

So the President has that report. Then he decides whether or not to submit the name. And that report is available to all of us in the Senate—only the Senators—in confidential form. We can go and examine that report. If we see something we do not like, even though the President has approved that person, we can oppose a nominee on that basis. So that is the way the system works.

After the nominee hits the Senate, the Senate sends a big questionnaire to the nominee. First the President submits a big questionnaire to the nominee, and depending on the investments and the career of the nominee, the questionnaire can have hundreds of pages of responses to all these questions. Then we have another one from the Senate. That one is done. Then the ABA, the American Bar Association, goes out and does their background check. They talk to judges. They talk to lawyers. They talk to the president of the local bar association, the president of the ABA, the members of the ABA from that community. They talk to people who have litigated in intense situations with the nominee. That is an important factor. In the pit, in the depth, in the intensity of a big-time lawsuit, if the person has character flaws, they will usually show up. Most lawyers are pretty objective. They will fairly evaluate a person they have litigated against, and they will tell the ABA and the FBI what they think about them.

So then the ABA makes their recommendations as to whether or not this nominee is “qualified” or “exceptionally well qualified.”

I think that is a pretty good process. So I suggest it is not wise at that point to say: Mr. Nominee, after you have done all these things, it is your burden, as we sit up here as Senators, to convince us, after the tremendous career you may have had in the practice of law—maybe you have a well-qualified rating—you have to convince us to vote for you. I do not know how you do that.

I think the record speaks for itself. Historically we have not had that as a standard. In fact, in the first 125 years of this country's existence we never even had hearings on the nominees. If something came up on a nominee that the Senate did not like, they could object, but they did not even have hearings on the nominee. I do not mind an objection to hearings; it is probably a healthy thing. The Senate should not be a rubber stamp. But also we should not put that burden on the nominee, after they have done all that, before they are confirmed.

So, Madam President, we will also have another series of hearings that are designed to intensify a basis for opposition to President Bush's nominees, all of which I think is a dangerous direction. So I say all that as a matter of background. That is not myth. That is not an unfair characterization of where we are.

There is a move, apparently, by some, to change the ground rules of confirmation. It has, apparently, already begun to infect our process.

I have some charts in the Chamber I would like to show that depict where we are in terms of vacancies in the Federal courts today.

In the 103rd Congress, there were 63 vacancies at this same time period. This was during a time when Senator BIDEN, a Democrat, chaired the Judiciary Committee.

In the 104th Congress, there were 65 vacancies during this same time period. Senator HATCH was chairman of the Judiciary Committee. There were 65 vacancies. This was during President Clinton's administration.

Then, with a Republican chairman, a Republican majority in the Senate, and a Democratic President, Chairman HATCH got the number down to 50 vacancies.

Then in the 106th Congress, the last year of President Clinton's administration, there were 67 vacancies—just about the traditional average. In fact, historically they tend to be a little higher in the last year of an administration.

But now, just a few months later, the vacancy rate has surged from 67 to 110. Perhaps it is 108 today after those confirmations, but that is an unhealthy trend. I believe President Bush and those who want to see him have a fair day for his judges have a right to be concerned in light of particularly the statements that they want to change our ground rules.

One of the things we have found, as we have looked at the process, is that the Senate, regardless of who is in the majority party, has done a good job of confirming judges who were nominated prior to August in that first year. In other words, from January through July, the President submits his nominees, as he can. It is a little difficult for him at first because he has a lot of people to appoint—he has a Cabinet to select, and new things are happening for the President in those first months—but, fundamentally, we have seen that the President has done very well with the nominees he has submitted.

President Reagan, in his first year in office, was able to get every judge he nominated, prior to August, confirmed before the Senate recessed for the year in November or December. He had 100 percent confirmed.

Former President Bush got 100 percent of his nominees confirmed during that time.

President Clinton got 93 percent confirmed. I think there was one judge who did not get confirmed who was nominated before August. This was under President Clinton and a Republican Senate—well, maybe it was a Democrat Senate at that time. They did not confirm one, but all the rest were confirmed.

But under this President, President Bush—and we are coming along to the

end of this session; there are people saying we ought to be out of here in a month or less—has only gotten 18 percent of those judges confirmed.

I know there have been some things that have happened that make it a little difficult, but, frankly, I think we ought to work a little harder. We have had a change of party, and we have had an attack on America that has disrupted us in many ways. But many of these nominees, you have to understand, are highly rated by the ABA. They are highly respected by their local men and women in the bar association, and no one objects to them. They have no objections against them. Republicans and Democrats back home support them.

There is one from my district. She worked for me. She was hired as an assistant U.S. attorney under President Carter. She worked 12 years for me. Absolutely wonderful. She recently received a unanimous “well qualified” rating. She has no political agenda. A lot of these nominees are like that, just good lawyers, men and women of integrity and ability. They need to be moved forward. We could be a lot further along than we are today.

One of the reasons we are behind is that we are not bringing enough of these noncontroversial judges, or any of the judges, forward at hearings on nominations.

Under the heading “judicial nominees per hearing,” in 1998, they had 4.2 judges as the average number per hearing to be confirmed.

We have a hearing in which the judge appears and answers any questions Senators might have. Later there is a vote within the committee whether or not to confirm.

You can't have a vote in the committee until there has been a hearing to take information and question the nominee about anything anybody would like to ask. So the hearing is a critical step in getting confirmations. In 1999, it was 4.2. In 2000, it was 4.2.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate now stands in recess until the hour of 2:15 p.m.

There being no objection, the Senate, at 12:30 p.m., recessed until 2:14 p.m. and reassembled when called to order by the Presiding Officer (Mr. CLELAND).

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2002—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. What is the matter now before the Senate?

The PRESIDING OFFICER. A motion to proceed to H.R. 2506.

The Senator from Alabama is recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. 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. MCCONNELL. Mr. President, as the ranking member of the Foreign Operations Appropriations Subcommittee and coauthor of the bill with the Senator from Vermont, obviously, I would like to see the bill pass, and pass sometime soon. But the point this side of the aisle made yesterday afternoon is that we do need to have some cooperation in moving forward on the President's nominees for the circuit district courts across America.

An essential part of our job in the Senate is confirming these judges. The President has nominated judges to fill these vacancies at a record pace.

In fact, his first 11 nominations were sent to the Senate on May 9 of this year, more than 2 months earlier than any of the previous 3 Presidents in their first years. Of these 11, all received either the highest or second highest rating available from the American Bar Association, and all have had their paperwork complete for many months. In eight situations, there were formal judicial emergencies. Yet only three have received a hearing.

This is the situation in which we find ourselves. Looking back at recent history, looking at the first year of each of the three previous administrations, with one exception, every judge nominated before the August recess was confirmed before the end of the year.

Let me repeat that. Looking back at the last three administrations, in the first year of each of the last administrations, every judge, with one exception, nominated prior to the August recess was confirmed in the first year of those administrations.

There is simply no good reason to move so slowly. It is easy to have hearings, and when you have hearings, it is easy to have a number of different judges at that hearing. I am sure the chairman has made the point that he has had a number of hearings. The problem is we have not done any judges at the hearings. So we need to give these outstanding nominees an opportunity to have their hearings, to have their votes in the Judiciary Committee, and to have their votes on the floor of the Senate.

Part of fighting the war on terrorism is to have a judiciary that is adequately staffed. There is a very significant, a very high vacancy rate currently in the Federal judiciary across America.

This pace we have been following is just painstakingly slow and is really not necessary at all. As time passes and we do not have serious action on judicial nominees, the situation gets

worse. Just today, another judge, Charles Wolle of the Southern District of Iowa, announced he has taken another status.

Another day has gone by, and we have lost another judge. The vacancy situation has now risen to 109, which is almost 13 percent of the Federal bench. That means that more than 1 out of every 10 seats is unfilled. Justice delayed, as we all know, is justice denied. And if there is not a judge on the bench, obviously you cannot get justice.

The situation is much worse than it was just a couple of years ago when our colleagues on the other side of the aisle were urging action on judges. I want my colleagues on both sides of the aisle to understand that I am not engaging in hyperbole. My conclusions are based on the specific standards articulated by our Democratic colleagues.

For example, just last year when there were only 76 vacancies—at the moment we have 109 vacancies—just last year when there were only 76 vacancies, Senator DASCHLE stated:

Looking at those figures, one might assume we have no pressing need for Federal judges. In fact, just the opposite is true. Today, there are 76 vacancies on the Federal bench. Of those 76 vacancies, 29 have been empty so long they are officially classified as "judicial emergencies." The failure to fill these vacancies is straining our Federal court system and delaying justice for people all across this country.

That was March 8, 2000, at the time there were 76 vacancies, just 18 months ago. Now there are 109 vacancies and very little to no action has been taken.

Some of our colleagues have tried to shift the blame to the President for our lack of progress, but this is clearly not the case. As I indicated at the beginning of my remarks, President Bush has submitted more nominees to the Senate and at a faster pace than any President in recent memory.

Specifically, he submitted his first batch of nominees in May, a full 2 months before President Clinton submitted his first nominees. The administration has done an extraordinary job. President George Bush has gotten his nominees up here 2 months before President Clinton got his first nominee up. By the August recess, President Bush had submitted 44 judicial nominees, another record. So the President and his administration, on the issue of getting nominees vetted and up to the Senate, has clearly surpassed recent administrations.

You cannot blame our lack of progress on the change of control of the Senate and the time to get an organizing resolution because after the change in Senate control, 9 different Senate committees held 16 different nomination hearings for 44 different nominees before reorganization was completed.

Let's go over that again. It has been suggested that somehow the shift in control of the Senate slowed down the consideration of judges. Yet since the shift in the Senate, since the reorga-

nizing resolution was passed, 9 different Senate committees held 16 different nomination hearings for 44 different nominees before reorganization was completed, and one of those committees even held a markup during the reorganization period. I am talking about the period during the discussion of reorganization.

By contrast, during the same period, the Judiciary Committee did not hold a single confirmation hearing for any of the 39 judicial and executive branch nominees who were pending before us.

Let's take a look at that one more time. I am talking about the 3-week period when we were discussing how to reorganize the Senate. The Senate had shifted hands to the Democrats, and we had a 3-week period where we were discussing how to reorganize. During that 3-week period, 9 different Senate committees held 16 different nomination hearings for 44 different nominees prior to the reorganization discussion being completed. One of those committees even held a markup during the reorganization period.

During that 3-week period we were discussing reorganization, after the Senate shifted hands to the Democrats, what was happening at the Judiciary Committee? Absolutely nothing. It did not hold a single confirmation hearing for any of the 39 judicial and executive branch nominees who were then pending before us.

The notion that nothing could be done during the period we were discussing how to reorganize the Senate certainly did not affect these other nine committees that were holding hearings and in one case even held a markup on nominees for jobs other than the judicial jobs.

It seems to me the reason for our slow progress has been a lack of efficiency. While we have had some hearings, we have not come close to getting the most out of the hearings. In fact, it seems as if we have gotten the least out of the most. Specifically, during the period from 1998 to 2000, the Judiciary Committee averaged 4.2 judicial nominees per hearing. This year we have averaged only 1.4 judicial nominees per hearing. That is a pace that is three times as slow.

The issue of having hearings is not as significant as the question of what did you do in the hearing.

As I indicated, if you average up the number of judicial nominations dealt with per hearing, in 1998 it was 4.2 judicial nominees per hearing in the Judiciary Committee; in 1999, 4.2 judicial nominees per hearing; in the year 2000, 4.2 judicial nominees per hearing.

