get confirmed this year. Republican nominees who failed to get confirmed have bone on to great careers, both in public service and the private sector. Senator JEFF SESSIONS, Governor Frank Keating, Washington attorney John Roberts, and law professor Lillian BeVier are just a few examples. Lillian BeVier and a number of other women are prime examples of those who were denied the opportunity of being on the court for one reason or another back in those days.

I bitterly resent anybody trying to play politics with this issue. I stand ready to defend our position on the Judiciary Committee, and I look forward to confirming these last four nominees today. And, of course, once we have done that, we will have matched what was done back in 1994, when the President said we had a full judiciary, with a vacancy of 7.4 percent.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. It is my understanding that under the unanimous consent request, I have 10 minutes to speak.

The PRESIDING OFFICER. Correct.

Mr. DURBIN. Mr. President, I have spoken with the staff of Senator LEAHY and, if I go beyond 10 minutes, I ask that the additional time be taken from that allocated to Senator LEAHY.

I thank Senator HATCH for his leadership and friendship on the Senate Judiciary Committee. We have our differences. When I served on the committee, we had some profound differences, but I respect him very much, and I respect the job he does.

I thank Senator HATCH personally for the kind attention which he has given to the vacancies in my home State of

Illinois. I am happy to report that with the nomination and confirmation of Michael Reagan, we will have a full complement of Federal judges in our State, which will make the workload more manageable all across the State. So I thank Senator HATCH and also Senator FITZGERALD. We have been working for the last 2 years, on a very bipartisan basis, toward approving these nominees to have come before the Senate.

Before I address the nomination of Michael Reagan, I would like to address a larger issue which involves not only the Senate Judiciary Committee but the entire Senate, the Congress, and the people of this country because this week marks the opening of the Supreme Court's new term. It is a good moment to reflect on the role of the Supreme Court, its past, and its future.

This brief statement that I present to you represents some of the concerns I have about the Supreme Court, the role it is playing, and the impact of the Presidential election on the future of that Court.

One of the most interesting books ever written about America was written by a French tourist by the name of Alexis de Tocqueville. He came to the United States 165 years ago, traveling around different cities and making observations about this American character. This was a brand new nation. De Tocqueville wrote in his famous work his observations and took them back to Europe.

One might think that a book such as that would be lost in history. It turns out that de Tocqueville's observations were so impressive that 165 years later we still turn to this book, and I think it is nothing short of amazing that his observations turn out to be valid today. De Tocqueville made an observation about America and about all of the important political questions in our country which sooner or later turn out to be judicial questions. This wasn't a criticism. Quite the contrary. De Tocqueville admired the innovations in the American judiciary that granted the courts the independence and clarity of function that were found nowhere else in the world. De Tocqueville believed these observations would mean that America's judicial system would hear, and act on, the most important issues of the day. He couldn't have been more correct.

Think about the ''big issues''. The issues that the American people have cared about—argued about—most deeply. The issues that spark the most debate—and the most passion. Sooner or later, the battle over these issues comes before the highest court in the land. Slavery. Child labor. Worker safety. Monopolies. Unionization. Freedom of the press. Capital punishment. Segregation. Environmental protection. Voting rights. A woman's right to choose.

The battle always comes to the Supreme Court; always comes before the nine justices who are Constitutionally granted enormous responsibilities, and enormous power.

In just the past year, the Supreme Court has offered important rulings on abortion, school prayer, gay rights, aid to parochial schools, pornography, Miranda rights, violence against women, parental rights—just to name a few. Not all of these decisions have turned out as I would have hoped.

For instance, take the case of U.S. vs. Morrison. The Supreme Court struck down a provision of the Violence Against Women Act that gave victims of rape and domestic violence the right to sue their attackers in federal court. Congress passed this law to give women an additional means of pursuing justice when they are the victims of assault. We passed this law because the States themselves did not always adequately pursue rapists and assailants. And the States acknowledged this!

Thirty-six States had entered this suit on behalf of the woman who had been victimized. They wanted victims of violence against women to retain the right to bring their attackers to court. But the Supreme Court, in a narrow vote, decided otherwise. The vote . . . five to four.

But this close margin is not unusual on our highest court—it is becoming commonplace. Rarely has the Supreme Court been so narrowly divided for such a long period of time. The replacement of just one judge could drastically change the dynamic of the Court for decades to come.

Chief Justice Rehnquist and Justices Scalia and Thomas—the Court's most conservative members—tend to vote together on hot button social and political issues such as affirmative action and school prayer. Centrist conservatives, Justices O'Connor and Kennedy, usually join them. The dissent is often written by the more liberal justices—Stevens, Souter, Ginsberg and Breyer. Both Ginsberg and Breyer are Clinton appointments.

Many of the Supreme Courts decisions have been made on the basis of a single vote. Partial birth abortion—five to four. Age discrimination—five to four. Gay rights—five to four. Warantless police searches—five to four. The federal role in death penalty cases—five to four.

These are not mere academic cases. These are decisions that change people's lives. We all hope that the Supreme Court will act wisely and fairly. But we also all know—history and human nature tell us so—that this is not always the case.

We learned in school about the Dred Scott case. Mr. Scott had lived in my home state of Illinois—where slavery was banned—and sued for his freedom on the basis that he had already lived as a free man, and had the right to continue to do so. The Supreme Court infamously disagreed, finding that Mr. Scott was nothing more than property—''to be Used in Subserviency to the Interests, the Convenience, or the Will, of His Owner'', a man ''Without Social, Civil, or Political Rights.'' The decisions of the Supreme Court—and at times, the opinion of just one Justice—can make the difference between having, or losing, a cherished right.

Perhaps that is the reason that my colleague, the senior Senator from Utah, is of the opinion that a President's power to make nominations to the Supreme Court and to the federal bench is—and this is a quote—''. . .the single most important issue of this next election.''

I think he's right. The next President may have the opportunity to make two or three appointments to the Supreme Court. He may even appoint the next Chief Justice.

In the first two hundred years since the signing of the Constitution, the Supreme Court invalidated 128 laws that had been passed by Congress. About one law every two years, on average. Since 1995, however, the Court has struck down 21 laws, more than four per year. This is an unprecedented assertion of judicial power.

Will the next President try to use the appointment process to further shift the balance of power between the branches of government?

Will the next President of the United States use a litmus test to ''pack'' the Supreme Court with Justices—Justices whose minds were already made up on important issues?

That is what the far right, members of the Federalist Society, want. They want to turn back the hands of the clock.

So I'm inclined to agree with the distinguished Senator from Utah. This is, indeed, one of the most important issues of the Presidential campaign.

Imagine a Supreme Court with three Antonin Scalia's—three Clarence Thomases—three radically conservative Justices bent on greatly restricting the authority of the federal government. The philosophical balance of the Court would shift dramatically. One by one the protections that have been built up over the past thirty five years could fall.

If you read the history of the Supreme Court, you will note that up until the time Franklin Roosevelt was President, it was an extremely conservative and somewhat lackluster Court. The Court started to change during Roosevelt's Presidency, and beyond. Republican and Democratic Presidents thereafter appointed more activist judges who looked at the problems facing America. One by one, the protections which we built up over that period of time would be in jeopardy.

Protection of the rights of minorities, women, and the handicapped; protection of voting rights, civil rights, worker rights, reproductive rights; protection of the environment; protection from gun violence; and protection of our fundamental freedoms as Americans. One by one, a different court could challenge each of these protections.

No longer could the federal government require background checks for gun purchases, rein in polluters, or protect the persecuted.

I hope all Americans will give some thought to the type of Supreme Court they feel can best serve the American people. I hope they give it some thought before they go out and vote in November.

In addition to who will be appointed, it's also critical to realize who is not being appointed.

More than any previous president, President Clinton has succeeded in diversifying the bench. Nevertheless, women and minorities are still underrepresented in our Federal courts. It isn't as if some Members of Congress have not tried to address this disparity. But as hard as we try to diversify the bench, we have not been able to produce the record of success that we would like to show.

I wonder how one of the great Justices ever to serve on the Supreme Court, Justice Thurgood Marshall, would have reflected on the treatment of a nominee, Ronnie White for the Federal District Court in Missouri. He is a member of Missouri Supreme Court. He is African American. He was judged qualified and reported by the Senate Judiciary Committee. Then he was rejected on the Senate floor by a party-line vote. Some labeled him a ''judicial activist.'' They produced some excuses or reasons for not confirming him, and he was defeated—one of the few times in modern memory that a judge made it to the floor and lost on a recorded vote.

I wonder how Justice Thurgood Marshall, the first black Justice appointed to the Supreme Court 33 years ago, would observe and reflect on what happened to Ronnie White.

I think Justice Marshall would have viewed the current state of judicial nominations differently than the Federalist Society. This conservative group has over 25,000 members plus scores of affiliates, including former Independent Counsel Kenneth Starr; Supreme Court Justices Thomas and Scalia; and University of Chicago's Richard Epstein and Frank Easterbrook, also a federal appellate judge.

And their numbers are growing. The Federalist Society has chapters in 140 out of the 182 accredited law schools. The campus chapter at the University of Illinois College of Law is very active.

I don't have to tell you about the Society's ''originalist'' approach to the Constitution. Justice Scalia's and Justice Thomas's opinions clearly reflect their point of view.

I don't have to tell you the Federalist Society has been instrumental in influencing the law. They have helped to weaken or rolled back statutes on civil rights and affirmative action; voting rights; women's right's and abortion rights; workers' rights; prisoners' rights; and the rights of consumers, the handicapped and the elderly.

Martin Luther King., Jr., once said, ''The moment is always right to do what is right.''

I think the moment is right to hold the tobacco industry responsible for the costs incurred by the federal government for the medical treatment of individuals made ill by their deadly products.

I think the moment is right to hold the gun industry accountable for the irresponsible design, manufacture, distribution and marketing of their lethal weapons.

The moment is right to ensure that HMOs and health insurance companies can be held accountable for their wrongdoing that results in the injury or death of American citizens.

The moment may be right to elect a President who will appoint Justices who reflect that point of view and will protect our civil liberties.

I think the moment is right to remove barriers to the bench so that every citizen—whether man, woman, or whatever ethnic, racial, or religious background—can be adequately represented on our court.

I will say a word on behalf of my nominee who is before the Senate, Michael Reagan, the judicial nominee for the U.S. District Court for the Southern District of Illinois. Senator FITZGERALD and I reached an agreement about the selection of these nominees. Michael Reagan is the product of this agreement.

Michael Reagan possesses all the qualities necessary to make a tremendous contribution to the federal bench.

He has strong bipartisan support, as well as, the support of several respected judges, leaders, and organizations including: the National Sheriffs' Association; the Honorable Moses Harrison II, Chief Justice, Illinois Supreme Court; The Most Reverend Wilton D. Gregory, Bishop of the Diocese of Belleville; the Illinois Federation of Teachers; and the Illinois Pharmacists Association.

They have all written letters supporting Michael Reagan's nomination to fill the Southern District of Illinois' judicial vacancy.

Michael Reagan is a full-time public servant who wears several hats. In addition to his private practice, Mr. Reagan serves as a Commissioner of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois. Mr. Reagan has held this position since 1995 and is responsible for supervising the attorney registration and disciplinary system in Illinois, a very important assignment.

