am going to just start calling them up, one by one, and clearing them and getting them done. And by doing that, I have done six, and I am on the verge of doing three more. So I would hope we would get cooperation on that.

I think Judge Stewart of Utah is a qualified nominee. He is obviously supported by the Senator from Utah, the chairman of the Judiciary Committee, who has been working in good faith. He was not particularly happy with my plan to just go forward and start calling up judges. I assured him that after we had done several of them that had been cleared, his would be next. His is going to be next. He will be in this package of three.

I understand Senators may want to talk some more about this in the next few minutes. I don't want to file cloture on Judge Stewart. I will do that, and then we will start down this 41-vote trail, which I don't think is wise. Let's try to have some cooperation with each other and a modicum of good faith, and we will continue to work on them.

It takes a lot of time for the majority leader and the minority leader to clear these judges—a lot of time. I have to check with 54 other Senators before I can enter into any kind of agreement. Sometimes the objections are: I need time to think about it; I need to meet with this person or that person. Sometimes it is a legislative issue. Sometimes they say: Well, I have a problem; I am going to vote no. Sometimes they say: I need a lot of time.

I have to work through all that. I will withhold right now on these three, on either of the three. I urge Senator LEAHY, Senator HATCH, Senator FEINSTEIN, anybody else who is involved and interested, to talk this out. I will be back here in a couple of hours, and I will see if we can't work out a way we can move the two who have been cleared already and move Judge Stewart. I do think you will want to talk about it some and perhaps discuss it further with Senator DASCHLE. That would be fine, too.

UNANIMOUS CONSENT AGREEMENT—H.R. 2587 CONFERENCE REPORT

Mr. LOTT. Mr. President, I ask unanimous consent that at 2 p.m., the Senate turn to the conference report to accompany the D.C. appropriations bill under the same terms as outlined in the earlier consent, with a recorded vote to occur at approximately 2:30.

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

Mr. LOTT. I thank the Senators, and I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

NOMINATIONS

Mr. LEAHY. Mr. President, while the distinguished majority leader is still on the floor, I note I, too, do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41. In fact, the distinguished majority leader is perhaps aware of the fact that during the Republican administrations I rarely ever voted against a nomination by either President Reagan or President Bush. There were a couple I did.

I also took the floor on occasion to oppose filibusters to hold them up and believe that we should have a vote up or down. Actually, I was one of those who made sure, on a couple controversial Republican judges, that we did. That meant 100 Senators voted on them, 100.

In this case, unfortunately, we have at least one judge who has been held for 3 years by one or two or three or four Senators, not 41 but less than a handful. All I am asking is that we give them the fairness of having the whole Senate vote on them.

Unfortunately, in the last couple years, women and minorities have been held up longer than anybody else on these Federal judgeships. They ought to be allowed a vote up or down. If Senators want to vote against them, then vote against them. If they want to vote for them, vote for them. But to have two or three people, quietly, in the back room, never be identified as being the ones holding them up, I think that is unfair to the judiciary, it is unfair to the nominees, and, frankly, it demeans the Senate.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, as a Senator representing California, who sits on the Judiciary Committee, I have to say a word or two on this subject.

First, I believe the chairman of our committee, Senator HATCH, has been very fair with respect to these judges. I believe he has tried his level best to move the calendar along.

I think what we on this side are encountering is the holding up of judges, particularly on the Ninth Circuit Court of Appeals, for years on end. That must stop. A nominee is entitled to a vote. Vote them up; vote them down. To keep them hanging on—the court has 750 cases waiting for a judge. These judges are necessary. If someone has opposition to a judge, which I believe to be the case in at least one, they should come to the floor and say that.

It is also my understanding and my desire to ask that there be some commitment from the other side as to when specifically the nominations of Judge Paez, Marsha Berzon, and Ray Fisher, pending on this calendar—Judge Paez pending for 4 years; Marsha Berzon through two sessions now—can at least be brought to the floor for a vote.

I am prepared to vote on the judges that the majority leader mentioned. I am prepared to vote affirmatively, but I can't do that unless I have some knowledge that judges who have stood on this calendar for years can be brought up before this body for a vote. I don't think that is too much to ask the other side to do.

What this does to a judge's life is, it leaves them in limbo—I should say, a nominee's life—whether they have a place to live, whether they are going to make a move. It is our job to confirm these judges. If we don't like them, we can vote against them. That is the honest thing to do. If there are things in their background, in their abilities that don't pass muster, vote no.

I think every one of us on this side is prepared for that. The problem is, we have a few people who prevent them from having a vote, and this goes on month after month, year after year.