This year, strangely, we have only dealt with 1.4 judicial nominees per hearing. The number of hearings is interesting but not relevant to the subject of processing judges because we have had only 1.4 judges dealt with per hearing even though each of the last 3 years there were 4.2 judges per hearing. Obviously, we can do a lot better than that. It is not too late. The session is

not over. It is not too late for the Senate to act, at least on the remaining 38 judicial nominees who were submitted to the Senate before the August recess.

In the last three administrations, of the 30 judges submitted before the August recess, 23, or 77 percent, were confirmed in the fall after the August recess.

I have to quote a colleague, the chairman of the Judiciary Committee, on our ability, if we set our minds to it, to do this. Last year, when there were only 60 vacancies, Senator LEAHY said: Having begun so slowly in the first half of the year, we have much more to do before the Senate takes final action on judicial nominees this year. We misused all the time for adjournment to remedy the vacancies that have been perpetrated on the courts to the detriment of the American people and the administration of justice. That should be a top priority for the Senate the rest of the year.

This was Chairman LEAHY, last year, dealing with the very same kind of situation, which is to get our work done on judges, a year in which we were doing way more judges than we have done so far this year.

I must correct my colleague from North Dakota who earlier today said our failure to act on the foreign operations bill, which I care deeply about, is jeopardizing much needed funds for embassy security. As the ranking member on this bill, I assure my colleagues that is not the case. The money for embassy security is not in the foreign operations bill, not in this bill at all. It is in the Commerce-Justice-State bill. So nothing is being jeopardized by the failure to pass the foreign operations bill on one day versus a few later, after we reach an understanding on how to deal with the President's nominees sent up before the August recess.

In sum, all we are asking for is a specific concrete commitment to have President Bush's nominees treated in the same manner as nominees of his predecessors. Until we get such a commitment, I think it is clear from yesterday's vote it will be difficult to make progress on the appropriations bills. Let me again say, as an appropriator, as a former chairman of the foreign operations subcommittee, and now ranking member, I certainly would not argue that the bill is unimportant. It is an important bill. A long time ago, we learned how to walk and chew gum at the same time. We can do more than one thing. We can have hearings before the Judiciary Committee. We can deal with more than 1.2 judges per hearing. We can get our work done. We can get judges out of committee. We can get them voted on and pass appropriations bills at the same time.

I hope sometime in the next day or two we will be able to reach an understanding as to how to go forward on both of these important issues, the foreign operations bill and the confirmation of the President's nominees, or at

least a vote on them—Senators can certainly oppose them if they choose but vote on the nominees who came up before the August recess as we have done in previous years for other Presidents.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have worked with Senator DASCHLE for 20 years. I have served with him almost 20 years, or very close to 20 years. When I came to Washington, he already was a veteran legislator. Since the first time I met him until just a few minutes ago when I talked with him, he has been one of the nicest, fairest people I have ever met. As a legislator, he qualifies as being outstanding. As minority and majority leader—and I have served under a significant number of them—he is unparalleled. He has the ability to understand issues, to work with people of all different persuasions and never, ever lose his patience and always has enough time to talk to someone. I am amazed at the ability he has, as harassed as he appears, to me, to be with people wanting this and wanting that, to take time in a lengthy telephone conversation with someone who has an issue.

The only reason I am saying this, the minority doesn't understand the problem they have; that is, we have said we are going to move judicial nominations as quickly as we can. And we are. And we have. All of the cajoling and threatening they do on the other side will not get them any more judges. We are doing the very best we can.

For the whole time that Senator HATCH was chairman of the Judiciary Committee—and Senator HATCH is someone about whom I care a great deal; he comes from the neighboring State of Utah. I like him; I have no criticism of Senator HATCH. He never, during the time he was chairman of the committee, to my knowledge, held confirmation hearings 2 weeks in a row. We are going to do that. Maybe it will set some dangerous precedent where we will have judicial confirmation hearings 2 weeks in a row, but we are going to do that because it is the right thing to do.

My friend, about whom I care a great deal, the Senator from Kentucky, and I have worked together on a number of issues. As stated, it will be difficult to make progress unless something happens on the judges. I don't know what they want us to do to make progress on the judges. We cannot guarantee this many or that many.

I spoke to Senator LEAHY four times today on the judicial nominations. I have spoken to his staff. He is trying to come up with people for the hearing next week, but the paperwork is not in on the vast majority of the people. He cannot do the hearings unless the paperwork is completed.

It is interesting, but you cannot do the hearings without the FBI report. You cannot do the hearings without

the Justice Department reporting. You cannot do it unless all the paperwork, which is very traditional, is in. And it is not in. The fact they have sent people down here doesn't mean the paperwork is done. This isn't paperwork we invented. It is paperwork that has been traditional in trying to find out if this person should be a member of the Federal judiciary.

As my friend from Kentucky said, it is difficult to make progress. He also said: You can do two things at once. That is what we have heard today.

The Senator from Wyoming said we can do two things at once. Of course, we can do two things at once. But we are not even doing one thing. These appropriations bills are extremely important.

Mr. MCCONNELL. Will the Senator yield?

Mr. REID. I am happy to yield.

Mr. MCCONNELL. On the issue of paperwork, according to my staff, 29 of the judges have all the paperwork—29.

Mr. REID. I say to my friend from Kentucky, I don't know where you are getting this information.

Mr. MCCONNELL. As a member of the committee, it is not a secret. We are entitled to know that.

I am saying to my friend I believe the paperwork is completed, entirely completed, on 29 judges who are before the committee. A couple have had hearings.

Mr. REID. Senator LEAHY, to whom I spoke several times today, has indicated to me that the paperwork on the vast majority of the confirmations the President is seeking has not been completed. I also would say, in response to my friend from Kentucky, regarding the chart, "Judicial Nominations Per Hearing," the fact is, of course, the number of judges per hearing has some merit. But also it is acknowledged that Senator LEAHY has held more hearings. So even though you do not do as many judges per hearing, if you do more hearings, it all adds up to the same thing anyway.

As I have said here on several different occasions, you can prove anything with statistics or disprove anything with statistics. The fact is, we are ready to move forward on appropriations bills—"bills" in the plural. Senator MURKOWSKI comes to the Chamber every day saying, let's do something on an energy package. We can't. We can't until we finish the business at hand.

The continuing resolution is going to run out in a few days. Then we will need a third continuing resolution. It is 3 weeks until Thanksgiving. I hope the Senator from Alaska understands that there will be no energy bill, nor can there be, until we finish the work that we have. And the work now before us is the Foreign Operations Export Financing, and Related Programs Appropriations Act for 2002. My friend from Kentucky says it is a good bill and he supports it.

Some are saying this is not all about judges; it is about having one big appropriations bill. This is a way to stall

our individual appropriations bills and then we can have one big bill and go home. I think that would be too bad. There are specific things this administration has requested in this bill that will not happen unless it is done in this bill. It will not be done with a continuing resolution.

We have people, especially from the heartland of this country, but there are others, of course, who also care a great deal about a farm bill. We can't take up a farm bill until we finish these measures that are now before the Senate, foreign operations and the other appropriations bills.

I don't know what magic is expected. Of course, it is difficult to make progress, as my friend from Kentucky has said, when we are not allowed to go forward on any legislative matters. As I have said on a number of occasions, we have not held up judges saying we are going to hold these until we are able to move forward on appropriations bills. When there were judges last week, we reported them out. We have done that on all nominations. We have reported them out.

There was talk this morning, why haven't you done all the Federal marshals? We haven't gotten any. The Judiciary Committee doesn't have any U.S. marshals. We can't report them out if we don't have them. Why don't we do U.S. Attorneys? There may be some who know better than I, but we have never seen a slower process in sending down U.S. Attorneys. Last week we reported 14 of those we have. We reported out 14 attorneys. I am sure they have all taken their oaths of office by now.

We are going to move forward as rapidly as we can on judicial nominations. If the minority doesn't want us to do the appropriations bills, then that is something they can do procedurally. They can stop us. They can bar us from doing that. But in the process, the important work of the Senate will not get done.

No matter what happens with the minority, we are going to move forward in good faith and get as many judges, U.S. Attorneys, and U.S. marshals as we can. Whatever they decide to do on the other side is not going to change the number of judges we are going to do. We are going to do the very best we can because we also believe it is important to the country to have a full staff of U.S. marshals, full staff of U.S. Attorneys, and a full Federal judiciary as quickly as we can.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. McCONNELL. I say to my friend from Nevada, the dispute is not about U.S. Attorneys or U.S. marshals. That is not why all the Republicans voted against cloture on the motion to proceed to the foreign operations bill yesterday. It is about the judicial nominations.

Mr. REID. Let me ask one question.

Mr. McCONNELL. I yield for a question.

Mr. REID. I didn't bring up the number of U.S. marshals and U.S. Attorneys; various members of the minority brought this up as a form of criticism. And I am glad that is not a criticism because on those there really is no dispute; we are doing the very best we can.

Mr. McCONNELL. Even on U.S. Attorneys, there are a number before the committee—I don't have the number before me—that have not been acted upon.

The concern of the Republican conference, I assure my friend from Nevada and Members of the Senate, is not about U.S. Attorneys and about U.S. marshals. As we all know, those offices have a number of professional civil servants. In the U.S. Marshal Service and the Assistant U.S. Attorneys, typically when there is a U.S. Attorney vacancy, there is an acting U.S. Attorney. They are able to function. But a judge who isn't there can't rule. When you have a judicial vacancy, you have a vacancy. There isn't such a thing as an assistant judge, a civil servant who can sit in cases and make rulings. The U.S. Attorneys offices are functioning. The U.S. Marshal Service is functioning. Absent judicial seats do not function.

With regard to whether or not all the paperwork is in, I say to my friend from Nevada, I do now recall that the chairman has prepared a new questionnaire that he has sent out. I am told, over the last couple of weeks. Since there is a brandnew questionnaire that just went out in the last couple of weeks, it could be some of those are not in. But until the last 2 weeks, the understanding of the committee was that the completion of the ABA report completed a file. That has happened with 29 of district and circuit judges who are ready to be acted upon. It is time to move.

I see my friend and colleague from Arizona is here. I am happy to yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I wanted to make a couple of comments and then I know the Senator from Iowa wants to speak to a subject which is very, very important: U.S. relations with Pakistan. I am anxious he have that opportunity so I will be very brief.

One of the things the Senator will say is that Pakistan has really stuck its neck out in support of the United States position in this war against terrorism. Pakistan is in a very dangerous neighborhood, and the United States has to do everything we can to support Pakistan in its time of need.

Almost all of us in this body, and certainly the administration, agree with that proposition. So we are going to have to do everything we can to assist them. By the way, there are some things in the appropriations bill that will be before us, hopefully relatively soon, that will assist in this regard as well. In the meantime, there are a lot

of other things we can be doing to assist Pakistan.

In response to what has been said here with respect to the motion to proceed on the Foreign Operations bill, Senator McCONNELL is absolutely right about the delay that has been occurring in the consideration of judges. As he has said, he is the ranking member of this appropriations subcommittee and has chaired the subcommittee for the last several years. While it is important to get the foreign ops appropriations bill before us, the fact is we are going to have a foreign ops appropriations bill. We have a supplemental that covers the situation until then, so there is not a single day that goes by that we are not providing the money that is called for under this legislation. So this is not about holding up the Senate's business or holding up the Foreign Operations Appropriations Bill. All of that is going to be done. That is not the issue before us.