In addition, Mr. Reagan serves as Assistant Public Defender in St. Clair County, Illinois. In this capacity, he represents indigent criminal defendants charged with major felonies. Mr. Reagan has served as an Assistant Public Defender since 1996.

Mr. Reagan also serves as an Honorary Deputy Sheriff in St. Clair, a fully commissioned law enforcement position that he has held for the past three years. His background as a police officer certainly qualified him in that capacity. As an Honorary Deputy Sheriff, Mr. Reagan has full arrest powers and is subject to be called to duty in the event of an emergency.

Mr. Reagan began his career in public service as a police officer after graduating with a Bachelor's of Science degree from Bradley University in 1976, his law degree from St. Louis University in 1980.

Although Mr. Reagan holds many notable positions, the most important roles he plays are that of husband and father. Mr. Reagan has been married to Elaine Catherine Edgar since 1976. They have four boys. I have met them all; they are great kids.

The Reagans will soon be celebrating their 25th anniversary. It is a great family.

I am pleased that the Senate will have this opportunity to vote for Michael Reagan. He possesses a rare combination of intelligence, practical experience, temperament, and devotion to public service that makes for a great Federal judge. I look forward to his service on the Federal bench.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Mr. President, I join my distinguished colleagues to express my outrage at the treatment of judicial nominees this year. I do so with the same preface as my distinguished friend from Illinois, in saying that I have a good working and personal relationship with the chairman of the committee, but the failure to confirm the nominees at this time is an outrage.

I would like to focus my remarks on our efforts to fill one of the vacancies on the Fourth Circuit Court of Appeals.

The Fourth Circuit Court of Appeals has fifteen seats. Five of those seats are currently vacant.

We have one seat on the Fourth Circuit Court of Appeals that has been vacant for a decade—longer than any other vacancy in the nation.

Filling this vacancy has been deemed a ''judicial emergency'' by the U.S. Judicial Conference.

On June 30, the President of the United States nominated Roger Gregory, a distinguished lawyer from Virginia, to fill this vacancy. Mr. Gregory graduated summa cum laude from Virginia State University and received his J.D. from the University of Michigan. He has an extensive federal practice, is an accomplished attorney, and was described by Commonwealth Magazine as one of Virginia's ''Top 25 Best and Brightest.'' And he has bipartisan support. Senators JOHN WARNER and ARLEN SPECTER have also written to the Judiciary Committee to seek a hearing for Mr. Gregory.

Despite the well-documented need for another judge on this court, and despite Mr. Gregory's stellar qualifications, the Judiciary Committee has

stubbornly refused to even grant Mr. Gregory the courtesy of a hearing. In failing to provide Mr. Gregory with a hearing, the Judiciary Committee is abdicating its Constitutional responsibility and is effectively standing in the courthouse door to block this nomination.

Article II of the United States Constitution makes clear that the President is to nominate and the Senate is to provide advice and consent on the nomination. It is difficult for the Senate to provide advice or give its consent if it won't even allow the nominee to be heard. Many excuses have been offered for why this nominee won't be granted a hearing. One convenient excuse is that this is a presidential election year.

There is nothing in Article II of the United States Constitution, however, that suspends its provisions every four years. We have a constitutional obligation to render our advice and, if appropriate, grant our consent or, if not appropriate, decline to grant our consent. But we cannot just throw up our hands and declare that this provision of the Constitution is rendered meaningless during presidential election years.

The supposed logic that underlies this excuse is that the nominee may not reflect the judicial philosophy of the next Administration. But how can we even question the nominee's judicial philosophy if we never hear from him. So even this excuse argues in favor of granting the nominee a hearing.

The most recent excuse for failing to act on Mr. Gregory's nomination is that five years ago a gentleman from North Carolina was nominated for this seat, and so the argument goes this seat now ''belongs'' to North Carolina. But five years before that, when this seat and three others were created, a Virginian was arguably nominated to fill this seat—but the Senate only acted to fill the other three seats and this one has been vacant ever since.

More importantly, however, seats on Courts of Appeal don't ''belong'' to any state. As I have already noted, there are only ten judges currently sitting in the Fourth Circuit. Four of these ten judges are filling seats that were previously filled by a candidate judge and then from another state. Finally, it's a little hard for the senior Senator from North Carolina to complain that the seat belongs to North Carolina when he is the one who has been blocking a North Carolinian from filling the seat.

Rather than hide behind excuses, the Senate Judiciary Committee ought to seize the opportunity to right a historical wrong. The Fourth Circuit Court of Appeals has the largest percentage of African-Americans in the nation. Yet, the Fourth Circuit has never been integrated. In fact, it is the only Circuit in the country that has never in history had minority representation. If we were to confirm Roger Gregory—who is African-American—we could knock down yet another barrier that has existed for far too long.

In my view, courts should better reflect the people over whom they pass judgment. We still have time, if only we have the will to act. In 1992, when there was a Republican in the White House and the Democrats ran the Senate, we confirmed 6 Circuit Court judges later than July: 3 in August 2, in September 1, in October. In fact, its instructive to look at the one nominee who was confirmed in October of 1992. Timothy K. Lewis was nominated to the Third Circuit Court of Appeals on September 17. The Judiciary Committee gave him a hearing on September 24. He was reported out of the Judiciary Committee on October 7, and confirmed by the Senate on October 8.

Roger Gregory is an outstanding nominee. Rather than standing in the courthouse door, we ought to throw the door open and desegregate the Fourth Circuit. We ought to end this judicial and moral emergency and we ought to do it now.

Mr. President, I yield the floor and reserve any time remaining for those covered under the unanimous consent order.

The PRESIDING OFFICER (Mr. ENZI). The Chair, in his capacity as a Senator from Wyoming, suggests the absence of a quorum with time to be allocated equally between the sides.

Without objection, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEVIN. 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. LEVIN. Mr. President, the Senate today will vote on the confirmation of a number of judicial nominees. I not only have no problem with that, I very much favor it. These nominees deserve a vote. The districts in which they will serve surely deserve to have their nominations acted upon. I believe the Nation, as a whole, deserves to have these nominees, and other nominees awaiting hearings and votes acted on by this Senate as well.

The Judiciary Committee held hearings for three of the nominees and approved those nominations less than a week after the nominations were received. Other nominees wait in vain for years just for a hearing. That strikes me as being an arbitrary and inexplicable system, unfair to nominees awaiting hearings, awaiting votes, and unfair to the districts or the circuits in which they would serve if confirmed. I believe it is also unfair—perhaps this is most important of all—to the people who await justice in their courts.

Two Michigan nominees to the Sixth Circuit have been waiting unsuccessfully for a hearing for more than 3½ years and 1 year respectively. Two women, highly qualified, nominated from Michigan for the Sixth Circuit where there is a severe shortage of judges and an enormous caseload that sits there pending, while they have been waiting for more than 3½ years and 1 year respectively.

Judge Helene White, who is a court of appeals judge in Michigan, was first nominated in January of 1997. Her nomination to the Sixth Circuit Court of Appeals has never been acted upon. She has never been granted a hearing.

Kathleen McCree Lewis was nominated to the Sixth Circuit over a year ago. It has been pending before the Judiciary Committee for over a year. No hearing, no action.

These are two judicial nominees from my home State of Michigan. Despite there being no objection that I know of to their nominations, and in the absence of any explanation whatsoever, they have been kept in limbo without even a hearing for 3½ years and 1 year respectively. I believe that is truly unconscionable. In the history of the Senate, no nominee has waited as long as Judge White for a confirmation hearing. The seat that she has been nominated for has been vacant for 5½ years. It is considered a ''judicial emergency'' by the Judicial Conference of the United States.

There is no apparent reason for the denial of hearings for these two nominees. No one has questioned their qualifications for the bench. No one that I know of objects to their candidacies. It is well known Judge White and Ms. Lewis are both talented, hard-working nominees.

Each are highly respected for their records which show them to be women of integrity and fairness. Judge White has had a distinguished career. She was a trial judge for 10 years on the Wayne County Circuit Court bench and in 1992 was elected to the Michigan Court of Appeals where she has served ever since. She also serves on the board of directors of the Michigan Legal Services and the board of governors of the American Jewish Committee.

Kathleen McCree Lewis is a distinguished appellate practitioner at the Detroit law firm of Dykema Gossett, one of the most prestigious law firms in our State. She also served as a commissioner on the Detroit Civil Service Commission and on the Civic Center Commission. She has argued dozens of cases and is a respected appellate lawyer in the very circuit to which she has been nominated. She also happens to be the daughter of the late Wade McCree, a highly respected judge who served on the Sixth Circuit, and was a former Solicitor General of the United States. If confirmed, Kathleen McCree Lewis will be the first African American woman ever to serve on the Sixth Circuit.

Gov. George Bush has said that the Senate should act on nominees within 60 days. That deadline passed years ago for Judge White and for Kathleen McCree Lewis. According to Governor Bush:

> The Constitution empowers the President to nominate officers of the United States, with the advice and consent of the Senate.

Then he said:

> That is clear-cut, straightforward language. It does not empower anyone to turn

the process into a protracted ordeal of unreasonable delay and unrelenting investigation.

To keep these nominees pending for so long without hearings is unfair to the nominees, particularly where there is no known objection and where there is no explanation for the refusal to grant hearings.

Even more important, it is unfair to the citizens served by the court. There is a large backlog of cases in the Sixth Circuit which is a serious concern for not just Michigan but for all the States that are served by that court. Over one-fourth of the judgeships on the Sixth Circuit are currently vacant, and that is among the highest vacancy rate of any circuit court in the country.

Judge Gilbert Merritt, who recently served as chief judge of the Sixth Circuit, wrote in a March 20 letter to Chairman HATCH: The court is ''hurting badly and will not be able to keep up with its workload due to the fact that the Senate Judiciary Committee has acted on none of the nominations to our court.''

Judge Merritt went on to say the following—and this is the former chief judge who still sits on the court. This is what Judge Merritt said:

Our court should not be treated in this fashion. The public's business should not be treated this way. The litigants in the Federal courts should not be treated this way. The remaining judges on a court should not be treated this way. The situation in our court is rapidly deteriorating due to the fact that 25 percent of the judgeships are vacant. Each active judge of our court is now participating in deciding more than 550 cases a year—a caseload that is excessive by any standard. In addition, we will have almost 200 death penalty cases that will be facing us before the end of the next year.

The Founding Fathers certainly intended the Senate ''advise'' as to judicial nominations, i.e., consider, debate and vote up or down. They surely did not intend that the Senate, for partisan or factional reasons, would remain silent and simply refuse to give any advice or consider any vote at all, thereby leaving the courts in limbo, understaffed and unable to properly carry out their responsibilities for years.

That is Judge Merritt's letter. In addition to that, the Judiciary Committee chairman, Senator HATCH, received a letter from 14 former presidents of the State bar of Michigan. These include, by the way, Democrats and Republicans. That letter pleads for action relative to the situation on the Sixth Circuit.

