

ORDER OF PROCEDURE

Mr. REID. Madam President, I have spoken to my counterpart, Senator NICKLES. He wishes to speak for 15 minutes. That would go past the time set aside for morning business. I ask unanimous consent that the Senator from Oklahoma be recognized for whatever time is left, plus enough time to make it 15 minutes.

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

The Senator from Oklahoma.

NOMINATIONS

Mr. NICKLES. Madam President, I rise today to join my colleagues in expressing real disappointment in the fact that we have eight nominees to the U.S. circuit courts of appeals, who were nominated a year ago, who have yet to have a hearing before the Senate Judiciary Committee.

Nineteen of 30 circuit court nominees have yet to have a hearing—19 out of 30. I have stated to my colleagues—and I state this on the floor of the Senate, just as sincerely as possible—we should treat all judicial nominees fairly.

Some people say: Well, we are having a little retribution because you didn't treat people well in President Clinton's last year.

The tradition of the Senate has always been to give a President his or her nominees pretty good access to the Senate for confirmation purposes in the first 2 or 3 years of their Presidency. The tradition of the Senate, also, is to kind of slow it down in a President's last year.

Certainly, if you look at what happened in the last three Presidencies, that is what has happened. Unfortunately, the current President Bush has not had fair treatment for his judicial nominees, especially circuit court nominees, in his first 2 years. That is just a fact.

The chart I have shows that we have only confirmed 9 out of 30. That is 30 percent. There is another nominee who is pending on the calendar. Hopefully, that will be cleared fairly quickly. That would be 10 out of 30. That is one out of three nominated judges confirmed.

If you look at President Clinton's first 2 years, he got 19 out of 22. If you look at President Bush I, he got 22 out of 23. President Reagan got 19 out of 20. So President Reagan and President Bush I got 95 percent of their circuit court nominees confirmed in their first 2 years. President Clinton got 19 out of 22. That is 86 percent.

We should always be confirming those kinds of percentages unless they nominate people who are totally unqualified and are undeserving of the position. But we are not doing that.

Also, if you look at the total numbers, President Reagan got 98 percent of all the judges that he nominated confirmed in his first 2 years. President Bush I got 93 percent of the judges he

nominated confirmed in his first 2 years. And President Clinton had more judges confirmed than either of the two by a considerable amount; he had 129 judges confirmed in his first 2 years, which is 90 percent.

For the current President Bush, we have now done 56 percent. We are moving along, at least now, at 60-some odd percent for district court judges. But the big discrepancy is, we are way behind in circuit court appellate judges—way behind—and these individuals are not being treated fairly. They are eminently qualified. And to think that eight were nominated a year ago.

Somebody said: Why are you making such a fuss now? Because enough is enough. Eight of these outstanding, qualified individuals were nominated a year ago today, and they have not had a hearing. Why? Are they not qualified? Well, let me just look at some of their qualifications.

John Roberts was nominated to the DC Circuit Court of Appeals. He has argued 37 cases before the U.S. Supreme Court. Evidently, the private sector thinks he is eminently qualified. He was unanimously rated "well qualified" by the ABA. He is a Harvard Law School graduate, magnum cum laude. He was managing editor of the Harvard Law Review. He was a law clerk to Supreme Court Justice Rehnquist. And he also was the Principal Deputy Solicitor General for the United States from 1989 to 1993.

You will be hard-pressed to find anybody more qualified than John Roberts anywhere in the country to sit on any bench. Yet, he cannot get a hearing, and he was nominated a year ago. I am embarrassed we have not been able to schedule a hearing for John Roberts.

I hope, in the course of this dialog, Senator LEAHY or Senator DASCHLE will join me. I would like to ask the question, why can't we get a hearing for him?

Miguel Estrada is also nominated to the DC Circuit, a partner of the DC firm of Gibson, Dunn & Crutcher. He has argued 15 cases before the U.S. Supreme Court. He was unanimously rated "well qualified" by the ABA. He immigrated to the United States as a teenager from Honduras and, at the time, hardly even spoke English. Yet, he graduated from Harvard Law School magnum cum laude. He was an editor of their Harvard Law Review. He was a law clerk to Justice Kennedy. And he is a former Assistant Solicitor General and Assistant U.S. Attorney. He has been a prosecutor. He worked as a law clerk for a Supreme Court Justice. He argued 15 cases before the Supreme Court. He is eminently qualified. He is Hispanic. And we can't get a hearing?

The District of Columbia Circuit Court of Appeals has four vacancies. A year ago, they were saying they really needed at least three judges. And we can't get a hearing for two of the most qualified people anywhere in the country for these two positions. This is unbelievable.

Priscilla Owen was nominated to the Fifth Circuit Court. She has served on the Texas Supreme Court since 1994. She was unanimously rated "well qualified" by the ABA. She is a Baylor Law School graduate, with honors, and a member of the Baylor Law Review. She had the highest score on her Texas bar exam, and 17 years of prior experience as a commercial litigator.

Just another example. Why is she not entitled to have a hearing? I think when these individuals have hearings, it is going to be obvious they are well-qualified. There will be no reason whatsoever to attack them or to vote no. So people do not want to have a hearing because they know if they have a hearing, they are going to be confirmed.

Terrence Boyle was nominated to the Fourth Circuit. He is presently the chief judge in the U.S. District Court in the Eastern District for North Carolina, and has been since 1997. He was unanimously rated "well qualified" by the ABA. He is a graduate from American University, Washington College of Law. He also served as minority counsel for the House Subcommittee on Housing, Banking, and Currency from 1970 to 1973, and legislative assistant to Senator HELMS.

We usually treat former Senate staffers with a little courtesy. We usually give them a hearing. This is a person who has had a little experience in the Senate working on the Judiciary Committee, in addition to serving as a district court judge from 1984 to 1997. We can't even give him a hearing? I don't think that is right.

Michael McConnell is nominated to the Tenth Circuit Court of Appeals. He is presently a Presidential professor of law at the University of Utah. He was unanimously rated "well qualified" by the ABA. He is a renowned constitutional law expert. He has argued 11 cases before the U.S. Supreme Court. He graduated at the top of his class from the Chicago Law School. He was a law clerk for Justice Brennan, and also served as a prior Assistant Solicitor General. Michael McConnell was nominated a year ago and has yet to even have a hearing.

Deborah Cook is nominated to the Sixth Circuit Court of Appeals. She is presently serving as a justice on the Supreme Court of Ohio, and has since 1994. She was unanimously rated "well qualified" by the ABA. She is an Akron School of Law graduate, and practiced with Akron's oldest law firm. She sat on the Ohio District Court of Appeals from 1991 to 1995. She also chaired the Commission on Public Legal Education, and has also been a member of the Ohio Commission on Dispute Resolution. She is more than qualified.

Jeffrey Sutton is also nominated to the Sixth Circuit Court.

On the Sixth Circuit, there are 8 vacancies out of the 16. One-half of the circuit court of appeals is vacant, desperately needing some assistance.

Mr. Sutton a partner in the law firm of Jones, Day. He is rated well qualified by the ABA minority and qualified