The issue before us is occasioned by the fact that there were some who said we are so busy we just can't get to these nominations. My response is: Fine, we will just call a time out until we can catch up with some of the nominations. In each of the three preceding administrations—the Reagan administration, 8 years' worth; the Bush administration, 4 years; and 8 years of President Clinton—in their first year every single one of the nominees that had been sent to the Senate by the August recess were confirmed by the end of the year with only one exception. Yet it is going to be virtually impossible for that to occur now. There were 44 nominees sent up by President Bush before the August recess. We have confirmed eight. That leaves 36. At the pace the Judiciary Committee, of which I am a member, is holding hearings, we are not going to be able to complete work on even half of those nominees.

Part of the reason we have tried to focus attention on this matter is to say we have to get to work in the Judiciary Committee. We have to have the Judiciary Committee hold hearings, approve the nominees for consideration by the floor so all of us can then consider the nominees. They are going to be approved on the floor. I doubt very many, if any, are going to be disapproved. But certainly, in any event, whether you like the nominee or not, the argument has been made for years that they at least deserve a vote, and I think all of us would agree with that. So we have to do something to take up consideration on these nominees. Time is short. We have only another 4 or 5 or 6 weeks to go in this session.

If we don't get to work here pretty soon, we are not going to be able to confirm the same percentage of judges that have been confirmed in prior administrations.

There have been two parliamentary or rhetorical tacks taken by those on the other side of the aisle. One is the red herring, the President hasn't sent

up very many nominees for U.S. marshals. That has nothing to do with the fact that a whole lot of nominees are pending for judge. I daresay, as important as the marshals are, the judges are more important. We have got to get them confirmed.

Then there was the comment that the President could send up a lot more U.S. attorney nominations than he has. Again, it is a red herring. He could. We will confirm them, too. They are also important.

But let's get back to the judges. In other words, let's stop trying to change the subject. President Bush has nominated more candidates for judgeship at this point in his Presidency than any of the past three Presidents.

With respect to nominees to the court, the President has done his job. Granted, he got a bit of a late start because his term as President got a bit of a late start because of all of the business following the election results. But, once he got started, he named nominees at a faster pace than his three predecessors.

That is what is pending before us—60 nominations with only 8 confirmed. We are saying that all of those ought to be considered by the Senate and by the Judiciary Committee. But, at a minimum, those nominated prior to the August recess should be considered by the full Senate.

Mr. McCONNELL. Mr. President, if the Senator will yield, the Senator is right on the mark. It is not too late to do the right thing, which is one of the points we are trying to make to the Senate and to the country. In those first years of those three administrations to which the Senator made reference—and I have talked about others—77 percent of those confirmed were confirmed after the August recess, which means it is not too late.

The idea some on the other side of the aisle may be thinking—that we can't possibly replicate the standard here—is not true. It can be done. We simply need to have hearings and have more than 1.4 judges heard per hearing. Hearings don't mean a whole lot if you are not having judges before the committee.

I commend the Senator and echo his thoughts. It is not too late to do the right thing. That is what we are saying.

Mr. KYL. Exactly. At the rate of 1.4 judges per hearing, there is no way we will be able to have enough judge nominations that can come to the Senate floor for confirmation before we adjourn for the year. That is why we have to not only have more hearings but we have to have more judges at each hearing.

Basically, there are a couple of dozen, or more, of these pending 36 that haven't had hearings. That means that even if you have one hearing per week rather than one per month, and you have maybe five candidates per hearing, you are just barely going to be able to have enough hearings to get the

candidates voted on and get them to the Senate floor in order for us to be able to confirm them before year's end.

While it is true that it is not too late, it will be too late if we don't get a commitment right away to have the Judiciary Committee hold hearings for the candidates and have business meetings at which the committee can then vote on them, and then have the ability for the full Senate to take up the nomination.

To further validate what the Senator from Kentucky just said, the fact is that in almost every case in the past several years the nominees are voted on as a bloc by voice at the end of the day, or by a unanimous consent. In other words, the majority leader will usually stand up and say: I ask unanimous consent that we now go to Executive Calendar number such-and-such and consider the following 14 candidates for judge. The clerk reads the names. Is there any objection? Without objection, it is so ordered. It is done. That is all the time it takes.

It is true that the chairman of the Judiciary Committee since June has insisted on rollcall votes on the Senate floor. That is fine, too. That takes 20 minutes per judge. We can do that. We can have debate before that. No problem. We are saying that we now have an opportunity to do that; let's do it.

I want to make the point that you can try to change the subject if you want, but you can't deny that we are not moving as rapidly as possible. For anybody to stand here and say we are moving as rapidly as possible runs counter to the facts. We could be holding hearings. We are not. We could be voting to approve those who have had hearings. We are not. We could bring those people to the floor for a vote. We are not doing that. It is simply incorrect to say we are moving as fast as we can or that we are doing as much as we can.

Unless somebody brings all of this to the attention of the American people and also the other people in the body, this matter simply slides until it becomes too late to consider those candidates.

We should not be using the horrific events of September 11 and the business we have had since as an excuse not to take action on a matter. In fact, one can make the argument that it is more important than ever that we fill these important positions. That is simply the point I wanted to make.

But I want to defer now to the Senator from Iowa who I know has an important point to make about this war on terrorism and the position of the United States in supporting one of our allies, in particular the country of Pakistan, something that is very important for us to do. In advance, I applaud his remarks.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

THE NATIONAL AGENDA

Mr. NELSON of Florida. Mr. President, we are in times when it seems we

ought to be doing what is on the top of the national agenda. Meeting this terrorist threat, providing the resources to our military, and providing the humanitarian assistance in our efforts in Afghanistan clearly should be at the top of the agenda.

In meeting the national economic condition we have seen as a result of the airlines having the difficulty of getting their passengers back, it took us 3½ weeks to get the aviation and airline security bill passed in this body. When it finally passed last Thursday, it was on a unanimous vote. But it was filibustered. We had to go through all the motions of breaking the filibuster to finally get it to where we would get a unanimous vote because different people had different agendas.

So, too, we find ourselves now with the foreign operations appropriations bill being held off and last night having the motion for cloture defeated. We couldn't get 60 votes so that we could proceed on this very important appropriations bill that directly affects what we are doing on the other side of planet Earth at this moment. We simply must move swiftly to conduct the business of the American people.

There is no more urgent pending business than this foreign operations bill that we are simply trying to get to, but we keep being held up in the Senate. This foreign operations bill gives the administration and Secretary of State Powell the resources and tools needed to build the international coalitions that are so necessary in fighting this war on terrorism. It is clearly necessary for us to be able to successfully conduct the operations of Enduring Freedom.

Specifically, this bill provides funding for the important international initiatives vital to conduct U.S. foreign policy.

If this foreign operations bill does all of that, why are we having the difficulty of getting to it? Why can't we have our debates where there might be disagreement on something other than a bill that is so important to the national agenda and supporting our men and women in uniform over in the central Asian region of the world?

Let me talk about something else that this bill does. It provides \$5 million for Afghan refugees.

Why is that important? It is important because we have a major two-pronged effort in Central Asia. We have the military effort, and we have the humanitarian effort. We are dropping food. We want to be able to win the hearts and minds of those people. We want to take the example of what has happened in North Korea, a communist dictatorship, where we have sent bags of food that the people of North Korea know have come from the United States because the bags say, in the native language, "This is a gift from the people of the United States of America," and those people know it. Because of their starvation, those North Koreans are very appreciative.

Do you know what they do with those bags, those sacks after, in fact, they have eaten the food? They use that material from the sacks for clothes, for suitcases, for anything that human ingenuity can think of to use those sacks. They recognize that the food has come from the United States because it says, in their language, "This is a gift from the United States of America." So we have been very successful in doing that.

So we ought to take the model of what we have done so successfully in our humanitarian aid in North Korea and apply it in Afghanistan. Secretary Powell came over to discuss a lot of these matters with the Foreign Relations Committee and this matter was brought up to him. He thought that was an excellent idea. But part of it depends on us passing this bill, this appropriations bill, which has \$255 million for Afghan refugees. And we cannot even get this bill up because yesterday we only got some 50 votes to break this filibuster so we could get this bill to the floor.

So here we are, still debating the motion to proceed. It is inconceivable to me, with what is at stake for this country and the interests of this country over in that part of the world near Afghanistan, that we have people who are delaying this legislation coming to a swift passage.

Let me give you some additional items in this bill. There is \$326 million in this appropriations bill for non-proliferation, antiterrorism, demining, and related programs. One of the big problems is, even from the old days of the Afghan war with the former Soviet Union, there are so many mines that for our troops, once they are in there, or for nongovernmental companies going in to distribute food, there is the risk of detonation. We need to be in there demining.

This foreign operations appropriations bill provides money for that. Why can't we get on with passing this legislation instead of it being derailed by a filibuster?

This bill also includes \$4 million for a terrorist interdiction program designed to enhance border security overseas to reduce terrorism. It also includes \$38 million for the antiterrorism assistance program to support training and emergency and first responder training.

Additionally, the bill provides important bilateral assistance to nations that are so important to both the Middle East peace process as well as fighting terrorism. It provides foreign assistance of \$2.7 billion to Israel, almost \$2 billion to Egypt, and \$228 million to Jordan. Need I remind you how important the King of Jordan and his government are to us as we knit together a coalition of Arab and Muslim nations to assist us in this war on terrorism. Yet we have people who are delaying this legislation for their own agenda. Their own agenda may be important to them, but is it as important to us in America as the war against terrorism?

Let me suggest some other things this legislation says. It provides assistance for the independent states of the former Soviet Union—now get this—the Ukraine, Armenia, Georgia; former states of the former Soviet Union, now independent states that are absolutely critical as we knit together the coalition in this war against terrorism. U.S. support and assistance in these nations are needed now, and it is in our national security interests. Yet the legislation is being delayed. It is being filibustered in this Chamber.

There are also other items in this legislation. We must keep the focus on the Andean region. This bill provides \$718 million for the Andean regional initiative, which includes \$147 million for humanitarian and development programs. This Andean initiative is a part of a balanced effort aimed at eradicating coca crops, supporting interdiction efforts, and strengthening the rule of law in those conflict-plagued regions of the world. This is critical to the U.S. focus on Latin America where democracy itself is being threatened. That is a very high priority in the agenda of protecting the interests of the United States. But we have people filibustering this bill, not allowing it to go forward.

I daresay when it passes, it will probably pass almost unanimously, if we can ever get it to a vote. Yet we have people dragging their feet for their own specific agenda purposes.

I will give you more examples. This legislation that is being held up right now provides funding recommendations for conflict resolution in the Middle East and the Balkans. It provides funding for conflict resolution in the War Crimes Tribunals in Yugoslavia, Rwanda, and Sierra Leone, and it provides funding for regional democracy programs in Asia. Yet the legislation is being held up.

So I urge our colleagues to put aside their differences and stand up for what is in the interests of the United States at this particularly critical time in our country. I ask all our colleagues to join in the spirit of bipartisanship we have had over the course of the last several weeks in sending a strong statement to the American people and to those around the world who would wish ill upon the United States. Let's send that strong message that we will move forward with a policy that is important to freedom, democracy, and American values, despite the efforts of those in the world who would try to undercut all things we hold so dear in this country.

I plead with our colleagues, it is not in their interest to delay and to obfuscate, to use tactics of filibustering an appropriations bill that is so important to the national security interests of this country.

I yield the floor.

The PRESIDING OFFICER (Ms. STABENOW). The distinguished Senator from Iowa.

PAKISTAN

Mr. HARKIN. Madam President, I take the floor to talk about our relationship with one of the longest, strongest allies we have ever had in this world and why I think it is so important for us at this point in time to recognize that and to move more aggressively towards reestablishing the kind of connections and ties and mutual support we have had with the nation of Pakistan in the past.