The Michigan bar presidents wrote in their letter to Senator HATCH that the state of affairs on the Sixth Circuit has ''serious adverse effects on the bar and the administration of justice for our clients. We urge you to promptly schedule hearings for, and to pass to the Senate floor for a vote, the nominations of Judge Helene White and Kathleen McCree Lewis.''

In the last few months, there have also been several articles and editorials in papers around Michigan calling on the Senate to confirm the court of appeals nominees for Michigan.

An editorial in the Detroit Free Press said:

The Senate's delay in considering President Clinton's nominations to the [Sixth Circuit] court is unfair to Michigan, to the nominees, and to anyone whose future might be affected by a decision of this court.

An editorial in the Observer and Eccentric newspapers urged the Judiciary Committee and its members to ''give two thoughtful and well-respected Michigan lawyers the courtesy of timely hearings on their nominations to the Federal judiciary that is currently hamstrung in carrying out its work.''

An editorial in the Detroit News described the failure to act on Sixth Circuit nominees as ''the sort of die-hard intransigence that should be out of bounds.''

And a Jewish News editorial called the stall a ''travesty of justice.''

If Senators have concerns about something in the records of these Michigan candidates—and no one has raised anything to that effect—then Senators should air their concerns in a committee hearing and then let the committee vote. It is unfair to Michigan, it is unfair to the citizens who use this court to keep these judicial nominees endlessly in limbo, despite the absence of any objection that I know of to their nominations and with no explanation forthcoming whatsoever.

A number of us have spent many hours over the last few years trying to get hearings for these Sixth Circuit Court of Appeals nominees from Michigan, and yet two well-qualified candidates, each deserving a hearing and a Senate vote, have been left in limbo with no explanation, no stated objection.

What we are doing today in approving these four nominees, it seems to me, is surely our function, totally appropriate, and I believe and hope the nominees will be confirmed.

As we do this, we should also focus on nominees pending in the Judiciary Committee, awaiting hearings or awaiting a vote by the committee after a hearing, who are left there no matter how long they have been waiting, sometimes, again, years in the case of Helene White and Barry Goode. We have others who have been waiting since April of last year, June of last year, August of last year, September of last year. I think we can do better than that. We should rise above that kind of nonaction on the part of our Judiciary Committee.

No plea from me or from others who have worked with me on these nominations has produced hearings, despite the editorials, despite the letters from the bar associations and from Judge Merritt. Despite all these efforts, we have received just silence and statements about waiting a little longer or ''we'll see'' or ''we'll try.''

We should be better than that. The Constitution wants us to be better than that. I will vote to confirm these nominees whose nominations, in many cases, were sent to the Senate, heard by the Judiciary Committee, and approved by the Judiciary Committee in less than a week. At the same time, I will be thinking of the vacancies that exist on the Sixth Circuit Court of Appeals that have remained unfilled for years, where there is a judicial emergency, an enormous backlog, and where, despite all the pleas from the bar association, the Sixth Circuit, from indeed the Chief Justice of the United States, to vote on confirmations, we have these two well-qualified women from Michigan sitting there, awaiting a hearing, endlessly in limbo, nothing but silence, no explanation as to why their hearings are refused, no objection being noted or stated to their nominations, only two well-qualified women left in limbo and in silence.

We can do better. We should do better. I hope we find a way some day to do better.

I ask unanimous consent to print in the RECORD the following letters and editorials.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

U.S. COURT OF APPEALS
FOR THE SIXTH CIRCUIT,
Nashville, TN, March 20, 2000.

Re: Vacancies on the Sixth Circuit Court of Appeals

Hon. ORRIN HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH: Several years ago during the period that I was Chairman of the Executive Committee of the United States Judicial Conference, we met from time to time, and you were always concerned that the Senate Judiciary Committee do its duty in filling the vacancies on the various Courts of Appeals. I write now to you to request that the Judiciary Committee bring up for a hearing and a vote nominations to the Sixth Circuit Court of Appeals.

I was taken aback to see an alleged statement of Senator Mike DeWine from Ohio that no vote would be taken for a nomination to fill the vacancy currently existing from Ohio. Senator DeWine was quoted as saying that due to partisan considerations there would be no more hearings or votes on vacancies for the Sixth Circuit Court of Appeals. I hope that this was not an accurate quote.

The Sixth Circuit Court of Appeals now has four vacancies. Twenty-five per cent of the seats on the Sixth Circuit are vacant. The Court is hurting badly and will not be able to keep up with its work load due to the fact that the Senate Judiciary Committee has acted on none of the nominations to our Court. One of the vacancies is five years old and no vote has ever been taken. One is two years old. We have lost many years of judge time because of the vacancies.

By the time the next President is inaugurated, there will be six vacancies on the Court of Appeals. Almost half of the Court will be vacant and will remain so for most of 2001 due to the exigencies of the nomination process. Although the President has nominated candidates, the Senate has refused to take a vote on any of them.

Our Court should not be treated in this fashion. The public's business should not be treated this way. The litigants in the federal courts should not be treated this way. The remaining judges on a court should not be treated this way. The situation in our Court is rapidly deteriorating due to the fact that 25% of the judgeships are vacant. Each active judge of our Court is now participating

in deciding more than 550 cases a year—a case load that is excessive by any standard. In addition, we have almost 200 death penalty cases that will be facing us before the end of next year. I presently have six pending before me right now and many more in the pipeline. Although the death cases are very time consuming (the records often run to 5000 pages), we are under very short deadlines imposed by Congress for acting on these cases. Under present circumstances, we will be unable to meet these deadlines. Unlike the Supreme Court, we have no discretionary jurisdiction and must hear every case.

The Founding Fathers certainly intended that the Senate ''advise'' as to judicial nominations, i.e., consider, debate and vote up or down. They surely did not intend that the Senate, for partisan or factional reasons, would remain silent and simply refuse to give any advice or consider and vote at all, thereby leaving the courts in limbo, understaffed and unable properly to carry out their responsibilities for years.

You and other members of the Senate have appeared before the Judicial Conference and other judges' groups many times and said that you care about the federal courts. I hope that you will now act to help us on the Sixth Circuit Court of Appeals. We need your help and the help of the two Senators from Ohio, the two Senators from Tennessee, the two Senators from Kentucky, and the Senators from Michigan.

Sincerely,

GILBERT S. MERRITT.

JULY 7, 2000.

Re: Vacancies on the Sixth Circuit Court of Appeals.

Hon. ORRIN HATCH,
U.S. Senate,
Washington, DC.
Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATORS HATCH AND LEAHY: Recently, the former and current presidents of the Ohio State Bar wrote Senators DeWine and Voinovich a letter expressing their deep concern over the present situation in the Court of Appeals for the Sixth Circuit. With four of the sixteen seats vacant, the circuit is in a state of judiciary emergency. Former Chief Judge Gilbert Merritt has said:

''Our Court should not be treated in this fashion. The public's business should not be treated this way. The litigants in the federal courts should not be treated this way. The remaining judges on a court should not be treated this way.

* * * * *

''The Founding Fathers certainly intended that the Senate ''advise'' as to judicial nominations, i.e., consider, debate and vote up or down. They surely did not intend that the Senate, for partisan or factional reasons, would remain silent and simply refuse to give any advice or consider and vote at all, thereby leaving the courts in limbo, understaffed and unable to properly to carry out their responsibilities for years.''

Chief Justice Rehnquist has expressed the same sentiments.

Presently three Michigan seats remain open. The President has made two nominations. Judge Helene White was nominated in January 1997, and is the longest pending nominee without a hearing by over a year; Kathleen McCree Lewis was nominated in September, 1999. Senator Abraham returned the ''blue slips'' for the nominees in April. Joe Davis, a spokesman for Senator Abraham, was quoted as saying that Senator Abraham wants hearings for these nominees to take place. Still, no hearings have been scheduled.

As former Michigan Bar Presidents, we agree with our Ohio colleagues that the situation has serious adverse affects on the bar and the administration of justice for our clients. We urge you to promptly schedule hearings for, and to pass to the Senate floor for a vote, the nominations of Judge Helene White and Kathleen McCree Lewis.

Respectfully,

Honorable Victoria A. Roberts (1996–1997); Honorable Dennis W. Archer (1984–1985); John A. Krsul (1982–1983); George T. Roumell, Jr. (1918–1986); William G. Reamon (1976–1977); Joseph L. Hardig, Jr. (1977–1978); Eugene D. Mossner (1987–1988); Donald Reisig (1988–1989); Robert B. Webster (1989–1990); Fred L. Woodworth (1991–1992); George A. Googasian (1992–1993); Jon R. Muth (1994–1995); Thomas G. Kienbaum (1995–1996); and Edmund M. Brady, Jr. (1997–1998).

[From the Detroit Free Press, May 2, 2000]

JUDGES ON HOLD: SENATE HURTS JUSTICE BY DELAYING CONFIRMATIONS

The 6th Circuit Court of Appeals now has four vacancies. Twenty-five percent of the seats . . . are vacant. The court is hurting badly and will not be able to keep up with its workload due to the fact that the Senate Judiciary Committee has acted on none of the nominations to our court.''

Those were the words of Judge Gilbert Merritt, former chief judge of the Cincinnati-based circuit, in a letter last month to Senate Judiciary Chairman Orrin Hatch, R-Utah, and eight other senators—including Senates Carl Levin and Spencer Abraham of Michigan, one of eight states covered by the circuit.

Merritt should not be alone in his outrage. The Senate's delay in considering President Bill Clinton's nominations to the court is unfair to Michigan, to the nominees, and to anyone whose future might be affected by a decision of this court.

The judicial confirmation process has bogged down in mean-spirited, petty partisan wrangling between Democrat Clinton and the Republican-controlled Senate, which seems determined to wait out the lame duck and let his nominations wither.

It's not just the 6th Circuit, either. According to the Senate Judiciary Committee, there are 78 vacancies and 10 future vacancies in the federal judiciary. Only seven judges have been confirmed this year. Six nominees are pending on the Senate floor, 39 in committee, one nominee has withdrawn.

The 6th Circuit vacancies are for seats vacated by Judges Damon J. Keith and Cornelia Kennedy. Michigan Appeals Court Judge Helene White was nominated in January 1997 to fill the Keith vacancy. She has never had even a hearing. Nominee Kathleen McCree Lewis has been waiting since September 1999.

This is a disgrace that did not have to happen. Abraham sits on the Judiciary Committee and could move these along. Instead, he stalled consideration for three years, claiming the Clinton administration blindsided him with the White nomination.

It's hard to fathom what that has to do with the efficient, effective administration of justice in reasonable time, with the best interests of citizens in Michigan.

The federal court system should not be treated this way. Neither should the judges who seek to serve it, nor the citizens it is supposed to serve.

[From the Michigan Press, June 25, 2000]

IS THE GOP PLAYING POLITICS WITH JUDICIAL APPOINTMENTS?

(By Phil Power)

''The presidential appointments process now verges on complete collapse.'' So concludes Paul C. Light, of the Brookings Institution (usually a liberal Washington think tank) and Virginia L. Thomas, of the Heritage Foundation (usually conservative) in a study of the experiences of 435 cabinet and sub-cabinet officials who served in the Reagan, Bush and Clinton administrations.

