

Would Senator McCONNELL be willing to give up 15 minutes of his time?

Mr. KYL. I say to the Senator from Nevada, Senator McCONNELL has asked me to represent him during this period of time. I would be happy to do that if that would be the preference of the Senator from Nevada and the Senator from Vermont.

EXTENSION OF MORNING BUSINESS

Mr. REID. Mr. President, I say that I do not see anyone in the Chamber wishing to speak on the Democrat side; I am sure there will be somebody shortly. Why not have until 5 o'clock set aside equally between the majority and minority for morning business, and at 5 o'clock Senator LEAHY and Senator McCONNELL will use their time as appropriate. I ask unanimous consent that be the order.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). Without objection, it is so ordered.

Mr. KYL. I thank the Senator from Nevada.

JUDICIAL VACANCIES

Mr. KYL. Let me summarize where I was, Mr. President.

The point is, we are a country that relies upon our courts to administer the rule of law. At the Federal level that means we need to have a fully staffed Federal judiciary. We always know there are a certain number of vacancies at any given time. But we need to complete action on as many of the nominations pending before us as possible, certainly before we leave perhaps some time next month.

In the past, it has been the case that Members of both parties have expressed concern about the fact that we have vacancies and that we need to fill those vacancies. I will make note of that in just a moment because some of my colleagues on the other side have been eloquent about their commitment to try to get the process done.

My point is, with over 40 vacancies designated as emergencies by the Administrative Office of the Courts that characterizes vacancies as "emergency" or "nonemergency," with over 100 vacancies now, over 40 of which are emergencies, it is not business as usual. We cannot continue to have maybe one hearing a week, with maybe one or two judges being considered. We have only confirmed eight judges this entire year; most of them quite recently—only eight.

At that pace, we are clearly not going to be able to act even on the President's nominees that existed at the time we began the August recess. These are nominations made in May, in June, I believe, mostly—maybe a couple in July. Clearly, we ought to at least act on those nominations before we terminate our business this session.

But if we do not get about that task very soon, there will not be enough in

the pipeline coming from the Judiciary Committee to get that work done. That is why I have said we are going to have to have a timeout. If the argument is we just don't have time, we are too busy doing other things, then I am willing to say: Then let's call a timeout. Let's get to the nominations. And when there is a sufficient number of nominations completed, then we will go back to our other priorities.

We will continue to pass continuing resolutions to fund all of the various operations that are the subject of the appropriations bills. There will be nothing lost from that process.

We will pass the appropriations bills. No one suggests otherwise. But in terms of priorities, if we do not act soon on these judges, two things will happen: No. 1, we are not going to have enough time to complete the work on those before we quit; second, we will not fill these vacancies that have been declared emergency vacancies by the Administrative Office of the Courts.

So that is my reason for calling this timeout. It is my reason for urging people to vote against the motion to proceed to the foreign operations bill, which I very strongly support, incidentally.

I will represent to my colleagues that Senator McCONNELL, who is the ranking member of that subcommittee, did, indeed, ask me to represent him until he arrives this afternoon. He may be in the Chamber by 5 o'clock. He may not. But it is his view that this is an appropriate objection at this time to moving forward with action on that bill.

Since I see a couple of my colleagues are in the Chamber to speak, let me simply say, when I resume my comments, I will speak statistically to where we are in this current situation vis-a-vis past administrations and make the point that it pretty much does not matter how you cut it. By any statistical measure, we are far behind.

In the Reagan administration of 8 years, in the Clinton administration of 8 years, in the previous Bush administration of 4 years—in every case, with one exception, every single Presidential nominee for the courts that was made prior to the August recess was acted upon before Congress adjourned for the year.

There are 30-some vacancies for the courts now. I do not see, at the current pace at which we are operating, how we can come close to completing action on those nominations. Actually, if you were to compare the numbers through October 31, it would be a better measure, and that would make it virtually impossible for us to get all these nominations done when we are so far behind at this point.

I think an even more conservative proposal of just acting on those nominees the President sent to the Senate prior to August would be perfectly appropriate. I see no reason for us not to do it. That is why I am willing to say until we do that, we need to defer action on our other business so we can indeed get about this job.

With that, Mr. President, I reserve the time until we take up the motion to proceed to the bill.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I want to follow up a bit on what my friend from Arizona has talked about. Certainly, each of us recognizes that things have changed substantially since September 11.

I spent the weekend in Cheyenne, WY, and much of it with the National Guard. These great men and women are continuing to carry out their duties in protecting the country, as well as now doing the special things, such as airport security, and other requirements they have. Some have just returned from Bosnia, as a matter of fact.

I guess my point is, things changed for all of us; and special things come up at times such as we are in now. But it is also necessary for us, after we have done the things we have to do for those special times, to go ahead and do the things that we ordinarily have to do. Life goes on, and we have to continue to pursue that.

I think very much that is the case now with issues we have before us, special things such as airport security, special things such as the declaration, really, of war on terrorism, which we have done. Those things needed to be done.

Now, of course, we need to do appropriations. But we also have to do the mundane things such as the confirmation of judges, the seating of U.S. attorneys, many of whom have a very real role in this matter of domestic terrorism.

I, too, believe we have to work these two things out together. I understand the frustration of the leadership in the majority when they are seeking to move things, but I have to remind us, for example, that on July 21, 2000, while objecting to Majority Leader LOTT's attempt to proceed with the intelligence authorization bill, the minority leader—now majority leader—said this:

I hope we can accommodate this unanimous consent request for intelligence authorization. As does Senator Lott, I recognize that it's important. I hope we can address it. We must address additional appropriations bills. There is no reason that we can't. We will find a compromise if there is a will, and I am sure there is. But we also want to see the list of what we expect will probably be the final list of judicial nominees to be considered in hearings before the Judiciary Committee.

This is what he said as he held up that appropriations bill.

Our friend from Nevada, on July 24, while objecting to Senator LOTT's repeated attempt to move forward, said:

We believe there should be certain rights protected. Under this Constitution, we have a situation that was developed by our Founding Fathers in which Senators would give the executive branch, the President, recommendations for people to serve in the Judiciary. Once these recommendations are made, the President would send the names to the Senate and we would confirm them and