Following the attacks of September 11, all eyes turned to South Asia and particularly to Afghanistan. Just as quickly, we began to look for allies in that region of the world. As has always been the case, the United States found a steadfast ally in Pakistan. Through thick and thin, we have never had a better ally in that region of the world and, in fact, in almost the entire world, but we have often failed to recognize this fact.

Let's look at the record. Our close relationship with Pakistan began when that State was born in 1947 with the partition from India. At that time, we watched as the world began to divide into two camps—one led by the United States and the free world and democracies, and the other by the Soviet Union and the Communists. The temptation for the Pakistanis to stay neutral at best or to be opportunistic and go with the Soviet Union, since it was so close to the borders of the Soviet states at that time, was enormous. But when Pakistan's first prime minister, Liaquat Ali Kahn, chose to undertake his first foreign travel out of Pakistan—this is the first prime minister of a newly formed country, very close to the Soviet Union, right on the border of Communist China—he took his first trip to the United States. In a speech to Members of the U.S. Congress at that time, Prime Minister Liaquat Ali Kahn proclaimed:

No threat or persuasion, no material peril or ideological allurements could deflect Pakistan from its chosen path of free democracy.

Imagine that. This was in 1947. Since those days, Pakistan has stood with the United States time and time again. In 1950, Pakistan declared its unqualified support for our position in the Korean conflict. Keep in mind, Pakistan shares a border with Communist China. They sent troops to fight alongside us in Korea, barely 3 years after Pakistan became a nation.

Soon after that, Pakistan joined CENTO and SEATO, the Southeast Treaty Organization, supporting the U.S. in the long struggle to contain communism. In 1959, the U.S. and Pakistan signed the mutual defense treaty, which, by the way, is still in effect today. One year after that, Pakistan allowed the United States to set up bases in their country to conduct U-2 flights over the Soviet Union.

As those who are at least my age may recall, the U-2 flight of Francis Gary Powers, which we remember was the U-2 shot down by a missile in the Soviet Union, originated in the Pakistani city of Peshawar, which we read

so much about today since it is right on the border of Pakistan. After that U-2 flight was downed in the Soviet Union, Nikita Khrushchev, in one of his more infamous, belligerent speeches, threatened to "wipe Peshawar off the face of the earth" because they had allowed our U-2 flights to originate there.

Despite its relative proximity to the Soviet Union and the immediate threat it posed, Pakistan continued to stand with America. The threat crept even closer as the Soviets invaded Afghanistan. From the onset of that invasion in 1979 until the Soviet withdrawal in 1989, Pakistan cooperated fully with the United States to roll back the Soviet threat. It became the staging area for our work with the rebel forces in Afghanistan to throw back the Soviets.

Probably a little known fact: In every conflict the United States has fought since Korea, Pakistan has sent troops to fight alongside us every single time. They even sent troops to help us in Haiti, of all places. They sent troops to fight alongside us in the Gulf War.

In the United Nations—check the record on this—Pakistan was one of our strongest allies in voting with us. Their neighbor to the east was voting more often with the Soviet Union, but Pakistan was one of the best votes we had to support the United States in all these years in the United Nations.

Pakistan has also repeatedly taken courageous actions against terrorism in recent years. We may remember when the two CIA employees were shot and killed right in our own backyard. Pakistani authorities arrested and turned over several suspected terrorists, including Mr. Mir Aimal Kasi who was convicted of killing the two CIA employees. Pakistan picked him up, gave him over to our authorities so we could bring him here, try him, and convict him of those killings.

They turned over Ramzi Ahmed Yousef, convicted for his role in the 1993 World Trade Center bombing. Pakistan turned him over to us.

In 1998, they detained Mohammed Sadiq Howaida, involved with the bombing of the U.S. Embassy in Kenya. Time and time and time again, when we wanted the terrorists turned over, Pakistan not only helped us hunt them down, but arrested them and then turned them over to us.

Since the dark day of September 11, when we turned to Pakistan once again in our time of great need, most Pakistanis and their government are bravely standing with us at substantial risk to themselves. I believe history will record this as one of Pakistan's finest hours. I hope the courageous support in the war against terrorism will now open a new era of unparalleled bilateral collaborations between our two great nations.

Yes, we must continue to encourage Pakistan, as well as India, to pursue sound nuclear policies and to sign the comprehensive test ban treaty. I be-

lieve that will come with continued, positive engagement. It will come as Pakistanis see their role as a critical U.S. ally in the region and as they are more fully recognized as a great leader, especially among the Muslim nations of the world.

Madam President, Pakistan now faces its gravest crisis since the 1971 war with India, especially given its ethnic and religious makeup. Nevertheless, the Government of Pakistan has been remarkably forthcoming in its willingness to help the U.S. prosecute the war against the terrorists who perpetrated the recent horrific attacks in our country and their sponsors.

President Musharraf has pledged to give the Americans just about everything they want.

Now, that is just about as strong as what we heard from Prime Minister Blair in England. Yet this is from the President of a country in which there are elements—large elements—who support the Taliban and, quite frankly, do not support what the United States is doing. So President Musharraf has courageously stepped forward to help our country once again. We asked for an expanded information exchange between the United States and Pakistani intelligence services. They have given that to us. We asked for permission to use their air space for military purposes. They have given it to us. We asked for logistical support for any U.S. military operations to be launched from Pakistani territory. They have given us that commitment also.

In short, in standing up to terrorism, no government—no government—has been more responsive to U.S. requests since September 11, and no government is assuming greater risk to itself than the Government of Pakistan.

The Bush administration is already moving on several fronts to solidify our short-term and long-term cooperation with the Government of Pakistan and to show our deep appreciation for the Pakistanis' strong support for the U.S.-led coalition that is now embarked on ridding the world of the scourge of terrorism. The remaining sanctions on Pakistan are in the process of being lifted. I compliment President Bush and his administration for beginning that process. Debt relief is being hammered out. U.S.-Pakistani military cooperation is quickly being restored—at least I hope so.

The Senator from Arizona and I were just discussing this issue on the floor. The Senator from Arizona, Mr. KYL, was recently in Pakistan, I believe, toward the end of August and had several meetings with the military and with the President. We were discussing this issue.

My friend, the Senator from Arizona, heard there are a lot of people in the Pakistani military—many of whom are retiring or getting ready to retire—who trained with or worked with our military who feel a close kinship with our military. Yet because we have cut off this military-to-military engagement

over the last 20-some years, if I am not mistaken—pretty darn close to 20 years—we have a whole new generation of young military officers who have come in who have no connection with the United States.

In many cases, they have come from areas of Pakistan where the forces maybe are not too supportive of the United States, and may be closer to the Taliban, have more sway.

So I am hopeful that the President and the Congress will give him whatever authority he needs to allow our military, once again, to engage in military-to-military cooperation with the Pakistani military to make sure that we can bring Pakistani military officers over here for training and for the kind of intermilitary kind of cooperation that I believe will help build a more lasting and strong friendship between our two peoples.

Mr. KYL. Will the Senator yield for a moment?

Mr. HARKIN. Yes, I am happy to.

Mr. KYL. I commend the Senator for the points he is making. I will add one other point, which he hasn't mentioned yet, but I am sure he was probably getting ready. Pakistan has not been the same kind of democracy as the United States. The military of that country has pretty well controlled its nuclear armaments and forces, rather than being under civilian control. That is the way it is in Pakistan, and I know it to be important for the United States to know where the Pakistani military is coming from.

As long as they have great relations with the United States, which the Senator from Iowa was referring to, I don't think we have too much concern that Pakistan's nuclear weaponry would fall into the wrong hands. If this younger officer corps, which is not as closely aligned with the West and the United States, were to become dominant in their military, and if the influence of the Taliban should continue to increase in Pakistan, I would think the United States would have great concern about who is controlling the nuclear weapons in Pakistan. That is another very important reason to support what the Senator is talking about right now.

Mr. HARKIN. I thank my friend and colleague from Arizona for elaborating. That is a concern, and should be a concern, to all of us. Pakistan is a nuclear power. We want to make sure the control of those nuclear arms is in responsible hands and in the hands of a military that is closer to us.

Again, we have tried over the years to reestablish our military training programs with Pakistan. I hope we can get that back on course. I remember when Pakistan, in good faith, purchased a number of F-16s from the United States. They paid for them, and then the United States reneged. I am not going to get into all those issues. Let me put it this way. There was a contractual relationship and the United States reneged on it. The F-16s

never went. We kept their money and their planes for several years.

Finally, the Clinton administration made good on the money in a sort of roundabout way. I often think today, with what we are doing in going after the terrorists and their sponsors in Afghanistan, would it not be nice to know that the Pakistani Air Force had those F-16s—the kind of planes that we fly—and maybe they would have had that close relationship to us. Yet after they purchased and paid for them, we would not let them have them and we kept their money for several years. It was one of the darkest times in our relationship with Pakistan. I remember it well.

Several of us here, including myself, Senator BROWNBACK from Kansas, and others, had worked long and hard to get that straightened out. Anyway, all of these steps—the debt relief, the sanctions being lifted, the restoration of the military cooperation, all of which I support—we need to do sooner rather than later. But still more needs to be done. We should use our voice and our vote in the IMF, the World Bank, and other international financial institutions, to help Pakistan secure new loans on more favorable terms for its beleaguered economy. We should also provide much more than the \$100 million in assistance that President Bush has recently pledged to assist Pakistan with the rising flood of Afghan refugees.

That is another thing I found when I visited Pakistan. There were over 1.5 million Afghan refugees in Pakistan. They are left over from the Afghan war against the Soviets. These Afghans, for the most part, are living in refugee camps, poorly educated, poorly fed, and poorly housed. Pakistan did everything we asked them to do in prosecuting this proxy war against the Soviet Union in Afghanistan. Yet they have all these Afghan refugees there. Now more are coming across the border.

Madam President, it was said to me a long time ago, before anybody ever heard of Osama bin Laden that these Afghan refugee camps are a breeding ground for the terrorists, a breeding ground now I know for Osama bin Laden and others. Pakistan needs help with these Afghan refugees. It is something we should have done a long time ago.

Most important, now is the time for the United States to forge a new strategic partnership with Pakistan, while at the same time not giving up our ties with India. I do not believe it is one or the other. I am not saying we have to become friendly just with Pakistan and cut off India. I am not saying that at all. I know India and Pakistan have fought several wars in the past. I understand that. I believe we can maintain our ties with India and, at the same time, build a new strategic partnership with Pakistan.

This new United States-Pakistani strategic partnership should be built upon three principal shared interests.

First, the United States must commit to supporting a stable democratic Pakistan with a growing economy and at peace. With our support, Pakistan could serve as a model to many of the newly independent, mostly Muslim, countries of west and central Asia. Muslims could begin to see the United States as a willing economic partner in the Islamic world. That has not been the case for far too long.

I am encouraged by the recent visit of Secretary Powell. As I read in the newspaper this morning, Secretary Powell and President Musharraf had discussed several items, one of which I noted with interest was educational assistance to Pakistan.

During a visit to Pakistan, the then-President and Prime Minister and the head of education in Pakistan all met with me to tell me how bad the educational system was in Pakistan. They had all these phantom schools where people were being paid but no one was teaching anything. The structure of education had totally broken down in Pakistan.

They knew I was on the Education Committee and the appropriations subcommittee for education, that it is a big interest of mine. They quite forthrightly asked if we could help them with educational assistance in Pakistan. So I came back and had a personal conversation with President Clinton, sort of debriefed him on my trip to Pakistan. I talked to him about this very point.