Some found treatment by the White House appointments people ''an ordeal.''

Others—35 percent of Reagan administration appointees and 57 percent of Clinton's nominees—were held hostage to the politics of the U.S. Senate in waiting for confirmation hearings.

That's one reason a lot of talented people are not about to consider appointment to top government positions.

A perfect instance of this general problem concerns the nominations of two Michigan lawyers to fill vacancies on the U.S. Sixth Circuit Court of Appeals that have been twisting slowly in the wind of the U.S. Senate for far too long.

Helene White is presently a member of the Michigan Court of Appeals; nominated by President Clinton in January 1997, Judge White has yet to receive a hearing from the Senate Judiciary Committee. Kathleen McCree Lewis, the daughter of former U.S. Solicitor General Wade McCree, is a partner in the Dykema Gossett law firm in Detroit; her nomination has been pending before the Judiciary Committee since September, 1999.

The Sixth Circuit is authorized to have 16 judges. Currently, the Court has four vacancies, one of which goes back for five years. For the Court to operate at 75 percent efficiency means long delays to the litigants and enormous workloads for the remaining judges (each of whom now has a caseload of 550 cases each year). Authorities now consider the number of vacancies in the federal court system to constitute a ''judicial emergency.''

What's going on here?

Michigan's Senator Carl Levin, a Democrat and a minority member of the Judiciary Committee, says it's because Republicans in the Senate, hoping to win the presidency this fall, have decided to hold up judicial nominations from the Clinton White House.

As evidence, he produces a table showing that while the Democrats controlled the Senate during the Bush Administration, a total of 66 federal judges were confirmed.

However, when the GOP ran the Senate during the first term of the Clinton Administration, 17 judges were confirmed.

So far in Clinton's second term, the Senate has confirmed only seven judges, with a total of 33 judicial nominees hanging fire before the Judiciary Committee without any hearings scheduled on their nominations. There are at present 81 vacancies in the federal judiciary.

Michigan's other Senator, Spencer Abraham, is also a member of the Judiciary Committee, but as a Republican his party controls the committee.

I asked Joe Davis, a spokesman for Senator Abraham, how come it's taken three and a half years (in the case of Judge White) and eight months (in the case of lawyer Lewis) just to get the committee to hold hearings on their nominations.

According to Davis, ''Senator Abraham does not know whether or when hearings will take place. He wants them to take place, though.''

That's nice. Frankly, I suspect if Senator Abraham really wanted the Judiciary Committee to hold hearings on these nominations, he'd find a way to do it PDQ.

A member of the Sixth Circuit, Judge Gilbert S. Merit, wrote in March a letter to Senate Judiciary Chairman Orrin Hatch: ''The Founding Fathers certainly intended that the Senate 'advise' as to judicial nominations, i.e., consider, debate and vote up or down.

They surely did not intend that the Senate, for partisan or factional reasons, would remain silent and simply refuse to give any advice or consider and vote at all, thereby leaving the courts in limbo, under-staffed and unable properly to carry out their responsibilities for years.''

Senator Abraham is running for reelection this fall.

He is stressing his performance as an effective senator in his campaign. Somebody should ask him why he can't get his committee to give two able, thoughtful and well respected Michigan lawyers the courtesy of timely hearings on their nominations to the federal judiciary that is currently hamstrung in carrying out its work.

[From the Detroit News, August 13, 2000]

GET JUDGES OUT OF LIMBO

Michigan Court of Appeals Judge Helene White got the welcome word that she had been appointed to the federal bench in January 1997.

That was 43 months, or more than 1,300 days ago. She is still waiting to be approved by the U.S. Senate and take her seat with the Sixth Circuit appeals court in Cincinnati, which covers Michigan and several other states. She now has the distinction of being the longest-delayed judicial nominee in American history.

Judge White has been caught in the crossfire between President Bill Clinton and the Republican Senate leadership. So has Detroit attorney Kathleen McRee Lewis, whose nomination to the same court has been held up for nine months.

The Senate is angry, and justifiably so, at the president for deliberately bypassing the confirmation process and appointing Bill Lann Lee head of the civil rights division of the Justice Department. President Clinton knew that Mr. Lee did not stand a chance of being confirmed because of the his record in backing racial quotas.

Mr. Clinton got around it by the semi-devious route of making a recess appointment. This has infuriated Senate Majority Leader Trent Lott. In retaliation, he is holding up 37 judicial appointments.

This is exactly the sort of bitter political obstruction that Texas Gov. George W. Bush pledged to end in his convention acceptance speech last week.

''I don't have enemies to fight,'' he said. ''I want to change the tone in Washington to one of civility and respect.''

Senate Republicans should listen to their party's nominee. While their anger is understandable. It is the courts, and by extension those who use the federal courts, who are punished because of the resulting shortage of judges.

Sen. Lott hasn't even scheduled hearings for these nominations. And the clock is ticking. If no action is taken by Oct. 6, when the Senate adjourns, the nominations will die.

U.S. Sen. Spencer Abraham, the Michigan Republican, initially supported the stall by withholding his approval of the nominations on the grounds that he was not properly consulted by the White House. But he has since been mollified, and he has given his go-ahead. His staff says, however, that he will not push for hearings, which would be within his power as a member of the Judiciary Committee. That is for the Democratic nominators to do, his staff argues.

Every nominee deserves, at the least, a hearing within a reasonable time frame. Mr. Bush has specifically suggested 60 days.

Certainly, there is ample room for disagreement when the legislative and executive branches of government are in the hands of different parties. But Mr. Lott's pique has outlived any reasonable purpose. [It is the sort of die-hard intransigence that should be out of bounds.]

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

The PRESIDING OFFICER. Without objection, the time will be equally divided. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. 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. HARKIN. Mr. President, parliamentary inquiry: I understand this Senator has 30 minutes?

The PRESIDING OFFICER. That is correct.

Mr. HARKIN. I thank the Chair.

Mr. President, I will support consideration by the Senate of these nominations to fill district judge vacancies in Arizona and Illinois because we are entering a critical stage in the rising number of judicial vacancies in our Federal courts. However, in addition to the district vacancies, there are 22 vacancies in our Federal appeals courts, and pending before the Judiciary Committee are several appeals court nominations who are more than qualified to fill those positions. That, of course, includes a constituent of mine, Bonnie J. Campbell, former attorney general of the State of Iowa and presently the head of the Department of Justice Office of Violence Against Women. Her nomination is for the Eighth Circuit U.S. Court of Appeals.

These positions should be filled with qualified individuals as soon as possible. I urge the Republican leadership to take the steps necessary to allow the full Senate to vote up or down on these important nominations.

Basically what I have been hearing from the other side of the aisle, the Republican leadership, is: This is an election year. Why allow circuit nominees a vote on the floor? Hold it up. Maybe Governor Bush will win the election and we will control the Senate and the House, and we can have a whole new batch of appointees next year.

That attitude led me to take a look at the history of our judicial nominations. Let's go back to a time when there was a mirror image of what we have here, when there was a Republican President in the White House and a Democratic majority in the Senate. That year would be 1992. That year, then-President George Bush nominated fourteen circuit court judges. From July through October, the Democrat-controlled Senate confirmed nine of those judges. This year, a Democratic President nominated seven circuit court judges but with a Republican-controlled Senate, only one of these nominees has been confirmed. We have several pending, but we see no action. Time is running out. Basically what I have been told is, it is over with. They are not going to report any more of these nominees out for circuit courts.

I have also heard the argument that Bonnie Campbell was not nominated until this year so we shouldn't expect this nominee to go through. Let's take a look at what I am talking about with these charts. This is kind of a busy looking chart, but these are the circuit judges nominated in 1992 by then-President George Bush. These were all nominated in 1992. There were 14 nominated. There were 9 who had hearings, 9 who were referred, and 9 who were confirmed, 9 out of 14 who were nominated that year.

There was one nominee—Timothy Lewis—who was nominated in September of 1992, had his hearing in September of 1992, was referred in October of 1992, and confirmed in October of 1992. If the attitude that prevails among the Republican leadership today had prevailed in the Democrat-controlled Senate in 1992, we would not have confirmed anyone after July. This year, we have had none since July.

In 1992, we had two in September, two in August, and one in October, despite the fact that it too was late in an election year. This year we have only had one.

It is clear who is playing politics with judgeships. The Republican leadership of the Senate is playing the most baldfaced politics. It is not alleged that these nominees are not qualified. It is simply that they were nominated by a Democratic President. That is all. I have not heard one person on the Republican side tell me that Bonnie Campbell is not qualified to be a circuit court judge.

Some people on the other side may have some differences with her on some of her views. I understand that. I have had differences of view with judges I have voted to confirm. Why? Because I thought they were qualified.

I thought that if the President nominated them, they had a fair hearing, and they were reported out, my only decision was whether or not they were qualified—not whether they were ideologically opposed to me or to how I feel or what I believe. It has been my observation over the last quarter century that oftentimes when judges who have more of a liberal bent get appointed to the court, in many cases they come down on the more conservative side of cases. And I have seen conservative judges appointed to the court come down on the liberal side of cases. You never really know how this will come out, but you know whether or not people are legitimately qualified to serve on the bench.

So the arguments made that Bonnie Campbell wasn't nominated until this year—well, as I said, in 1992, we had nine circuit court judges confirmed that were nominated in that year. A couple of these were quite controversial. This year, we have had one confirmed. We have six more pending for the circuit courts. I know my colleague

from Vermont, who is ranking member on the Judiciary Committee, stated this last week that when a majority in the Senate starts playing these kinds of games, the result is that when the other side becomes the majority they will do the same thing. That is too bad for our democratic system of government, too bad for the judgeships, and for our third branch of Government to have that happen.

I am not naive enough not to know that there are always politics involved in how judges are nominated. I understand that. That is the system in which we live. But there comes a point where politics ends and responsibility begins. When you have people who have had a hearing, who are qualified, yet they won't be reported out for a vote on the Senate floor, that is pure politics and that is the height of irresponsibility. The Republican leadership is being totally irresponsible.

Of the judges nominated in 1992, every judge who got a hearing—every single judge who had a hearing in a Democrat-controlled Congress, when a Democrat was the Chair of the Judiciary Committee, when the Democrats controlled the Judiciary Committee, every person who got a hearing was confirmed. Every single one. That is not the case today. Too many political games are being played, I am afraid, on the Judiciary Committee and on the other side.

I would like to mention one other judicial example from 1992. Michael Melloy was nominated for the district court in April of that year. He was a Bush nominee, supported by Senator GRASSLEY. As my colleagues know, Senator GRASSLEY and I have a longstanding commitment to support the nominations of individuals from Iowa to our courts. Mr. Melloy is an example of this. He was nominated April 9, 1992, received his hearing on August 4, 1992, reported out of committee on August 12, 1992, and confirmed by the Senate that very same day in 1992.

Again, I may have been ideologically opposed to Mr. Melloy. There may have been some things he believed in that I didn't, but there was no question in my mind that Mr. Melloy was fully qualified to be a Federal judge. As long as he was qualified and supported by Senator GRASSLEY and the administration, I supported that nominee, even though it was in the closing days of 1992.

