

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.