I then called up my good friend Secretary of Education Dick Riley, and I talked to him about this. I said: The President is getting ready to take a trip to Pakistan and India in a couple of months. I would like to arrange for you, Mr. Secretary, to go with him to meet with people in Pakistan to begin to set up a structure whereby the United States could be involved with Pakistan in helping rearrange, restructure, and help build up their educational system in Pakistan.

Everything was a green light. Secretary Riley was going to go with the President. The meetings were going to be set up in Pakistan. I thought this was going to signal a whole new era in our relationship with Pakistan. Then we know what happened. India, I thought in a very unwise and provocative maneuver, started exploding underground nuclear weapons again. In response to that, Pakistan exploded underground nuclear weapons. The President's trip was called off. A few months later, there was a military coup in Pakistan, a military government took over. That trip occurred later, but only in its barest form.

That was a missed opportunity to establish, again, a new relationship with Pakistan. I am very encouraged that the present Government of Pakistan under President Musharraf has at least spoken with Secretary Powell about educational assistance. I will do whatever I can to help the Secretary of State and President Bush in whatever way to help provide that assistance.

For too long, Pakistan has seen us as an ally who was there when it was in our interest and, when it was not in our immediate interest, we were gone. It was sort of, the United States uses us, they abuse us, and then they lose us. It is time to change that, and we must change that.

It is true that Pakistan over its lifetime has had about half democratic governments and half military governments. In large part, that is because we have not paid attention, that we have not been as involved in helping establish and maintain the democratic structures in Pakistan that are truly responsive to the wishes of the people of Pakistan. Now is the time to reestablish that.

I said there are three principal shared interests: First, supporting a stable democratic Pakistan with a growing economy and at peace. Second, we share an interest in containing and reversing the nuclear arms race and missile technology proliferation in South Asia. An arms race may be good business for the arms dealers, but it is bad for the economic and social development of that entire region.

Unless and until the issue of Kashmir is settled, or at least until we have such time that Kashmir becomes a negotiating issue between Pakistan and India, we are going to have trouble in South Asia. It is time for our ally India to recognize that it can no longer ignore this, it can no longer take the posture that there is nothing to negotiate, and it is time for the United States, I believe, to be involved as an honest broker, as a third party broker in bringing India and Pakistan together to begin the diplomatic resolution of the conflict in Kashmir. I believe now is the time to start that also, and I believe it is in all of our best interests to do so.

I call upon Pakistan in that vein to use its powers to control any and all terrorist type activities that may be happening in Kashmir, to use its armed forces and its police power to keep and prevent any altercations that may then provoke India to fire back, as we saw happen just the other day. I call upon India to refrain from any military actions in Kashmir. There needs to be a hiatus, but there can only be that hiatus if the United States is willing to use its good offices as an honest third party broker to step in and help arrange the negotiations between India and Pakistan.

Third, we must work together more closely and for as long as it takes to reduce the threat of not only the international terrorism of Pakistan but of international narcotics trafficking, the trafficking in women, and the use and abuse of child labor.

Pakistan has been one of the more forthright of the nations in all of South Asia in cutting down on the use of child labor. At least the Pakistan Government in the past admitted there was child labor and that they were willing to do something about it. We

engaged with them in efforts to cut back on child labor.

Pakistan has been forthright in helping to cut down on narcotics trafficking.

Pakistan has also been very helpful in trying to cut down on the trafficking in women all over South Asia.

These are three things about which Pakistan and the United States share mutual concerns, and we need to work more closely with them on these threats.

Madam President, the multifaceted war against terrorism and its sponsors is not a war against Islam. We know that. Pakistan was among the very first nations of the world to recognize this critical distinction and to act upon it. This is all the more courageous and noteworthy because obviously the vast majority of Pakistanis are Muslims.

It is not enough to simply embrace our Muslim friends in Pakistan and elsewhere in times of armed conflict, uncertainty, and threats to the United States. We owe it to them, to ourselves, to a more peaceful world, to commit now to building a much closer, lasting relationship with an ever-expanding circle of Islamic nations based upon mutual understanding, democratization, more broad-based economic development, and shared prosperity.

As I have often said since September 11, yes, we have to get these terrorists. We have to rip the wires out of their network. We have to bring Osama bin Laden and al-Qaida and the other networks to justice. We need to break down the states that sponsor these terrorists. But if we do all of that and we walk away, our children and my grandchildren, 30, 40 years from now, will be facing the same thing.

From Indonesia in the South Pacific, to Morocco, in the east Atlantic, stretching across a broad belt of South Asia, southeast Asia, southwest Asia, and northern Africa, lies the Islamic world—1.5 billion-plus people. It has become clear to me that the United States is not fully engaged with the people of the Islamic world. We have only dealt with the thin veneer of whatever dictator might be in charge, whatever prince or king, whatever shah at that point in time, and only if it serves some short-term best interests of the United States.

We have failed to recognize the vast amount of poverty and illiteracy, the lack of decent things that make up the basics of life such as clean water and decent housing, a decent diet. So many of these people who live in the Islamic world from Indonesia to Morocco, so many live without education, without decent nutrition, without decent housing, with no hope.

Perhaps out of this dark cloud that has now covered us will come a silver lining, that we will rid the world of organized terrorists, but that we will also recognize we must engage and embrace and be involved with that part of the world that encompasses over 20 percent

of the world's population and that we must do it in a way that embraces their hopes and desires, their need to have a better share of the world's prosperity, their need for economic development, their need to have some hope for their kids and their grandkids for a better life.

One image will always stick in my mind. I was in a small town in Pakistan, right on the border with India. It was a very poor community. I remember I met with one of the individuals, a man in charge of some of the city planning, who went to Harvard. He was there with almost an unimaginable task. We were driving down the street, a little dirt street, with sewage on both sides of the street. On the side of the sidewalks, up on the walk, was something that looked to me like maybe a barber shop. I am not certain what it was. Inside, while sitting in the car, literally 20 feet away, we saw a bunch of men sitting watching a color television. Obviously, it was the only television for quite a way around. They were watching the television, and on the screen was a soccer match being broadcast from England.

I marveled at this. I saw these people in a poor community, with sewage in the streets, with not much in the way of clean water, a terrible educational system, bad housing, and they were watching a color television of this soccer match in England, with all these people who were dressed up and they were looking at all of the finery coming through that television. I thought, what are they thinking? They live like this, but they know there is another world that lives a lot differently.

The world has shrunk in my lifetime, and, Madam President, in yours. We live in a world where we have instant communications and CNN. People know what is going on—not like it was when I was a kid. People know, those 1.5 billion Muslims in that part of the world, that, for whatever reason, they are not sharing in the world's prosperity. They know their kids don't have as much hope and they don't have as much hope for a better life.

So maybe out of this dark cloud will come some silver lining that we will engage with this world in a sense of shared prosperity for the future of our entire globe. I believe much of this will hinge on our relationship with Pakistan. If we are now willing to reengage, to support a moderate Islamic state that does not shield and harbor terrorists but has arrested them and turned them over to us time after time, that has courageously stood up against those terrorists, that is supporting us in every way we could hope right now, that by establishing that relationship with Pakistan and not abandoning Pakistan once we put an end to the terrorists, I believe we will go a long way toward bringing that silver lining out of this dark cloud, for the entire Islamic world and for all of us.

In this spirit, I plan to work with interested colleagues in the Senate and

the House on both sides of the aisle to establish a congressional caucus on Pakistan and United States-Pakistani relations. After the terrible attacks of September 11, we must think anew and act anew toward the Islamic world. Let's start now by more fully embracing our long-time friends and partners in Pakistan. Together, we can build a foundation of a just and lasting peace, as well as prosecute the war against the misguided fanatical terrorists who are our common enemy.

I hope Senators and House Members will join together in establishing this congressional caucus on Pakistan and United States-Pakistani relations.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Madam President, I enjoyed listening to my friend from Iowa. I wish him every good wish for this caucus he will be starting. I hope to help him with that.

Mrs. BOXER. Madam President, as I stand here, I have no office in this complex. As we probably all know, about 30 offices had to be cleared out to do some precautionary air quality testing in the offices that were connected to the ventilation system in Leader DASCHLE's office. We know Leader DASCHLE's office received a letter that contained anthrax. They are taking every precaution.

I want my colleagues to know we are all still working, even those who may not have an office at the moment. I thank the Senate staff and my colleagues in the Senate for being so wonderful and offering us their offices to use, their phones to use, their faxes, their computers, and the rest. We are fully functional.

We have recorded a message for people calling this office. They are given the number of my Los Angeles office, so we will not leave people out there without a voice on the other end of our telephone.

I thank my colleagues for their generosity of spirit and for being so kind to my staff. I also thank the Capitol Police, the Sergeant at Arms, and the Capitol physician for acting so swiftly to protect my staff. I am very certain that their steps will prove to be the right steps and that in fact we will have a high level of confidence that we are all OK.

One of the reasons I think we will be OK is because, as Senator DASCHLE explained, the particular employee in his office handled this letter in such a fashion that it was quickly dropped to the floor, and we think, because of that, the effect will be minimal. Of course, we pray that is the case. I am confident and hopeful that will be the case.

The reason I came down to the floor is not only to thank my colleagues for all their help, but also to plead with my Republican friends to let us move on with the business of the day. We are working out of makeshift offices, Republican and Democrat Senators alike

who were caught in this situation. But we could do a lot more if we were working on the Senate floor with the important foreign operations bill that is pending before us.

I have listened to colleagues who say, you are holding up judges. I have looked at the record. The fact is, we are moving forward with judges. The fact is, when Republicans were in charge, I waited once 4 years—4 years—to get a vote on one wonderful judge who eventually passed through the Senate.

We are not doing that. Senator LEAHY is working to get the paperwork done. He is holding hearings. We have definitely moved much quicker than the Republicans did when Bill Clinton was President, if you compare the time periods.

I am perplexed as to why we are having this slowdown. After all, our President says we are in a war. Certainly, it is a campaign against terrorism. This bill is essential.

I will spend the next few minutes spelling out what is in this bill and why it is so important to move it forward.

First of all, the bill invests \$42 million to help countries strengthen their borders and secure their weapons facilities. This is very important. What we are talking about is a sum of money that will be given to our coalition partners to make sure that if they have weapons, particularly weapons of mass destruction or weapons we do not want to have in the hands of the terrorists, they have the ability to secure these weapons and secure their borders. I would say it is elementary that we must take this step. They are helping us. We should help them make sure that these weapons cannot be stolen by terrorists.

I say to my Republican friends, you are holding us up. Why in God's name would you hold us up at a time such as this? We should be moving quickly to secure those weapons.

We have in this bill \$175 million in infectious disease surveillance programs that can provide an early warning system against some of the world's deadliest and most contagious diseases. We are making speeches on the floor about the whole issue of bioterrorism, and here we have a bill that provides \$175 million in infectious disease surveillance so we can stop these diseases from coming into this country which my Republican friends are holding up.

Then in this bill we strengthen the coalition against terrorism by providing \$5 billion in military and economic assistance to Egypt, Israel, and Jordan, countries that are critical to long-term peace and stability in the Middle East. Why would our Republican friends hold up this money? Why? It doesn't make any sense.

It also provides \$3.9 billion in military assistance to key NATO allies that are putting it on the line for our country right now, and to front-line states in the area of the conflict. These

states are Uzbekistan, Turkmenistan, and Tadjikistan. These are the countries that are being so cooperative with us. They were formerly in the Soviet Union. They are helping us. They are helping our troops. Why would our Republican friends hold up this money? It does not make any sense.