Let's look at the current nominees that we have. Three of the four we are going to be voting on today were nominated, got hearings, and were reported out of the committee within one week. Mr. James Teilborg was nominated on July 21, 2000, got his hearing on July 25, and was reported out of the committee on July 27. Now he stands to be confirmed today. On the other hand, Bonnie Campbell received a hearing by the Judiciary Committee in May—more than 2 months before Mr. Teilborg. Yet she is not here on the floor. Why is it that Mr. Teilborg can come out on the floor today and not Bonnie Campbell? Politics, the rankest form of politics.

The majority is being very inconsistent in their arguments. They say, well, Bonnie Campbell was nominated this year, so it is too late. Mr. Teilborg was nominated this year—nominated, had a hearing, and was reported out all in the same week, and he will be confirmed today. If this year was too late for Bonnie Campbell, why wasn't it too late for James Teilborg?

As I said, nobody has come up and said Bonnie Campbell is not qualified. I challenge someone to come on the floor and say that. Again, if people want to vote against Bonnie Campbell to be a circuit court judge, that is the right of each Senator—not only a right, but an obligation—if they believe someone is unqualified. We can't do that as long as she is bottled up in the committee.

The Senator from Utah has the power on that committee to report her out. I say to my good friend from Utah, who just appeared on the floor, the Senator from Utah can report Bonnie Campbell's name out here to the floor and we can have a vote on this nominee. That is the way it should be done. Nobody has come up to me to say she is not qualified. She is a former attorney general of the State of Iowa. Since 1995, she has led the implementation of the Violence Against Women Act as the head of that office under the Justice Department. She has broad support on both sides of the aisle. This is a case where a judicial nominee has the support of both the Republican Senator from Iowa, Mr. GRASSLEY, and the Democratic Senator from Iowa, me. Yet she has not been reported out of the Judiciary Committee. I say report her out. If people want to vote against her or say something about her qualifications, let them.

I can stand here today and talk about the qualifications of James Teilborg, or the other people; but, quite frankly, I am convinced they are qualified. I may be opposed to the way they think once in a while, but they are qualified. Is the reason Bonnie Campbell is not being reported out because somebody on the other side of the aisle doesn't like the way she thinks, or because she may have a view on an issue contrary to theirs? The rankest form of politics is holding up Bonnie Campbell's nomination. We have a backlog of nominees and we should vote on her.

The Violence Against Women Act expires this year. The Office of Violence Against Women in the Department of Justice has had only one person head it since this bill was first implemented in 1995, and that is Bonnie J. Campbell. The reauthorization of the Violence Against Women Act was voted on in the House of Representatives last week. If I am not mistaken, I think the vote was 415–3. So 415 Members of the House voted to reauthorize the Violence Against Women Act. Now, if the only person to ever head that office had done a bad job in enforcing that law, had not acted responsibly, had not brought honor and acclaim to that office and the administration of that law, do you think that 415 Members of the House would have voted to reauthorize it? No. They would have been on their feet over there, one after the other, talking about how terrible this office has been run and how the person operating that office had done such a bad job in enforcing the law. Not one Member of the House took the floor to so speak.

The one person to head that office is Bonnie J. Campbell. Not one person I have ever run across has said she has done anything less than an exemplary job in running that office. Yet the Senate Judiciary Committee will not report her name out for action by the full Senate. Yet we will get the Violence Against Women Act here and Senator after Senator will rush up to speak about how great this law is. I will bet you won't hear one Senator get up and say how badly this law has been administered by the Office of Violence Against Women in the Department of Justice.

That tells you what an outstanding job Bonnie Campbell has done in that office.

If that is the case, why won't the Senate Judiciary Committee report her name out? Politics; pure rank politics. That is what is going on in the Judiciary Committee today. I hope it won't be that way if the Democrats take charge of the Senate. I am not on the Judiciary Committee, but we tend to get in what I call a ''cesspool spiral,'' like a whirlpool. One side takes over the majority and begins to stall nominations, and then the other side takes over, we keep spiraling down further and further to the point where any nominee for a Federal court will be held up months and perhaps even years while we await the next election. Then our third branch of Government truly becomes a political football.

I hope the Judiciary Committee and the leadership on that side—I say to my friend from Utah—will listen to the words of Texas Governor George Bush. He said he would call for a 60-day deadline for judges—once they are nominated, the Senate will have 60 days to hold a hearing, to report out of committee and vote on the Senate floor.

Bonnie Campbell has been there a lot longer than 60 days and so have some of the other judges.

I say to my friends on the Republican side—you are supporting George Bush for President. If he said he would call for a 60-day deadline, I ask my friends on the Republican side: Why don't we act accordingly?

In this Congress, the judicial nominees who have been confirmed had to wait on average 211 days. Governor Bush said they should not wait longer than 60 days. This is not getting better; it is getting worse around here. It is really a shame.

Let's look at the percentages. I am told: This is the same today as it was before—blah, blah, blah, blah. I hear this all the time—nothing has changed.

It has changed dramatically. For example, in the Reagan years, during the 98th Congress, the Republicans were in the majority. They had a Republican President. We received 22 circuit court nominations, and 14 were confirmed. This is a Republican President and a Republican Senate—22 received, and 14 confirmed, for a 63.6-percent confirmation rate.

Let's look at the 100th Congress. President Reagan was still President, but there was a Democratic Senate. Twenty-six circuit court judge nominations were received; 17 were confirmed, for a 65.4-percent confirmation rate.

Think about that. Democrats had a higher confirmation rate under President Reagan—a very conservative President. We had a higher confirmation rate when the Democrats were in charge of the Senate than when the Republicans were in charge. We didn't block things when the Democrats were in charge.

Next, the 102d Congress, 1991–1992. President Bush was the Republican making nominations and the Democrats were in charge in the Senate. We received 31 circuit court nominations. Twenty were confirmed, again, for a 64.5-percent confirmation rate—Republican President and a Democratic Senate.

Now we move to the 104th Congress. We had a Democratic President, President Clinton, and we had a Republican Senate. Twenty circuit court nominations were received; 11 were confirmed. That was a 55-percent confirmation rate.

Now we are in the 106th Congress. We have a Democratic President and a Republican Senate. Thirty-one circuit court of appeals nominations have been received; 15 have been confirmed, for a 48.4-percent confirmation rate.

I ask my friend—and he is my friend—the chairman of the Judiciary Committee: How can we live with something like that? How can the Judiciary Committee come to this Senate with a straight face and say that a 48-percent confirmation rate is what we did in the past, when the record is clear? The record is in the 60-percent confirmation rate when we had Republican Presidents and a Democratic Senate. Yet today we are faced with a 48-percent confirmation rate.

I have heard from many judges. I have gotten letters from them saying that it is time we filled the bench. Cases are backing up. We need to get judges on the bench. But I suppose we first have to pay attention to the elections.

This one nominee, Bonnie J. Campbell, should be reported out if for no other reason than we need people on the bench who are sensitive to what is happening in domestic abuse cases and violence against women.

In 1998, American women were the victims of 876,000 acts of domestic violence. In 5 years—1993 to 1998—domestic violence accounted for 22 percent of the violent crimes against women. During those same years, children under the age of 12 lived in 43 percent of the households where this violence occurred. It is generational. The kids see it, they grow up, and they become abusive parents themselves.

In Iowa, and all across America, prosecutors, victim service organizations, and law enforcement officers are fighting. But they need help. We need to reauthorize the Violence Against Women Act. But there is more we can do to make sure that we have judges who know what is happening from firsthand experience and who can make sure that the law is applied fairly and upheld in courts around the country.

That is why we need someone like Bonnie Campbell on the circuit court of appeals. As I said, she is widely supported. She is supported by me and by Senator GRASSLEY. She has the support of judges, police organizations, women, and domestic violence coalitions. She has strong support in the State of Iowa and on both sides of the aisle.

I ask the chairman of the committee: Why aren't we reporting out Bonnie Campbell? Why? Just one simple question: Why? Is there a member of the majority who thinks she is not qualified? Let them so state. Have specific objections been raised as to her qualifications? If so, we ought to know that so they can be addressed. But all we hear is a deafening silence from the other side. We are left to assume that the reason Bonnie Campbell is being held up is because they are hoping their nominee wins the election. That is their right to hope that. They can work as hard as they can for him. I don't blame them for that. But to hold up a qualified person like Bonnie Campbell who had her hearing 2 months before Mr. Teilborg had his; yet she is being locked up in the committee—all the paperwork is done. Yet politics is holding her up.

Mr. President, I ask unanimous consent the text of an article that appeared in the Des Moines Register the other day regarding the Bonnie Campbell nomination and the text of two editorials, one in the Cedar Rapids Gazette and one in the Des Moines Register, be printed in the RECORD.

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

[From the Des Moines Register, Oct. 1, 2000]

CAMPBELL ISSUE AIDS DEMOCRATS' POLITICS

(By Jane Norman)

If Iowa Democrats needed any more reason to be excited and energized about this year's presidential race in the state, they probably have found it in the controversy swirling around the stalled nomination of Iowan Bonnie Campbell in the Republican-controlled U.S. Senate. George W. Bush, hello?

Campbell, the director of the Violence Against Women office for the U.S. Justice Department, was nominated in March to be Iowa's new appeals-court judge for the 8th Circuit based in St. Louis. She had a spectacularly sedate hearing before the Senate Judiciary Committee in May, but then the nomination process ground to a halt. She's one of 42 judicial nominees pending in the Senate.

Campbell has had the support not just of Senator Tom Harkin, but also Senator Charles Grassley, even though it must stick in Grassley's craw. Campbell, who ran for governor of Iowa in 1994 and lost, made remarks during her race about Christian conservatives that riled conservative activists, who appealed to Grassley to kill her bid for the bench. That's fair; whatever you think of the merits of their arguments, it's their right to protest something as significant as a lifetime judicial appointment.

Grassley declined to side with his traditional conservative allies and supported Campbell, saying Democrats did not stand in the way he wanted judicial appointments during the waning days of the Bush presidency. While Grassley predicted that Campbell would fall victim to election-year politics, there's no evidence that he has tried to sabotage her behind the scenes.

Campbell's nomination hung around all summer, gaining the support of the bar association and the Iowa Police Association. When Congress returned to work in September, Harkin started turning up the heat. During the past week, he has taken to the floor repeatedly to lambaste majority Republicans for holding up the nomination, and he holds forth at length on the Campbell nomination with Iowa reporters.

This has been a masterful strategy by Harkin, who's become such a surrogate for Vice President Al Gore that Harkin was paired with GOP vice-presidential nominee Dick Cheney on a Fox News show. Campbell's woes only assist Harkin in making the case for a Democratic presidency, over and over again in media outlets across Iowa.

On Tuesday night, Harkin enlisted the help of Senator Joe Biden, the Delaware Democrat and Judiciary Committee member who's a friend of Campbell. Harkin and Biden formed a mutual admiration society on the floor to praise Campbell, and Biden recalled that he recommended that Campbell be made director of the Violence Against Women office when it was launched.

Biden insisted it was ''flat malarkey'' that Democrats have held up Republican appointments during the last days of Republican presidencies, and said he pushed through a flock of qualified Texas judges for Senator Phil Gramm in late 1992. ''To be fair about it there were three members of our caucus who ripped me a new ear in the caucus for doing this,'' said Biden.

