

their mission and mandate. They can say: We guarantee this loan. So far they have not done so. I wish we could rush through some additional language to make it clear this is their mission and mandate. We may not be able to do so. But they ought to go forward with this loan. If they don't, the consequences are going to be very harsh.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. JOHNSON). Without objection, it is so ordered.

#### RECESS

Mr. REID. I ask unanimous consent the Senate stand in recess until 3:30 today.

Thereupon, the Senate, at 3:03 p.m., recessed until 3:30 p.m., and reassembled when called to order by the Presiding Officer (Mr. JOHNSON).

The PRESIDING OFFICER. The Senator from Massachusetts.

#### JUDICIAL NOMINATIONS

Mr. KENNEDY. Mr. President, we have been hearing a steady drumbeat of complaints from our Republican colleagues about the pace of judicial confirmations by the Senate. For all who know the facts, there is no basis for the charge that Democrats have engaged in delay tactics on judicial nominees. In fact, the Democratic Senate has been significantly more diligent in confirming judges under the Bush administration than the Republican Senate was at any point under the Clinton administration.

In the 5 months since Democrats gained control of the Senate, the Judiciary Committee has already held 11 hearings on judicial nominees. Under Chairman LEAHY'S leadership, we held hearings during the August recess, and also just 2 days after the terrorist attacks. In addition, we held a hearing in the Capitol Building, when the Senate offices were closed by the anthrax contamination.

As a result, 27 judges have already been confirmed in the 5 months since Democrats took control of the Senate. By the time the Senate adjourns, we are likely to have confirmed more than 30 judges—more than were confirmed during the entire first year of President Clinton's first term in office when Democrats controlled the Senate, and more than double the number confirmed during the entire first year of the first Bush administration.

Our record is good by any measure. It becomes even better when we compare it to the record of the Republican majority when they controlled the Senate during the Clinton administration.

We have held 11 judicial nomination hearings in just 5 months, almost all of which have included several judges per hearing. In 1999 and 2000, the Republicans held an average of only seven hearings for the entire year.

In confirming 24 judges since the August recess, we have had a more productive post-August-recess period than any Republican-led Senate did for a comparable period in the last 6 years.

Some Republicans are now blaming Democrats for the current number of vacancies on the Federal bench. But these vacancies were largely caused by the tactics of the Republican majority over the last 6 years. We know that our colleagues worked to impede President Clinton's executive branch nominees such as Bill Lann Lee, nominated to head the civil rights division, and Dr. Satcher, the nominee for Surgeon General. Our colleagues also blocked or attempted to block President Clinton's judicial nominees by delaying or refusing to hold hearings, and refusing to allow the Senate to vote on some nominees. The average length of time a circuit court nominee waited for a hearing under the Republican Senate was about 300 days. Some nominees waited up to 4 years for a hearing. In 6 years, the Republican Senate failed to confirm nearly half of President Clinton's nominees to the circuit courts. As a result, vacancies in the Federal courts increased by 60 percent.

No one suggests that Senate Democrats should follow the example the Republicans set over the past 6 years. The Judiciary Committee should and will continue to move forward in confirming nominees to the Federal court in a prompt manner. But it is wrong for any of us in the Senate to abdicate our responsibility to thoroughly review the record of each nominee. Lifetime appointments are at stake. The need for careful review is important not just for Supreme Court nominees but for nominees to the lower Federal courts as well. These courts hold immense power. Many important legal issues in this country are decided at the Court of Appeals level, since the Supreme Court decides fewer than 100 cases per year.

I voted to confirm most of the judges nominated by President Reagan and the first President Bush. The Senate's constitutional duty of "advice and consent" does not mean that the Senate should be a rubber stamp. It certainly does not require the approval of Federal judges who have displayed hostility to core Federal constitutional and statutory protections, or who have an extreme ideological agenda. Judges who are highly qualified, have a balanced judiciary temperament, and who are committed to upholding the Constitution and Federal law are judges that Senators on both sides of the aisle can support. But we should not support nominees with records that suggest they will roll back the rights and protections that Americans consider vital.

All nominees should have their records examined thoroughly, and they

should have hearings to answer questions about their records. Because these are lifetime appointments to courts that make decisions deeply affecting the nation, full and fair review is the least the Senate owes the American people.

The Senate has worked well together this year on a number of bipartisan efforts, including education, airline security, and bioterrorism. On the issue of judges, all of us on the Senate Judiciary Committee know that we can work well with the administration and with Senators on both sides of the aisle to confirm nominees for our Federal courts who are highly qualified, fair, and committed to upholding the Constitution and the Nation's laws. I look forward to greater efforts in the time ahead to achieve that very important goal.

I am reminded of the fact, in reviewing the Constitutional Convention, that perhaps the last major decision made at the Constitutional Convention was to change what had been initially accepted by the Founding Fathers, and that was the Senate was going to appoint Federal judges. The Senate would do it by itself. One of the last decisions made by the Founding Fathers was to have this as a shared responsibility.

It seems to me that is something that sometimes this institution loses sight of, as do the American people sometimes. They believe that once nominated, we, in effect, should be a rubber stamp to these nominees. In reading constitutional history, we will find, to the Founding Fathers this was an issue of enormous importance and consequence. They made it extremely explicit that they believed the responsibility ought to be an equally shared responsibility between the President and the Senate. It does seem to me we should meet that responsibility in ways that are fair, that reveal the qualities of the individual, and make a judgment and a decision based upon that process.

#### TRIBUTE TO JOHN T. O'CONNOR

Mr. KENNEDY. Mr. President, it is a privilege to take this opportunity to remember my friend John T. O'Connor, who passed away on November 30, 2001. A lifelong fighter for social justice, John died suddenly and unexpectedly at the age of 46 while playing basketball, a sport he loved, at the YMCA near his home in Cambridge, Massachusetts.

John O'Connor's zest for life and boundless energy were apparent from the moment you first met him, and those extraordinary qualities continued to amaze even those who knew him best and longest. His undeniable charisma helped win an enormous circle of friends. But his life was always about causes larger than himself. He credited his passion for social justice to the example of his parents, Katherine and George, to the Catholic faith and training he felt so deeply, and to his many