The ranking member of the committee said something that I believe is concurred in on this side; that is, women and minorities have an inordinately difficult time having their nominations processed in an orderly and expeditious way. I don't think that befits this body.

What I am asking for, as a Senator from California, on these three judges, is to just tell us when we might see their nominations before the Senate for a vote up or down. I think there is also an understanding by the White House that will be the case as well.

I ask the majority party to please take this into consideration, allow us a vote up or down, and give us a time when this might happen.

Once again, I thank the ranking member and the chairman of the committee. I know the Senator from Utah has done everything he possibly can to move these nominations. I, for one, very much appreciate it. I am hopeful the leadership of his side will be able to give us some accommodation on this.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate my colleague's kind remarks. I support Mr. Stewart's nomination, and I urge my colleagues to do the same, and not to filibuster any nominee, let alone this nominee.

I am pleased, with regard to the judicial nominations that have been voted on so far this session—and there have been well over 300 since this President became President—that no one on our side, to my knowledge, has threatened to filibuster any of these judges. I think that is the way to proceed.

I think it is a travesty if we ever start getting into a game of filibustering judges. I have to admit that my colleagues on the other side attempted

to do that on a number of occasions during the Reagan and Bush years. They always backed off, but maybe they did because they realized there were enough votes to stop a filibuster against Federal judges. I think it is a travesty if we treat this third branch of government with such disregard that we filibuster judges.

I also have appreciated the comments of the ranking member of the Judiciary Committee, Senator LEAHY, who stated on this floor in the past:

> I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported. . . .

The Republican leadership, the Democratic President, the Republican chairman, and the Democratic ranking member of the Judiciary Committee all support Mr. Stewart's nomination. The nomination should not be filibustered. As I understand it, the only reason there would be a filibuster is because some Senators want their judges up. They have no real reason to filibuster Mr. Stewart.

The only way I could ever see a filibuster would be justified is if a nominee is so absolutely unqualified to sit on the Federal bench that the only way to stop that person is a filibuster. I can understand it under those circumstances. Even then, I would question whether that should be done. If a person is so unqualified, we ought to be able to beat that person on the floor.

Even when I opposed a nominee of the current President, I voted for cloture to stop the filibuster of that nominee. That was for Lee Sarokin.

We are dealing with a coequal branch of government. We are dealing with some of the most important nominations the President, whoever that President may be, will make. We are also dealing, hopefully, with good faith on both sides of the floor. For years, I thought our colleagues on the other side did some reprehensible things with regard to Reagan and Bush judges—very few, but it was serious. By and large, the vast majority of them were put through without any real fuss or bother even though my colleagues on the other side, had they been President, would not have appointed very many of those judges. We have to show the same good faith on our side, it seems to me.

And unless you have an overwhelming case, then certainly I don't see any reason for anybody filibustering judges. I hope that we never get into that. Let's make our case if we have disagreement, and then vote. And I reach this conclusion after having been part of this process for over 20 years now and always trying to be fair, whoever is the President of the United States and whoever the nominees are.

It is important to not filibuster judicial nominees on the floor of the Senate. The fight over a nomination has to occur between honest people in the White House and honest people up here. And that is where the battles are. When they get this far, generally most of them should be approved. There are some we still have problems with in the Judiciary Committee, but that is our job to look at them. It is our job to look into their background. It is our job to screen these candidates.

We have had judicial nominees withdraw after we have approved them in the Judiciary Committee because something has come up to disturb their nomination. This was generally handled between the White House, the Senate, and the nominee. That is the way it should work.

We must remember that these are among the most important nominations that any President can make and that the Senate can ever work on. We should not play politics with them.

I have really worked hard on the Judiciary Committee to try to not allow politics. It is no secret that there are some on the right who decry the fact that I have put through Clinton judges. Some of them don't want any Clinton judges put through —some just because they are liberal. If we get to the point where we deny people a chance to serve because they are liberal or conservative, I think we will be in real trouble. Politics should not be played with judicial nominees. President Clinton did win this Presidency. He has a right to nominate these people, and we have an obligation to confirm them if they are qualified. In every case where we have confirmed them, they are qualified, even though there may be some questions in the minds of some.

In the case of Ted Steward, we have examined the whole record. The President has examined the whole record. The President and I and Senator BENNETT agree that Mr. Stewart is qualified to serve as an Article III, judgeship in Utah. The Judiciary Committee reported Mr. Steward's nomination favorably to the floor.

Now we have the unusual situation of a Democratic President and Republican Chairman and Democratic Ranking Member agreeing on a nomination, but certain Democratic Senators who really don't oppose Ted Steward's nomination want to hold the nomination hostage in order to get other judges up. The majority leader said he will try to do so in good faith, but he must consult with 54 other Senators on our side.