Harkin said no Republican has ever come to him and explained their opposition to the nomination. ''In fact, Republicans in Iowa ask me why she is being held up,'' said Harkin. ''Mainstream Republicans are asking me that.''

Biden said it is a ''terrible precedent,'' and that it is hard on Harkin to see someone so ''shabbily treated'' from his home state. You hoped there was a box of tissues close at hand.

Then, on Thursday, Harkin revealed to reporters that he had been told by Senate Judiciary Committee Chairman Orrin Hatch ''in no uncertain terms'' that the Republican caucus won't budge on the nomination. Harkin said there's not much he can do now other than fume on the floor and ponder holding up Republican priorities.

All of this cater-wauling gives Harkin, and Iowa Democrats, a huge opportunity to seize a way to criticize Republicans on the selection of judges, an issue where the GOP is somewhat vulnerable, particularly among women and undecided voters.

Texas Governor Bush does not sit in the Senate, and he is not the one holding up the stop sign. But his party is doing it, ostensibly for his benefit. Is it really wise to have the confirmation of a woman as a judge become a major fuss in a supposedly battleground state in the last month before the presidential election?

On top of that, many Iowa Democrats are still angry at how Campbell was treated during her race for governor. The prospect that women such as Campbell will be shut out for another four years if Bush is elected president is like a booster shot for get-out-the-vote efforts.

Harkin said Thursday that he 'absolutely' would push Campbell to be nominated again if Gore wins the presidency. For the time being, she serves Democrats' purposes just as well if she never dons black robes.

[From the Cedar Rapids Gazette, Sept. 26, 2000]

STOP STALLING ON JUDICIAL CANDIDATE

In three weeks or less, Congress will adjourn before the 2000 elections, and increasingly it appears it will do so before the U.S. Senate brings the nomination of Bonnie Campbell to the U.S. Court of Appeals for the Eighth Circuit up for a vote.

It's not as if Campbell, the former attorney general of Iowa, is trying to get in at the last minute—unless you consider a six-month wait the last minute. Campbell was nominated to the job by the Clinton Administration in March. She had a hearing in May.

What's taking so long?

It seems apparent the Republican-controlled Senate Judiciary Committee is growing content to hold onto this nomination until after the session—and, not coincidentally—until after the November election, when they hope to win the White House. That would mean a Republican would more than likely be appointed to the job.

It is not unusual for political parties to try to run out the clock on nominations in the hope the next election will bring them to power. That does not make it right, and in this case it makes no sense to sit on the Campbell nomination.

U.S. Sen. Tom Harkin, D-Iowa, is her sponsor and he pointed out a week ago there are 22 vacancies on the federal appeals court. Campbell has the backing of the American Bar Association and the Iowa State Police Association. She also has the backing of U.S. Sen. Charles Grassley, R-Iowa, who is also a member of the Judiciary Committee. Traditionally, Grassley and Harkin have backed the other's nominees, and if Campbell's nomination fails, we would hate to see that understanding damaged.

Frustrated proponents of the Campbell nomination—as well as several other nominations—have been arguing recently that over the last three years, women and minority candidates have had to wait longer to get through the confirmation process than their white male counterparts.

The chairman of the Judiciary Committee, U.S. Sen. Orrin Hatch, R-Utah, has denied women and minorities are being treated differently in the committee than their white male counterparts. Still, of the 21 candidates for the federal bench who are women or minorities, nine have been waiting for more than a year for a hearing.

Campbell has a lengthy record in private legal practice. Elected in 1990, she was the first woman to serve as Iowa Attorney General. She was appointed in 1995 to be the director of the Violence Against Women Office in the U.S. Justice Department. Her hearing revealed no good reason why she should be denied this position.

The Senate leadership should do the right thing in the waning days of this session and let the full Senate vote on Campbell. It should set aside whatever reason it has for stalling and move forward. Let the process work and bring this nomination to the floor for a vote.

Mr. HARKIN. I see the distinguished chairman of the Judiciary Committee on the floor. He is a good man. He and I have fought many battles together. I like him personally and I respect him. If he would like to engage in colloquy, I will. He knows how strongly I feel about this nominee, about her qualifications and about the kind of job she has done at the Department of Justice. I am sure he knows I will do everything that is humanly and senatorially possible to try to get her name here. I believe I have a right and an obligation to do that. I will, within the confines of what is right and proper in the Senate, not violating any rules, do everything I can to try to get her name out.

We will be here this week and we will be here next week. I ask my friend from Utah, will we be allowed to have a vote on Bonnie Campbell for the Eighth Circuit Court of Appeals?

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I will submit a resolution, and after these remarks I will spend some time answering my two dear colleagues, Senator ROBB of Virginia and Senator HARKIN from Iowa, to the best of my ability.

(The remarks of Mr. HATCH pertaining to the submission of S. Res. 364 are printed in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

Mr. HATCH. Mr. President, I must respond to the remarks of Senator ROBB and Senator HARKIN.

With regard to the nomination of Roger L. Gregory, the position for which Mr. Gregory has been nominated has been vacant since it was created in 1990. Before nominating Mr. Gregory, the President had not even submitted a name to the Senate for this position in almost 5 years. Despite the longstanding vacancy of this judgeship, the work of the Fourth Circuit has not been adversely affected.

Moreover, when the President did submit a name to the Senate for disposition almost 5 years ago, he submitted the name of a resident of North Carolina, J. Rich Leonard. In doing so, the President effectively agreed that this seat should be filled by a North Carolinian.

The PRESIDING OFFICER. Without objection, the Senator's previous time consumed on the Olympics will not count against his 7 minutes.

Mr. HATCH. I ask unanimous consent I be able to speak for another 15 minutes.

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

Mr. HATCH. The President effectively agreed this seat should be filled by a North Carolinian. By nominating Roger Gregory, a Virginian, for the seat instead of a North Carolinian, the President sought to avoid the traditional practice of seeking the ''advice and consent'' of the Senators from the State where the judgeship is located about which local lawyer should be nominated.

It is very late in the session to be considering a circuit court nomination. Some nominations can move through the confirmation process quickly, but only where the White House has dealt with the Senate on nominations in good faith. The Arizona nominations we are debating today moved through the confirmation process quickly because the White House did work closely with Senator KYL and negotiated in good faith over which Arizonans should get these lifetime appointments.

In contrast, the White House has not dealt with the Senate on nominations in good faith. During our August recess, the President determined to recess appoint several executive branch officials over the express objections of numerous Senators. Furthermore, Democrats stood in the way of these four nominees we are debating today, the President's nominees, and they threatened to shut down the work of the Senate. This is hardly good faith. In fact, it was a Democrat hold—a Democrat hold by the minority leader on these four judges who are put forth by this President in accordance with an agreement worked out—that really caused a lot of angst on our side, plus the fact that these recess appointments that were made without consultation caused a lot of difficulty. Then we have virtually every bill filibustered, even on the motion to proceed. As a matter of fact, the H–1B bill, which just passed 96–1, had three filibusters on it, from the motion to proceed right on up through final passage of 96–1.

I must respond to some of the things Senator ROBB said here this morning. He used some pretty incendiary language to imply that the Senate majority is biased against Mr. Gregory because he is an African American. Senator ROBB said we ''are standing in the courthouse door'' and are refusing to ''integrate'' the Fourth Circuit. These allegations of racial bias are beneath the dignity of a Senator in the U.S. Senate, and they are offensive and politically motivated. When Democrats blocked the nomination of Lillian BeVier to the Fourth Circuit—which is what they did—the first female nominee to the Fourth Circuit, no one on our side accused them of gender bias.

I am sure Roger Gregory is a fine man. I have no doubt about that. I have been told that by a number of friends of mine, including former Secretary Coleman. But I have informed my colleagues that because of the atmosphere that has resulted from the President's refusal to consult with the Senators from North Carolina, because of the President's recent recess appointments and disregard of commitments he had made up here, and disregard of the advice and consent because of the petty parliamentary games in which our friends on the other side have engaged, Mr. Gregory's nomination is not going to move forward. And because this is a North Carolina seat. We would have to have somebody nuts, from North Carolina, who would not stand up for a

North Carolinian in this seat. There is just no question about it. The President knew that, having nominated a North Carolinian before.

I would like to respond to Senator LEVIN for a few minutes. I don't want to go beyond that. There are other things I could say. But I bitterly resent anybody trying to play racial politics with judges, especially after what we went through in prior administrations.

It had always been my intention as chairman of the Judiciary Committee to hold a hearing on judicial nominations during the month of September. I planned on doing that. At that hearing I was fully prepared to consider the nomination of some of these people, and perhaps even Helene White or Kathleen McCree Lewis to the U.S. Court of Appeals for the Sixth Circuit. A number of my colleagues were pressing very strongly for that. I wanted to try to resolve that if I could.

However, events conspired to prevent that from happening. First, during the August recess, the President determined to recess appoint several executive branch nominees over the express objection of numerous Senators. He did so notwithstanding the agreement to clear such recess appointments with the relevant Senators. We do not have much power around here in some ways against a President of the United States, but we can demand that he consult with us. These Senators are very aggrieved by the way they were treated on these appointments—I think rightly so.

Second, Democrat Senators determined to place holds on the four nominations we are debating today and threatened shutdowns of the Senate's committee work, going as far as to invoke the 2-hour rule and forcing the postponement of scheduled committee hearings, including the Wen Ho Lee hearing, which is an important hearing, a bipartisan hearing, for both sides to look at.

Helene White and Kathleen McCree Lewis have only the White House and Senate Democrats to blame for the current situation, I might add, because of some of these petty procedural games we have been going through around here with filibusters of almost everything that comes up, or a threat to bring up all kinds of extraneous amendments if we do happen to bring a bill up that needs to be passed.

It is very late in the session to be considering a circuit court nomination. Some nominations can move through the confirmation process quickly, but only where the White House has dealt with the Senate, on nominations, in good faith. The Arizona nominations we are debating today moved through the confirmation process quickly because the White House worked closely with Senator KYL and others, and myself, and negotiated in good faith over which Arizonans should get these lifetime appointments.

Everybody knows there is a tremendous need along the southern border in Arizona to have these judges. There is a tremendous court docket there that needs these judges. Yet they have been delayed for 2 solid months almost.

In contrast, the White House and Senate Democrats have not dealt in good faith, given the President's recess appointments in August of several executive branch nominees over the express objection of numerous Senators and Senate Democrats' efforts to hold up these nominees and hold up the work of the Senate.

With regard to the nomination of Bonnie J. Campbell, in March, Bonnie Campbell was nominated to the U.S. Court of Appeals for the Eighth Circuit. At the urging of Senator GRASSLEY, the Judiciary Committee held a hearing for Ms. Campbell in May. It had always been my intention for the Judiciary Committee to report Ms. Campbell's nomination. However, events conspired to prevent that from happening.

First, during the August recess, as I have explained, the President determined to recess appoint several executive branch nominees over the express objection of numerous Senators. He did so notwithstanding his agreement to clear such recess appointments with the relevant Senators. By the way, this type of an agreement arose out of Senator BYRD's objections in earlier Congresses. His objections were followed here on the part of people on our side of the aisle, and the President agreed to it and then violated that agreement.