Then we hear our President, rightly so, beg the children of this country—and I want to support him 100 percent—to put \$1 in an envelope and send it to the White House. I hope everyone will do it who is now listening. Send it to the children of Afghanistan. As he has stated eloquently, we are not in a war against the Afghan people. We are in a war against terrorism. In this bill we have funds, \$255 million, for refugee assistance to shelter Afghani refugees. That is \$55 million more than the President requested.

In this bill it says:

The situation in Afghanistan is perhaps the most urgent, the most massive humanitarian crisis anywhere.

Let me repeat that, the bill—and it is bipartisan, I must say—says:

The situation in Afghanistan is perhaps the most urgent, the most massive humanitarian crisis anywhere.

I don't understand. My colleagues on the other side of the aisle are holding up this bill which will help the children and the women and the families, the innocents in Afghanistan, get on their feet again.

Then in this bill we look ahead—and this is again a program where I so agree with the Bush administration and with Colin Powell: \$337 million for U.N. voluntary programs, the programs our President envisions will play an essential role in reconstructing Afghanistan after this campaign ends.

That is just a part of what is in this bill: Tracking terrorists; warning against infectious diseases; strengthening our coalition against terrorism; feeding and sheltering the Afghan refugees, helping to make Afghanistan whole. That is just a part of the good things in this bill.

Let me conclude. We have work to do and we are not doing it. We have done a lot on this floor in a bipartisan way. I thought the airline safety bill was stupendous, where we provided a marshal on every flight, where we said strengthen those cockpit doors, where we said make those screeners Federal employees working under law enforcement. We did that in a bipartisan way right here on this floor. I am proud that we did that.

Why are we stopping now? I could show you the charts that depict that Senator LEAHY, since he took over the Judiciary Committee just this summer, has done far more than the Republicans did in that same timeframe when Bill Clinton was President.

I am all for getting judges. I am working hard with the administration, in my State, to get good, moderate judges. I will fight against anyone, right or left, who is a radical. But I will support mainstream judges. We are

working to do that, and we are bringing those judges to the floor of this Senate.

To come here and say we are going to waste another day on an issue where we are doing better on our side than the Republicans did when the shoe was on the other foot seems to me to be bizarre. It is bizarre. We are in a crisis, an international crisis, and we are not doing our work.

Look at this floor. There is no one here but my good friend from Virginia. I love to see him. We work together on so many things. We are working together on a bill that I think will pass which deals with travel and tourism, to set up a promotion agency within the Department of Commerce so we can go on the air and tell people to rediscover America. If they do not feel comfortable traveling to far away places, travel in America.

We have work to do. My colleague in the chair has an incredible program she is working on to honor the victims of 9-11. What are we doing today? Nothing. People are sitting around here doing nothing but making speeches. The point of this speech is to get us off the dime, to get working.

I want to work on this bill. I want to protect the people I represent and all Americans from ever having to face another crisis such as we did on 9-11 and another crisis such as what we are facing almost on a daily basis now from the anthrax situation.

In closing, I want to tell people to put this in perspective. We have ways to treat this. If you are exposed to it and you go on antibiotics, you are going to be fine. We are going to deal with this. We are going to wrap our arms around it. But for goodness sake, let's work on the foreign operations bill.

You wouldn't think we even had a problem, the way my Republican friends are acting—as if we can dillydally around until tomorrow and the day after to get money to fight terrorism. I am very upset about it. I don't mean to sound frightened. If I have, I apologize. But I believe it is very important that we do our work. After all, that is why our people sent us here.

Thank you, very much. I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. ALLEN. Madam President, I will speak briefly because we have a meeting shortly. Our time on the Republican side is to be protected between 4 and 5 for a meeting on the economic stimulus package.

I listened to my friend from California, Senator BOXER, speak on the foreign operations bill. That bill will be passed. I think it is an important bill. I have enjoyed working with Senator BOXER on her tourism promotion, which I think is very important for our economy. I have enjoyed working with the Presiding Officer in allowing people all across this country to show their

care in their communities for the 6,000-plus people who lost their lives. There are going to be a lot of park projects, mentoring, recreational facilities, maybe computer laboratories, maybe homes for adults, and senior citizen programs across the country named for each and every one of the fallen victims of these violent acts of terrorism on our office buildings in our airplanes on September 11.

I look forward to working with you. All of that is going to be done in less than a year. That will be a fitting memorial so we will remember those who lost their lives.

The people taken from us by those terrorist attacks were good people. They were our sons and daughters, mothers and fathers, grandparents, grandchildren, our friends, our neighbors, and our loved ones. They should be remembered.

The foreign operations bill, while it is an important bill—and it will be passed—also is important in the administration of justice. We have a crisis in the administration of justice.

Obviously, we have a crisis mentality so far as terrorism is concerned, as well as prosecuting the war on terrorism on the home front where we need to have our first responders better equipped. Our surveillance needs to be improved. In situations where there may be an anthrax scare, it needs to be properly identified and remedied. If it isn't anthrax, we need to make sure people are not panicked.

I believe very strongly that those front-line people, the fire, rescue, and police officers who are working in the terrorist attack zone, ought to be accorded the same sort of tax policy treatment accorded to our military personnel.

Under current Federal law—it is very good law—if our military men and women in uniform have to serve in a combat zone, their income taxes for that month are not paid because they are in a combat zone.

This war on terrorism has changed the face of war. Now the terrorism war is not taken to military facilities but is taken to office buildings, to airplanes, to civilians, and to commercial airlines. We have seen that—whether it was an attack on the World Trade Center buildings or whether at the Pentagon or obviously the innocent people who were on the airplanes that were hijacked and turned into weapons. With that, we see that innocent, unprotected men, women, and children are now the targets and the victims of terrorist attacks.

My view is that the firefighters, the rescue squad people, the heroic police officers, whether in New York City or at the Pentagon, are working in a combat zone. But it is called a terrorist attack zone. The President has so designated these areas. It would seem to me that these warriors and these patriots here at home in their heroic acts of working in these buildings and in these facilities—some of them with their last

breath of life to get people out, to save lives, and also in the aftermath of pulling rubble out with their hands, breathing toxic air in the crumbling buildings—those individuals are also in a combat zone. It is a terrorist attack zone.

It seems to me very logical and appropriate to adapt our tax laws so they do not have to pay income taxes for the month in which they are working in these combat zone areas, or terrorist attack zones.

I have legislation in that regard. Hopefully, we will pass that, as well as legislation to say to the family members of those who have lost their lives that they will not have to worry about paying taxes.

Again, using the analogy for those who serve in our military, if a man or woman in our Armed Forces is killed in combat, they are not subject to income taxes, and half of their estate taxes are forgiven. Again, the targets of these terrorist attacks were men, women, children, and families. It seems to me we should accord them the same sort of tax treatment.

I have put in a bill, for which I have support from a good number of Senators, to say to those victims' survivors that they will not have to pay income taxes for the loss of their husband, wife, or other family member, and they will not have to be worrying about death or inheritance taxes. I think that is an appropriate and logical adaptation of law in that regard.

So far as justice and the judicial system are concerned, there are currently 106 vacancies in the Federal courts, 31 at the circuit court and 75 at the district court level, which is higher—it is almost 50 percent higher than the vacancy rate 2 years ago when many Democratic Senators, including the current chairman, Senator LEAHY, complained about a vacancy crisis. That is when there was a 50-percent vacancy rate. Forty-one of those vacancies have been formally classified as judicial emergencies by the nonpartisan Judicial Conference of the United States. This is the highest vacancy rate since 1994.

Despite the high level of vacancies and the record pace of nominations, the judiciary has actually shrunk during the months since President Bush took office. In other words, the number of vacancies has increased, and the Federal Government has moved backwards in its effort to bring the judiciary up to full strength.

During the first year of the Clinton administration, just to give you a sense of the pace of court nominees, there were nominees for the court of appeals. Of those nominees, 60 percent of President Clinton's court of appeals nominees were reported in the first year. In contrast, President Bush has nominated 25 circuit court nominees and the committee has reported 4. That is just 16 percent. One of those was Roger Gregory of Virginia—a very good move. I am glad the committee re-

ported Roger Gregory. But 16 percent is just not good enough.

There are those who will say, gosh, this is the same as it has always been. Let's look at first-year comparisons of former Presidents.

President Clinton nominated 32 judges by October 31 of his first year in office. Of those, 28—or 88 percent—were confirmed by the time Congress went out of session in 1993.

Further, President George Herbert Walker Bush nominated 18 judges by October 31, 1989, of which 16—or 89 percent—were confirmed by the time Congress recessed by the end of the year.

President Reagan's confirmation rate for pre-October 31 nominees confirmed during his first year was 100 percent.

Now President George W. Bush has nominated 60 judges, and the Senate has confirmed only 8, a mere 13 percent. So that is the actual comparison.

Currently, there are 108 empty seats in the Federal judiciary, which is about 12.6 percent of the total number of judgeships. This is the highest in modern history, except for the extraordinary event in December of 1990 when Congress created 85 new positions and, therefore, there were 85 vacancies all at once.

I believe we can do better. I think these nominations ought to be acted on before we recess for the year, which will be the end of the President's first year in office. I think all of the President's nominations that were made prior to August certainly should be acted upon.

Again, if you look at the history of the Senate, by the end of the President's first year in office, the Senate has acted on all judicial nominations made prior to the August recess; the only exception being one Clinton nominee the Senate acted on in the following year.

If we are going to work with the President to reach his goal to address the current judicial vacancy crisis, then the Senate should confirm at least 40 more judges by the end of this session.

I do not think this is too hard to do. It can be done if we work our will. I ask the chairman of the Judiciary Committee to hold these hearings. These individuals ought to be vetted, ought to be cross-examined. Look at their record, their judicial philosophy, their demeanor, especially if they are district court judges.

I think if they look at the competence, the qualities, and the characteristics of these judges, they will certainly find them to be individuals who ought to be on the bench administering justice.

Clearly, we have a judicial crisis. These vacancies should not continue. We need to act in the Senate, not just do one thing at a time. Let's keep moving forward to make sure that, yes, we support our military, support our intelligence efforts, our diplomatic efforts in foreign operations, making sure we are properly reacting and stimulating

our economy to get people back to work, making sure consumers have greater confidence and have the capability to then buy things so those who manufacture or produce various goods or services can start hiring again and get our economy moving again—but also we need to make sure the third branch of Government, the judicial branch, is at full strength, which it certainly is not with the 12.6-percent vacancy rate, which is an unprecedented high rate, again, as observed by those who see this as a crisis.

We need to get to work in the Senate. I hope once we get a commitment to move forward, that we then, obviously, can move forward on the foreign operations bill, which is also a very important measure. But let's get our judicial branch of Government up to full strength. That is our duty and responsibility as well.

Mr. President, I yield back my time and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CORZINE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SCHUMER. Mr. President, I know there has been debate intermittently as we have discussed other issues about the appointment of judges, and the pace and the speed. Frankly, I sort of regret the debate in a certain sense because we have been working together very well as a body since September 11. The times call for bipartisanship. And this is an issue that is naturally a partisan issue.

Some of the talk I have heard that the nomination of judges will be tied to bringing appropriations bills forward is not what we need at this time. But, nonetheless, it is proceeding.

As a member of the Judiciary Committee who has sort of been quite surprised that some of my good friends on the other side of the aisle—they are indeed friends—would make this an issue right now, I thought I ought to try to answer it in as objective way as I could because as someone who serves on the Judiciary Committee, I have seen the speed with which we approved judges during the first 6 months, and the speed with which we have approved judges since Senator LEAHY became chairman of the committee.

By any measure and by any objective standard, we have done a lot more since PAT LEAHY became chairman than we did before that time.