Second, after the August recess, Democrat Senators determined to place holds on the four nominations we are debating today, even though everybody admits—I think everybody admits—that they are important nominations and this arrangement that has been worked out has been fair.

Again, they threatened to shut down the Senate's committee work, going as far as to invoke the 2-hour rule and enforce the postponement of scheduled committee hearings. And we went through that because of pique. For these reasons, Bonnie Campbell's nomination has stalled. Ms. Campbell has only the White House and Senate Democrats to blame for the current situation.

I might add, it did not help at all on our side for these petty filibusters on everything. It used to be when I got here, there might be one or two or three filibusters a year at the very most, and then they were on monumental issues that involved a wide disparity of belief. It was not every little motion to proceed, every little bill we were going to pass, like the one we just passed 96–1. To go through three filibuster cloture votes on that bill was beyond belief. But that irritated a lot of people. It made it more difficult to get these judges through.

Mr. HARKIN, the Senator from Iowa, claimed that his review of history led him to believe we are ''playing politics with the judges.'' I strongly disagree. In President Reagan's last year, the Democrat-controlled Senate confirmed 41 nominees. After the votes today, the Senate this year will have confirmed 39 nominees. And there have been some indications there might be some games played with one of the four judges here today. If that is the case, boy, Katie bar the door, after what we have been trying to do here.

The committee worked sincerely to try to get these nominations out, and they have been here for quite a while. Finally, few nominees are confirmed when the White House and Senate are controlled by different political parties. From 1987 to 1992, the Democrat-controlled Senate confirmed an average of 46 Reagan and Bush nominees per year. Things changed when President Clinton was elected. In 1994, the Democrat-controlled Senate pushed through 100 Clinton nominees. They could not have done that without cooperation from Republicans, but they did that.

In 1992, at the end of the Bush administration when Democrats controlled the Senate, the vacancy rate stood at 11.5 percent. Now at the end of the Clinton administration the vacancy rate after the votes today will stand at just 7.4 percent.

Also in 1992, Congress adjourned without having acted on 53 Bush nominations, or should I say nominees who were sitting there waiting to be confirmed. After the votes today, there will be only 38 Clinton nominations that are pending.

Under both Democrats and Republicans, the Senate historically confirms 65 to 70 percent of the President's nominees. In his last 2 years, President Bush made 176 nominations, and the Democrat-controlled Senate confirmed 122 of them, yielding a confirmation rate of 69 percent. During the last 2 years, President Clinton made 112 nominations, and after today's votes, the Senate will have confirmed 73 of them. He has a confirmation rate of almost the same, 65 percent.

In May, at a Judiciary Committee hearing, Senator BIDEN indicated he did not believe we would do even 30 judges this year. He is wrong. We will have now done, at the end of the day, 39 judicial nominees confirmed by the Senate.

There has been much debate today about everything but the four nominees we ostensibly are debating. I fully support these nominees and want to say a few words about them. They are supported by their home State Senators—Senators KYL, MCCAIN, FITZGERALD, and DURBIN.

The nominees we are supposedly debating today are as follows: Susan Ritchie Bolton from Arizona: Ms. Bolton has served as judge in the Maricopa County Superior Court since 1989. Before that, from 1977–89, she worked in private practice at a Phoenix law firm. From 1975–77, she clerked for the Hon. Laurance T. Wren of the Arizona Court of Appeals. Ms. Bolton received her law degree, with high distinction,

from the University of Iowa Law School in 1975, and her undergraduate degree, with honors, from the University of Iowa in 1973.

Mary H. Murguia: Since 1998, Ms. Murguia has served in the Executive Office of U.S. Attorneys, first as Counsel and then as Director. Before that she served as an Assistant U.S. Attorney in the District of Arizona from 1990–98. From 1985–90, she was an Assistant District Attorney in Wyandotte Country, Kansas. She received her law degree from the University of Kansas Law School in 1985, and her undergraduate degree from the University of Kansas in 1982.

Michael J. Reagan: Mr. Reagan has worked in private practice since graduating from law school in 1980; since 1995, he has been a sole practitioner at the Law Office of Michael J. Reagan. In addition, he has served as an Assistant Public Defender (part time) since 1995. He received his law degree from St. Louis University Law School in 1980, and his undergraduate degree from Bradley University in 1976.

James A. Teilborg: Mr. Teilborg has been a partner at the Phoenix law firm of Teilborg Sanders & Parks since 1972; before that he was an associate at another Phoenix firm from 1967–72. He received his law degree from the University of Arizona School of Law in 1966.

Some have complained the Arizona nominations have moved more quickly while others have not. Some nominations can move through the confirmation process quickly, there is no question about that, but only where the White House has dealt with the Senate on nominations in good faith. The Arizona nominations we are debating today moved through the confirmation process quickly because the White House worked closely with Senator KYL and negotiated in good faith over which Arizonans should get these lifetime appointments.

All four are Democrats, all four are supported by the President, all four came through the appropriate committee—the Judiciary Committee—and all four will be voted on today, and I expect all four to be confirmed unanimously. If there are no politics played, they will be confirmed unanimously.

In contrast, the White House and Senate Democrats have not dealt in good faith, given the President's recess appointments in August of several executive branch nominees over the express objection of numerous Senators and Senate Democrats' efforts to hold up these nominees and obstruct the work of the Senate—the filibusters that have occurred on almost everything that comes up here and, of course, the holds that have been placed on these four nominees who are President Clinton's nominees. It does not take long until people on our side know there are too many games being played on judicial nominees.

We have done a good job. President Reagan had the all-time highest confirmation of judges during his 8 years. That was 382 judges. By the end of the day, when we confirm these 4, President Clinton will have the all-time second highest, as far as I know, and that is 377 judges, 5 fewer than President Reagan. Had we not had all these games played, I believe I could have held a hearing in September, which I no longer can hold, and we would have confirmed probably enough to draw President Clinton equal to President Reagan.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HATCH. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I have been scarcely able to hold back the tears listening to my good friend from Utah. I am sure he did not mean to mislead the Senate, but those who might not know the numbers could be misled, not by any intent on the part of the senior Senator from Utah.

As he has said himself, we will have confirmed fewer than 40 judges in the last year of President Clinton's term in office. When the Democrats controlled the Senate, in the last year of President Bush's term in office, we confirmed 66. In fact, we were holding hearings right into September and voting on judges up to the last days of the session, confirming judges for President Bush.

The distinguished Senator from Utah feels perhaps some have suggested inappropriately that women, minorities, and others take longer going through this body. I point out that the ones who suggested that have been independent bipartisan groups outside the Senate.

I have stated over and over, I have never seen or heard a statement expressing—I wonder if the Senator from Utah can stay while I speak; I do not want to say this with him off the floor—I have never once heard him express either a racist or a sexist remark. He has been a close and dear friend of mine for over 20 years. Nor have I ever suggested that anybody on the Senate Judiciary Committee has taken a racist or sexist position, but I am troubled, as I hope he and others would be troubled, by the fact that women and minorities, if they are nominated for judgeships, have taken longer to go through this Republican-controlled Senate than others if they are allowed to go through at all.

We talk about Roger Gregory, nominated to the Fourth Circuit. It has been suggested this is a seat that is reserved to North Carolina. That is not so. As pointed out in the Wall Street Journal in a recent letter from the President's Counsel Beth Nolan, this is a vacant seat that has not been allocated to the State of North Carolina and is appropriate for an appointment from Virginia. The distinguished chairman of the committee has said that Senators should work with the White House. In this case, two of the most distinguished Members of the Senate—one a Republican, one a Democrat, JOHN WARNER and CHUCK ROBB—worked very closely with the White House on this Virginia nomination and both support the nomination of Roger Gregory.

Senator ROBB strongly urged the White House to appoint Roger Gregory, a highly distinguished African American. Senator WARNER supports him. He has the highest ratings possible from bar associations. But he cannot get confirmed by the Senate; he cannot even get a hearing.

I commend what Senator ROBB said on the floor today in support of Roger Gregory. I hope all of us will listen to him.

Likewise, I was struck by the remarks of Senator DURBIN of Illinois with respect to the Supreme Court and his support for Michael Reagan to a district court judgeship in Illinois. Senator DURBIN laid out what I have also heard from Republicans and Democrats who support Michael Reagan for that judgeship. Democrats and Republicans were at hearings for him. Democrats and Republicans, ranging across the political spectrum, have spoken to me in support of Michael Reagan. He is supported by both home state Senators, one a Republican and one a Democrat.

Senator CARL LEVIN, the distinguished senior Senator from Michigan, one of the most respected voices in this body, spoke of his support for Judge Helene White to the Sixth Circuit and Kathleen McCree Lewis to the Sixth Circuit and how he wished they would be considered. They have been held up and blocked by this Senate. Is the chairman saying that Judge Helene White and Kathleen McCree Lewis do not have the support of their two Senators from Michigan? If that is the case, we ought to know that. I understand that they both have that support. If they don't have the support of a home state Senator, then let's say that. Judge Helene White and Kathleen McCree Lewis are extraordinarily well-qualified women. I wish they would get confirmed.

Senator TOM HARKIN, was an extraordinary advocate for Bonnie Campbell. I can't add to what he has said. Senator HARKIN spoke extremely well about Bonnie Campbell and, of course, Bonnie Campbell should be confirmed. Again, going to the test: Did the President work with the Senators from that State. Are we saying that the two Senators from Iowa do not support Bonnie Campbell? My understanding is both of them support her. Why can't she get Committee consideration and a Senate vote?

The Senate will move forward on a number of nominees today: Michael Reagan, Susan Ritchie Bolton, Mary Helen Murguia, and James Teilborg. I recommend that all four be confirmed by the Senate. It is unfortunate that this Republican-controlled Senate, is not willing to do for President Bill

Clinton what a Democratic-controlled Senate did for President George Bush, and move people forward. We can talk about the numbers that various Presidents have appointed. Recent Presidents have appointed more judges than George Washington did or Thomas Jefferson or Abraham Lincoln or Teddy Roosevelt. But we are also a much bigger country, and we have a lot more cases and need more judges. In fact, if we passed the judgeship bill the distinguished senior Senator from Utah and I have introduced, the vacancy rate would be well into the teens with over 130 vacancies.

We have waited 10 years to authorize new judges, even as this country has expanded over the years and caseloads have grown. The Judicial Conference is asking us to authorize 70 judges. In fact, I strongly urge we pass the judgeship bill before the Presidential election while no one knows who is going to be elected President, and we are looking at what is best for our court system.

I am glad to see the Senate moving forward on these three nominees. I expect they will be approved overwhelmingly. They are all well qualified for appointment to the federal courts.

Three judicial nominees on the Senate calendar have been cleared by Democrats for action for some time, including two from Arizona and one from Illinois who has been pending the longest of the four.

There were Senators who wanted to be heard and have a chance to debate the lack of hearings and the refusal to give hearings to qualified nominees. They have spoken eloquently on behalf of Roger Gregory, Bonnie Campbell and Judge Helene White. They are not seeking to filibuster these nominations and each has agreed to a reasonable time for debate before a vote.