To say we are slowing down the selection of judges is nonsensical to anyone. I would bet my bottom dollar that if we had 100 observers of the Judiciary Committee from a foreign planet, and they looked at the speed, both pre-Leahy and post-Leahy, all 100 of them would say the speed picked up when PAT LEAHY became chairman.

One wonders what the other side is trying to do. Are they trying to intimidate us into rushing judges we might want to dispute? Maybe. I hope not. They will not. I am not going to allow somebody I believe is not qualified for the bench to get on the bench because it is tied to something else or because the times ask for bipartisanship. We are not the ones who are making this matter an issue. But let me go into some of the details.

The bottom line is very simple. We now have real work to do in this Chamber. This Judiciary Committee has worked long and hard on an antiterrorism bill. We are trying to appropriate money for foreign operations. More is needed now than ever before. We have not finished the business of improving airline security. We are just beginning the business of improving rail security. We are trying to finalize and examine how we ought to change our immigration laws. We have anthrax in our office buildings. We are facing threats we have never had to deal with before.

Should we be filling the bench? Yes. Is that the No. 1 priority since September 11? Absolutely not. It is certainly not called for to tie appropriations bills or a foreign operations bill to the movement of judges. That is not marching to our higher instincts. That is not something the American public, looking on the Chamber, would say is the right thing to do at this time. It is not what they want.

It is with regret that some of us have to come to the floor and defend Chairman LEAHY. We shouldn't even have to do it. But when the Senator from Kentucky comes down and brings a chart that says let's look at the number of nominees considered for hearing, I guess we have to answer.

Again, some of the arguments are on the verge of the ridiculous. They say: Let's look at the number of judges per hearing. That is not the standard. That is not the standard you folks want. If we had one hearing with six judges as opposed to five hearings for four judges, you wouldn't be happy.

I was going to say to my colleague from Kentucky, but I couldn't get the floor, that it is sort of like saying how many chairs there are in the hearing room. We have more chairs in the hearing room than you do. So? The standard is the number of judges approved.

Let's set the record straight.

First, Ranking Member LEAHY became chairman on July 10. That is when the full committee was reconstituted. So he has been here over 3 months, including, of course, the August recess. In effect, he has been here through two working months. Yet he is ahead of the pace set by Congress in the first year of the first Bush administration and the first year of the first Clinton administration.

If there is anything at variance, you would have thought that the Democrat President and the Democrat Congress, which existed in 1993, would have want-

ed to rush through judges. Yet more judges passed this year.

If you extrapolate Chairman LEAHY's numbers over a full year—in other words, if the pace continues at the pace we have been proceeding thus far—then he is ahead of the pace set by the Republican-controlled Congress for the past 6 years.

If anyone doubts his devotion, he was here in August when most of us were traveling around our districts and going on vacation, and whatever else people do during August recess. I do some of each. But he was here holding hearings.

Since September 11, of course, we have been focused on the tragedies of that day and the new challenges that face our great country. Nonetheless, despite that, two more confirmation hearings have been held by Chairman LEAHY. The third is coming on Thursday. I am supposed to chair it. I have lots of other things to do, given the state of my State and the state of the city, both of which I love. But we are sitting and holding hearings. It is unfair at best and not nice to say we are not working hard on it when we have so many other challenges.

My good friend, ORRIN HATCH, with whom I work on so many issues, has argued that his numbers were what they were because there were not enough nominees to confirm. There are some folks out there who disagree with that.

Here are the names of nominees who were never confirmed:

Judith McConnell from California; John Snodgrass from Alabama; Bruce Greer from Florida; James Beaty from North Carolina; Jimmy Klein from Washington, DC—I went to college with him—Legrome Davis from Pennsylvania; and Helene White from Ohio.

Those are just a few of the 57 nominees from all over the country who never—underline “never”—got a hearing from the Republican Judiciary Committee. Those 57 would be shocked to hear Republican Senators taking to the floor and claiming they had no one to confirm. They are not a “nobody,” as somebody once said. That doesn't even begin to address the people who got hearings but had to wait and wait and wait.

The average time of a circuit court nominee from the 105th and 106th Congresses awaiting confirmation under the Judiciary Committee chaired by my friend, ORRIN HATCH, was 343 days. President Bush had not even been in office that long. Some took much longer. We know the reasons. Richard Paez took 1,520 days. Willie Fletcher waited 1,321 days. Hilda Tagle took 943 days. Susan Mollway took 914 days. Ann Aiken waited 791 days. Timothy Dyk took 785 days.

The list goes on and on. It sounds almost like the Bible. So and so lived 800 years, and begat so and so. The list goes on and on. We are a long way from seeing that under Chairman LEAHY. I don't think we ever will.

I believe there are three criteria for confirming judges. As I played a role,

as we all do, in selection of judges in my State, I have had three words that sort of guide me. They are excellence, moderation, and diversity.

By excellence, I mean legal excellence, among the best the bar has to offer. Being an article 3 judge, a lifetime judge, is such an important position. I believe that is important.

Moderate: I do not like ideologues on the bench. I do not like judges too far to the right; I do not like judges too far to the left. I want judges who will have moderate approaches to the law.

The third criteria is diversity. To me, that means we should not have all white males on the bench; we ought to make an effort for diversity in terms of race and gender but also ideology. I think a bench that had nine liberal Democrats would be just as bad as a bench that had nine conservative Republicans. You need some diversity of opinion. Obviously, depending on who is the President or who is in the Congress, there will be a tilt toward one direction or the other, but there ought to be some balance. Balance, to me, is the key word, as it is on so many issues these days.

While we move on judges, we are not going to be pressured to move too rapidly. We need time—and a reasonable amount of time—to examine these judges' backgrounds and their opinions before we give them lifetime seats on the Federal bench.

We are going to keep holding hearings for those nominees on whom we have done background research. We are going to keep confirming judges who merit confirmation. And we are going to do it at a pace that will exceed that done by my Republican friends across the aisle. Those are fair and reasonable commitments to this body. It is a fair commitment to the White House. It is a fair commitment to the American people.

With those commitments we should return to the real and pressing business that awaits us. We should not be having just cloture votes at this crucial time. That is so wrong, so, so wrong.

If you ask the American people, what are the top 5 issues, what are the top 10 issues, what are the top 50 issues, I do not think they would say the confirmation of judges is in that top 50. Yet we are slowing down important and vital legislation. Some people can make that link; it is wrong.

So I say to my colleagues—I almost plead to them—America is at war, and you are bickering about judges. We need to get our eye back on the ball.

Mr. President, I yield back the floor. The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I appreciate the leadership of Senator SCHUMER on the Court Subcommittee. I know he is a good lawyer, and he cares about the court system. We have had some very interesting hearings under his leadership. They do, however, reflect an idea that was openly stated at a Democratic retreat early this year,

that the ground rules for confirming judges to the courts should be changed. Apparently, at that retreat, a brilliant but liberal law professor, Laurence Tribe, and Cass Sunstein, and Marcia Greenberger advised the Democratic Senators that they should “change the ground rules”—that is a quote from the New York Times—used in the confirmation process and make it more difficult to confirm judges.

That is after the Senate gave President Clinton a fair hearing on his judges. This is important to note: In the 8 years that President Clinton was in office, he had confirmed 377 Federal judges. He only had one of his nominees voted down.

According to my numbers, there were 41 nominees pending that did not get confirmed before he left office. That is a traditional number. There were 67 vacancies, but there were 41 nominees; he did not have nominees for the difference.

So under Senator HATCH's leadership, when the Republicans had the majority in the committee, the Clinton nominees were scrutinized, they were examined, and, for the most part, they got through.

Last fall, at the time we left—and in the last months of the Clinton administration—we constantly heard a drumbeat of complaints that the 60-or-so vacancy level that was pending out there in the courts was jeopardizing justice in America. The truth is, you are going to have around 60 vacancies at all times.

It takes a while for the President to decide who to nominate. There has to be an FBI background check. They have to get the nominees to fill out all kinds of questionnaires to make sure there is not something bad in their record. As I say, the FBI does a background check. The ABA does a background check. The nominees are sent over here to the Judiciary Committee and are given a big questionnaire, which they have to fill out.

Historically, we have seldom been below having 60 vacancies for judges. Now we are at about 110. And the very people who were on this floor last year, screaming mightily that 60, 67 was an outrage, are now suggesting they have no problem with 110.

In my district, the southern district of Alabama, we have a three-court district where I was a U.S. Attorney for 12 years. I practiced there before Federal judges. Really, it was for 15 years as an Assistant U.S. Attorney and a U.S. Attorney before Federal judges. They have a three-judge court. They only have one judge. There are two vacancies there.

So we have some problems around the country that need to be dealt with. Here we are, and we are asked: What can you do about it? On the Judiciary Committee, President Bush's party, the Republican party, does not have a majority, so it cannot call hearings. It cannot force hearings. It cannot force votes. We are at the pleasure of the chairman and the majority.

What we have seen is a systematic slowdown, consistent with the public statements that have been made previously of what they were going to do. That is beginning to put a crunch on the judiciary and really hurt justice in America. It is legitimate and proper that this matter be raised here in this Senate Chamber.

Some say: Well, don't play politics with the foreign operations bill. You are playing politics with that.

Let me just say it this way: Let's have a fair movement of President Bush's qualified judges. Let's see them move forward at a fair rate.

They say: Well, you cannot complain about that. You cannot do anything about it. You cannot utilize any of the rules that are available to you Republicans because if you do, you are partisan. But we can sit on judges. We can delay hearings in the judiciary. And we can delay confirmations, but that is not partisan.

We are getting close to the end of this session, and we are way behind where we need to be. Nobody, in my view, can dispute that. Nobody can dispute we have a growing vacancy problem in the courts. It is time for us to confront it.

We have written letters to the chairman. We have talked to the majority leader. We have asked and asked for their help, and we are not getting it. So I do not think it is fair to say, those who have asked respectfully and urged movement of the judges in a fair and legitimate way, that we ought to be accused of being partisan.

By the way, the foreign operations funding is operating under a continuing resolution. We are not shutting off funding for that. But what we are saying is that this is serious business. Moving judges is serious business. We want your attention, majority in the Senate, slim though it may be. We want your attention. We want your focus on judges. It is important to America. And we have a legitimate concern in that regard; and we are asking for that.

Just a year ago, the then-minority leader, TOM DASCHLE, in July made a statement about moving the intelligence authorization bill. In recent weeks we have learned about how important the intelligence community is. The intelligence bill was on the floor, and in a nice way that the then-minority leader had to express himself; this is what he said:

I also hope we can address the additional appropriations bills. There is no reason we can't. We can 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 for hearings in the Judiciary Committee this year. I am anxious to talk with him [TRENT LOTT, the then-majority leader] and work with him on that issue. All of this is interrelated, as he said, and because of that, we take it slowly.

In other words, that was a nice way of saying, from Mr. DASCHLE, that they were not going to move the intelligence authorization. He was not

going to move that legislation until he got a commitment from the majority leader on judges. He wanted to know how many were going to be confirmed before the session ended.

Sometimes those things occur. The minority in the Senate has the power to block consideration of bills. That is what he was doing at that time. That is basically what we are saying today. We are going to stop this legislation until we get some sort of good-faith commitment to move judges forward at this point in time.

They say we didn't have any nominees in the first 6 months. The President of the United States has a lot to do in the first 6 months. He has to fill his Cabinet, his subcabinet, organize his government, working night and day, and submit judges. By May, President Bush had submitted a stellar list of judges, including at least three Democrats. What has happened on that?

Three Democrats have had hearings and been confirmed. They found time for those. Seven out of the 18 have had hearings. They were nominated in May. Their backgrounds are sterling. It was a bipartisan blue ribbon group of nominees.