The Senator from Arizona is right that there has been a problem with the nomination of James Teilborg, who happens to be a close personal friend of the Senator since their days together back at the University of Arizona Law School. Mr. Teilborg was nominated on July 21 and was afforded a hearing and was reported by the Judiciary Committee within a week.

The frustration that many Senators feel with the lack of attention the Committee has shown long-pending judicial nominees has recently boiled over. They wish to be heard; they seek parity and similar treatment for nominees they support. I understand their frustration and have been urging action for some time. This could all have been easily avoided if we were continuing to move judicial nominations like Democrats did in 1992, when we held hearings in September and confirmed 66 judges that presidential election year.

Michael Reagan, nominated to be a District Court Judge for the Southern District of Illinois, is a distinguished private attorney in Belleville, Illinois. He graduated from Bradley University in 1976, and St. Louis University Law School in 1980. He has been in private practice for over 20 years, and has been an adjunct professor of law at Belleville Area College and St. Louis University. He also presently serves as an Assistant Public Defender in St. Clair County, Illinois. He enjoys the support of both of his home state Senators. When other nominees to the Illinois federal courts were given hearings and confirmed in June, he was held back. He had likewise been nominated in early May. He was finally included in a hearing in late July and reported unanimously by the Judiciary Committee on July 27. He could have been confirmed before the August recess or at any time in September. I am glad that time has finally come.

Judge Susan Ritchie Bolton has presided in the Arizona Superior Court for Maricopa County since 1989. She received her undergraduate degree and law degree from the University of Iowa. Following law school she clerked for the Honorable Laurence T. Wren on the Arizona Court of Appeals. She then went into private practice at Shimmel, Hill, Bishop & Bruender. She enjoys the support of both of her home state Senators and received a well-qualified rating from the American Bar Association. She was nominated on July 21, participated in a confirmation hearing on July 25 and was unanimously reported by the Judiciary committee on July 27. She could have been confirmed before the August recess or at any time in September. I am glad the Senate is turning its attention to her nomination and am confident that she will be confirmed to fill the judicial emergency vacancy for which she was nominated.

Mary Murguia currently serves as Director of the Executive Office for U.S. Attorneys. She also serves as an Assistant U.S. Attorney for the District of Arizona. Prior to that, she served as an Assistant District Attorney for the Wyandotte County District Attorney's Office. She earned her undergraduate and law degrees from the University of Kansas. She enjoys the full support of both of her home state Senators. Like Judge Bolton, she was nominated on July 21, received a hearing on July 25 and was unanimously reported by the Judiciary Committee on July 27. She could have been confirmed before the August recess or at any time in September. I know that the Senate will now do the right thing and confirm her to fill the judicial emergency vacancy for which she was nominated.

I thank the Majority Leader and commend the Democratic Leader for scheduling the consideration of these judicial nominations. I wish there were many more being considered to fill the 67 current vacancies and eight on the horizon. I wish that we were making progress on the Hatch-Leahy Federal Judgeship Act of 2000, S. 3071, and authorizing the 70 judgeships affected by that legislation as requested by the Judicial Conference.

I heard Senator HATCH argue last week that the vacancies on the federal judiciary are ''less than zero''. While I marvel at the audacity of such argument, it moves us no closing to fulfilling our constitutional responsibilities to the federal judiciary. Likewise the notion that the refusal by some to waive the Senate's 2-hour rule in late September somehow preventing the Committee from holding additional confirmation hearings in early September or now is hardly compelling. I wish the Committee and the Senate would have followed the model established in 1992 and continued holding hearings and reporting judicial nominees in August and September. That simply did not happen and despite my requests no additional hearings were held. This year we held about half as many hearings as in 1992. Despite all of our efforts we have been unable to get the Judiciary Committee to consider the nominations of Bonnie Campbell or Allen Snyder or Fred Woocher following their hearings.

The debate on judicial nominations over the last several years has included too much delay with respect to too many nominations. The most prominent current examples of that treatment are Judge Helene White, Bonnie Campbell, Roger Gregory, and Enrique Moreno. With respect to these nominations, the Senate has for too long refused to do its constitutional duty and vote. Nominees deserve to be treated with dignity and dispatch—not delayed for two or three or four years. The nomination of Judge White has now been pending for over four years, the longest pending nomination without a hearing in Senate history.

Of course it is every Senator's right to vote as he or she sees fit on all matters. But I would hope that in the cases of these long-pending nominations, those who have opposed them will show them the courtesy of using this time to discuss with us any concerns they may have and to explain the basis for their anonymous holds and the Senate's refusals to act.

It was only a couple of years ago when the Chief Justice of the United States chastised this Senate for refusing to vote up or down on judicial nominations after a reasonable period for review.

This Senate continues to reject his wisdom and, in my view, our duty.

It is my hope the Senate will confirm all four district court nominees on the Senate calendar. I know there are Senators who want a chance to debate the lack of hearings and the refusal to give hearings to qualified nominees. I understand that frustration, and it is justifiable, especially as it is not the way the Democrats acted when they controlled the Senate with a Republican President.

The nominee from Illinois should have been confirmed some time ago. The nominees from Arizona have zipped through here faster than the Republican leadership has allowed most

judges to go through. When Senators supporting nominations, received months and years before, see newer nominees zip through, they are, of course, frustrated.

The Judiciary Committee has reported only three nominees to the court of appeals all year. We have held hearings without even including a nominee to the court of appeals. We have denied a committee vote to two outstanding nominees who have succeeded in getting hearings; namely, Bonnie Campbell and Allen Snyder. You have to understand the frustration of Senators and those outside the Senate who know that Roger Gregory and Helene White and Bonnie Campbell and Kathleen McCree Lewis and others should have been considered by the Judiciary Committee and voted on by the Senate.

On September 14, Senators BARBARA MIKULSKI, BARBARA BOXER, BLANCHE LINCOLN, TOM HARKIN, and CARL LEVIN and Representative CAROLYN MALONEY from the other body, highlighted the Senate's failure to act on judicial nominations to the Federal bench. They called on the Senate leadership to consider qualified women before the Congress adjourned. They also discussed the problems of judicial emergencies, the length of time it takes women and people of color to be confirmed, and how the Federal courts do not currently reflect the diversity of our country. I do not recall them or anybody else ascribing motives to those who are holding up these people. Rather, they were saying in a diverse country such as ours, the Federal court should reflect the diversity of our country.

They focused on the following women who have been waiting more than 60 days for confirmation: Helene White, U.S. Court of Appeals for the Sixth Circuit, has been pending more than 1,360 days; Kathleen McCree Lewis, U.S. Court of Appeals for the Sixth Circuit, has been pending more than 370 days; Bonnie Campbell, U.S. Court of Appeals for the Eighth Circuit, has been pending more than 215 days; Elena Kagen, U.S. Court of Appeals for the District of Columbia, has been pending for more than 480 days; Lynette Norton, U.S. District Court for the Western District of Pennsylvania, has been pending more than 890 days; Patricia Coan, U.S. District Court for the District of Colorado, has been pending more than 500 days; Dolly Gee, U.S. District Court for the Central District of California, has been pending more than 495 days; Rhonda Fields, U.S. District Court for the District of Columbia, has been pending more than 325 days; and Linda Riegle, U.S. District Court for the District of Nevada, has been pending more than 165 days. That is why these Senators and this Member of Congress made the statement we did.

Mr. President, am I correct in understanding that under the previous order, we are to recess at 12:30?

The PRESIDING OFFICER. The Senator is correct.

Mr. LEAHY. Then I yield the floor and withhold the remainder of my time.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEAHY. Mr. President, I believe I also have an hour under another part of the unanimous consent agreement.

The PRESIDING OFFICER. The Senator is correct.

Mr. LEAHY. I will withhold that and yield the floor.

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RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. INHOFE).

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EXECUTIVE SESSION—Continued

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, the Senator from Vermont has used one part of his time under the unanimous consent agreement, but I understand I have other time under the agreement. How much time is available to the Senator from Vermont?

The PRESIDING OFFICER. On the Teilborg nomination, 1 hour is available to the Senator from Vermont.

Mr. KYL. Mr. President, I suggest to my colleague that we complete the time on the three pending nominees. I could yield back the time that remains on them. Then I will be happy to allow Senator LEAHY to conclude his remarks on the time he has under the Teilborg nomination, and then I can comment with respect to that nomination.

I yield back all time remaining on the three judicial nominations.

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NOMINATION OF JAMES A. TEILBORG, OF ARIZONA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

The assistant legislative clerk read the nomination of James A. Teilborg, of Arizona, to be U.S. District Judge for the District of Arizona.

Mr. LEAHY. Mr. President, I understand that under the prior unanimous consent agreement the distinguished Senator from Utah, Mr. HATCH; the Senator from Arizona, Mr. KYL; and I each have 1 hour for the Teilborg nomination, and the distinguished Senator from Iowa, Mr. HARKIN, has up to 3 hours, unless time is yielded back, is that correct?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be able to yield 5 minutes to the distinguished Senator from North Carolina, Mr. EDWARDS, without losing my right to the floor.

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

The Senator from North Carolina is recognized.

Mr. EDWARDS. Mr. President, I am pleased that today we are discussing some of the vacancies that exist in the Federal judiciary. There was a discussion this morning about an issue that is near and dear to my heart and important to the folks in North Carolina, which is the vacancies on the U.S. Court of Appeals for the Fourth Circuit.

Senator ROBB came down and discussed Judge Gregory's nomination. Chairman HATCH responded. I would like to say a few words about that discussion.

There are 15 authorized judgeships on the Fourth Circuit Court of Appeals. There are presently only 10 active judges on that court. By tradition, my State of North Carolina, which is the largest, most populous State in the Fourth Circuit, is allocated three of those judgeships. Out of those 10 judgeships —presently active judges on the Fourth Circuit—how many come from North Carolina? None.

We are the only State in the nation that is not represented on a Federal circuit court, along with Hawaii. We are the largest State in the circuit. We have the largest population in the circuit, and we don't have a judge representing our State on this court. That has been true since Judge Ervin died in 1999.

The people of North Carolina, who have cases regularly heard in the Fourth Circuit, have no one there representing them. In addition, to the extent the court is regularly interpreting matters of North Carolina law, which it is required to do in diversity cases, there is no judge in this court who is trained in North Carolina law. Now, this Congress recognized some time ago how important it was for States to be represented on their circuit courts of appeal by enacting a law—in fact, requiring that States have a judge on their Federal circuit court of appeals. We have none. As I indicated before, along with Hawaii, we are the only two States in the country that are not represented on our circuit court of appeals.

Now, Chairman HATCH had some discussion this morning about Judge Gregory and his nomination to the Fourth Circuit in the State of Virginia, and the fact that that was a slot traditionally allocated to my State of North Carolina.

My question to Chairman HATCH is: What are we doing about the nomination of Judge Wynn? Judge Wynn is a very well-respected, very moderate, centrist jurist from North Carolina, who has been nominated for over a year from my State to fill a vacancy that is traditionally allocated to North Carolina. There is no question that Judge Wynn would be approved by this