The President reached out. He nominated one nominee that had been blocked by the Senate and had been held up. He renominated one of President Clinton's nominees as an act of good faith, to reach out. So what has happened? We have had confirmation of the three Democrats. We have had hearings on 7, and 11 of those nominated back in May have not even had a hearing. That is beyond the pale. That is unjustified.

Since then, additional nominees have come forward for which there is no objection. Many of those nominees have been blessed already by the home State Democratic Senator. Many of them, the Republican Senators have all signed off on. They are ready to go, many of them, with no objection whatsoever. Their background checks are clean, and they are ready to go forward.

We just need to have a hearing. We can't move a judge under our rules until the judge has been given a hearing. Any Senator has the right to ask them questions. I don't think this Senate should be a rubber stamp. They ought to be able to ask questions and examine their backgrounds and records. If they are not comfortable with it, vote no. But President Bush has given us a group of nominees that are mainstream superior judges and will do a great job on the bench. He is entitled to the same support and movement of his judges as President Clinton received.

They say we have a lot to do. We should not worry about judges and just pass the appropriations bill for foreign operations. We are just too busy to do this.

We have a chart that shows how many judges have been put up per hear-

ing before the Judiciary Committee. This chart is revealing. In 1998, judicial nominees per hearing averaged 4.2; in 1999, 4.2; in 2000, 4.2. That is 4.2 judges up each time we had a hearing. In 2001, that number has dropped. There has been some dispute about it, but there is no dispute that it is half what it was before.

One of the things happening is, when we have a hearing, we are not putting as many judges on the panel. We can do three, four, five, six at one time, if we want to. We can all be able to ask them questions if we want to. But if you hold the number of judges per hearing down, you are not moving many judges forward. That is a critical event that has gotten us as far behind in the scale as we are today.

Again, I know a lot has happened this year. Perhaps there is some basis for the complaint, the excuse, or the reason we have not moved forward is that a lot of things have happened. But if we were just to get our hearings moving, we would not be in this crisis. We have been warning on our side that this was happening. We have been asking in a respectful way and received little or no attention to the matter.

I believe our complaint is legitimate. I believe it is our duty to ask the majority leader and the chairman of the judiciary to reevaluate what they are doing, to sit down and plan some hearings for these judges and give us a commitment that they are going to move forward. If we don't, we will end up when we recess—and maybe we will recess earlier than normal this year; many hope so—without moving anything like the number of judges that we should.

It has been stated that a substantial portion of the judicial nominees pending in committee do not have all their paperwork completed. However, almost 30 have everything in, including their ABA rating, and there is no reason for us not to move on those.

We have at least 30 that have every bit of their paperwork done. We haven't been moving those. The President made 18 nominations in May; 11 of them that have not even had a hearing and their paperwork is in. Why is it that we are not able to move effectively?

Unfortunately, it appears to be consistent with what we learned in the New York Times article. At the Democratic retreat they had a meeting to plan to change the ground rules for confirmation of judges; in effect, to slow the process down, let the vacancies grow, even though last year they were saying just the opposite.

I will share with you some of the comments we had last year. When there were 76 vacancies—now we have 108, 109—when there were 76 vacancies, the now majority leader stated:

The failure to fill these vacancies is straining our Federal court system and delaying justice for all people across this country.

That was last year when we had 76 vacancies. Just 2 years ago, when the

vacancies numbered in the sixties, Senator LEAHY, then ranking member, now chairman of Judiciary said:

We must redouble our effort to work with the President to end the longstanding vacancies that plague the Federal courts and disadvantage all Americans. That is our constitutional responsibility.

Well, the Senate's pace in moving nominations this year is far behind the pace during the first years of both Reagan and Bush 1 and the Clinton administrations. For example, in the first year of President Reagan's administration, there were 40 confirmations to the Federal bench. Under former President Bush's administration, there were 15 confirmations. Under President Clinton's administration, the first year, 28 confirmations. At this point, we have confirmed eight, and we have maybe a month left in this session. At the rate we are going, we are not going to get close to what was a national average of the last three administrations of 28 judges in the first year.

In fact, with regard to the nomination process, in the first year of each of those Presidents' administrations, every person who was nominated before the August recess was confirmed that first year, except one.

This is a chart that demonstrates that quite clearly. During the Reagan administration, all of his nominees who were sent to the Senate before the August recess—they gave us a whole month to work on the paperwork and review it—every one was confirmed. Under former President Bush, the same occurred. Every nominee he sent forward to this Senate before the August recess was confirmed. Under President Clinton, 93 percent of his were confirmed who were submitted before the August recess. Only one of his was not confirmed. Under the now-President Bush, only 18 percent of his have been confirmed to date.

So we are just heading on a collision course to a situation that is going to leave the courts shorthanded. If we don't recognize it, we are acquiescing in what could be a deliberate plan to slow down the confirmation of judges, even though last year—less than a year ago—the people who are involved in that now were decrying that as unacceptable; it was unacceptable to keep the confirmations low.

One more time, let's review these numbers because I don't think anyone should think that the reason we are here is light or insignificant. The reason we are here talking about these issues is that they are important.

In the 103rd Congress, under President Clinton—and he had a Democratic majority in the Judiciary Committee—there were 63 vacancies there. In the 104th Congress, 2 years later, at the end of President Clinton's first term there were 65 vacancies. In the 105th Congress, with Chairman Orrin Hatch's leadership there were 50 vacancies. Senator HATCH had reduced vacancies to 50. In the 106th Congress, the last years of President Clinton's term, the

vacancies were 67, which is, as you can see, pretty mainstream. But now we have 110 vacancies without an extraordinary game plan in the Judiciary Committee to have hearings and move judges forward. At the rate we are going, the resignations are going to exceed the nominations and confirmations. That is not a healthy thing for our judiciary.

Mr. President, I feel strongly about the issue. I know there are pressures on all of us. We have groups out there that used to try to pressure Chairman HATCH and tell him how to run the Judiciary Committee. He took the view that: If you want to get elected to the Senate, you can run the committee; otherwise, I am going to give hearings a fair shot and do what I think is right and move nominees.

I know pressure is out there. I think it is time for us to get serious on this matter, to move nominees forward, give President Bush's nominees a fair chance to be confirmed, to reduce this extraordinary backlog of vacancies that are out there—to have hearings on those 11 judges who were nominated in May because they have not even had a hearing yet—and get busy with filling our responsibility to advise and consent or reject President Bush's nominees.

I thank the Chair and yield the floor.
The PRESIDING OFFICER. The Senator from Nevada is recognized.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein for up to 5 minutes each.

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

ON THE ANNIVERSARY OF GOVERNOR MEL CARNAHAN'S DEATH

Mr. DASCHLE. Mr. President, one year ago today, America awoke to the terrible news that we had lost three extraordinary public servants: Governor Mel Carnahan, his son Roger, and their friend and aide Chris Sifford.

Mel Carnahan was a remarkable man—the kind whose work proved that politics and public service can indeed be a noble profession.

Like another man from Missouri, Harry Truman, Mel Carnahan was a man of plain speech and enormous political courage.

Throughout his career, he worked to help people, to make government efficient, and to use the tools at his disposal to make a difference in people's lives.

Whether it was improving public schools, expanding health insurance for children, protecting seniors through stricter safety standards for nursing homes, or making communities safer—Mel Carnahan never stopped working to make a difference.

I have no doubt that he would have been a great Senator, just as he was a

great Governor. Sadly, he never got the chance to show us that—at least, not directly.

But his spirit does live on in this Senate. As JEAN CARNAHAN has said so many times:

Hopes and dreams don't die with people, they live on in all the people we touch.

Today, Mel Carnahan's hopes and dreams live on through all those he touched. But they have their most powerful voice in his wife of 45 years, JEAN CARNAHAN.

It was one year ago that she pledged to keep the fire burning. And every day since—that is exactly what Senator CARNAHAN has done.

In her tireless work to see that the economic victims of September 11 get health care, unemployment benefits, and job training—we feel Mel's sense of justice and compassion. In her work to improve our nation's schools—we see Mel's commitment to the children of Missouri, and America. And when Senator CARNAHAN comes to the Senate floor, and commands here colleagues' attention with her clear and thoughtful arguments—we hear the echoes of Mel's plainspoken sensibility.

One year after that cruel October morning, JEAN CARNAHAN has become the great Senator that Mel Carnahan would have been had he been given the chance. That is one blessing that makes his loss more bearable.

The poet Longfellow wrote:

When a great man dies,
for years beyond our ken,
the light he leaves behind him lies
upon the paths of men.

During his life, Mel Carnahan cast a bright and shining light on his state and our nation. His death did not extinguish that light.

That light continues to shine in the remarkable work and the indomitable spirit of his partner and our colleague, Senator JEAN CARNAHAN.

Today, especially today we thank her for her courage and for our inspiration.

JUDICIAL CONFIRMATIONS

Mr. THURMOND. Mr. President, I rise today to express my concern over the slow pace of judicial confirmations in the Senate.

The Bush administration deserves to be treated as fairly by the Democrat majority as the Republican majority treated the Clinton administration. Thus far, the facts show that the pace of confirmations is extremely slow and the number of vacancies is extremely high.

The Senate has confirmed only 8 judges so far this year, compared to 60 who have been nominated. During the Clinton administration, the Senate confirmed an average of 47 judges per year. In the first year of the Clinton administration, the Senate confirmed 28 judges, which is about average when compared to the first year for Reagan and Bush I. In the final year of the Clinton administration, we confirmed 39.

Given these numbers, it should not be surprising that the number of vacancies is much higher today than at the end of the Clinton administration. As of today, there are 109 vacancies for a vacancy rate of 12.7 percent, while at the end of the Clinton administration last year, there were only 67 vacancies for a 7.9 percent vacancy rate.

The Senate confirmed almost the same number of judges for President Clinton as for President Reagan, 377 compared to 384. This is true even though Republicans controlled the Senate for six years of Clinton and six years of Reagan. In fact, while I was Chairman for the first six years of the Reagan administration, I made confirmations arguably my top priority. Yet, the numbers are comparable.

The Democrat majority often notes that it has confirmed more circuit judges this year than the Senate did for the first year of the Clinton administration. While this is true, President Clinton nominated only five circuit judges in his first year in office, compared to 21 for President Bush so far this year. Also, in the first year of Clinton, the Democrats were in charge at the time. Last year, while Republicans were in control and it was an election year, the Senate still confirmed 8 circuit judges, double the number we have confirmed so far this year.

Under any reasonable evaluation, the numbers show that we are far behind this year. However, there is still time to act this session, and make the numbers fair with former Presidents.

In the first year of each of the past three administrations, all judges nominated before the end of the August recess were confirmed that year. The only exception is one judge during the first year of the Clinton administration who received a negative American Bar Association rating, and even he was confirmed the next year. President Bush nominated 44 judges before the end of August, and to be consistent we should confirm these judges before we adjourn this year.

One pending circuit court nominee is Judge Dennis Shedd, who was among President Bush's first set of nominees sent to the Senate on May 9. He has been a very able district court judge for the past decade and was formerly the chief counsel and staff director of the Judiciary Committee. He has bipartisan support. Also, the position for which he has been nominated has been declared a judicial emergency by the Administrative Office of the Courts. In addition, the committee held a hearing in August on the nomination of Terry Wooten for the District Court in South Carolina. I sincerely hope both of these fine judicial candidates can be confirmed this year.

In summary, I hope the Senate can act this year on many pending judicial nominees, and greatly reduce the extremely high vacancy rate that currently faces our Federal courts.