There is some angst on at least the background of two of the 9th Circuit Court judges on the part of some on our side. I could not disagree more with the threat of filibuster here. Unless there is an overwhelming case to be made against a judge that he or she is unqualified or will not respect the limited role which Article III prescribes for a judge, there should be no filibuster.

Mr. Steward is definitely qualified and will certainly respect the limited role that Article III provides for a federal judge. He will be a credit to the federal bench in Utah and throughout the country.

In sum, Mr. President, I oppose filibusters of judicial nominees as a general matter and I support Mr. Stewart's nomination in this specific case. I would like to see these three judges go through today because we put them through the Judiciary Committee. I would like to see all of those on the list have an opportunity to be voted up or down. I will work to try to do that.

On the other hand, I understand the problems of the majority leader and I hope my colleagues on the other side do. I hope colleagues on both sides of the aisle will not hold up the business of the Senate to play politics with Ted Stewart's nomination. I have to say that I think we do a great injustice if we do not support this nomination.

Having said all of that, let me conclude by saying I have been willing to and have enjoyed working with my distinguished friend from Vermont. He has done a good job as the Democrat leader on the committee. I just have to say that I hope he can clear his side on these matters and that we can get them through because I intend to put more judges out from the committee and to move forward with as much dispatch as I can.

Earlier, when I said there was some angst concerning the background of some Ninth Circuit nominees, I was referring to their legal background and some of the matters that came before the committee. Be that as it may, I was really referring to the Ninth Circuit Court of Appeals, which seems to be out of whack with the rest of the country. It is reversed virtually all the time by the Supreme Court. There is a great deal of concern that Ninth Circuit court has become so activist that it is a detriment to the Federal judicial system. Some on our side believe that to put any additional activists on that court would be a travesty and would be wrong. I am concerned about that, too.

All I can say is that it is important we work together to try to get these nominees through, both in the Judiciary Committee and in the Senate. Should we be fortunate enough to have a Republican President next time, I hope our colleagues on the other side will treat our nominees as fairly as I certainly did and the Senate Republicans as a whole treated the Democrat nominees who have been brought before the committee. We are going to keep working on them, and we will do the best we can to get as many of them through as we can. Thus far, I am proud of the record we have.

I yield the floor.

Mr. LEAHY. Mr. President, we have a number of highly-qualified nominees for judicial vacancies before the Senate and on the Executive Calendar. I want to be sure that the Senate treats them

all fairly and accords each of them an opportunity for an up or down vote. I want to share with you a few of the cases that cry out for a Senate vote:

The first is Judge Richard Paez. He is a judicial nominee who has been awaiting consideration and confirmation by the Senate since January 1996—for over 3 and one-half years. The vacancy for which Judge Paez was nominated became a judicial emergency during the time his nomination has been pending without action by the Senate. His nomination was first received by the Senate almost 44 months ago and is still without a Senate vote. That is unconscionable.

Judge Paez has twice been reported favorably by the Senate Judiciary Committee to the Senate for final action. He is again on the Senate calendar. He was delayed 25 months before finally being accorded a confirmation hearing in February 1998. After being reported by the Judiciary Committee initially in March 1998, his nomination was held on the Senate Executive Calendar without action or explanation for over 7 months, for the remainder of the last Congress.

Judge Paez was renominated by the President again this year and his nomination was stalled without action before the Judiciary Committee until late July, when the Committee reported his nomination to the Senate for the second time. The Senate refused to consider the nomination before the August recess. I have repeatedly urged the Republican leadership to call this nomination up for consideration and a vote. The Republican leadership in the Senate has refused to schedule this nomination for an up or down vote.

Judge Paez has the strong support of both California Senators and a ''well-qualified'' rating from the American Bar Association. He has served as a municipal judge for 13 years and as a federal judge for four years.

In my view Judge Paez should be commended for the years he worked to provide legal services and access to our justice system for those without the financial resources otherwise to retain counsel. His work with the Legal Aid Foundation of Los Angeles, the Western Center on Law and Poverty and California Rural Legal Assistance for nine years should be a source of praise and pride.

Judge Paez has had the strong support of California judges familiar with his work, such as Justice H. Walter Crosky, and support from an impressive array of law enforcement officials, including Gil Garcetti, the Los Angeles District Attorney; the late Sherman Block, then Los Angeles County Sheriff; the Los Angeles County Police Chiefs' Association; and the Association for Los Angeles Deputy Sheriffs.

The Hispanic National Bar Association, the Mexican American Legal Defense and Educational Fund, the League of United Latin American Citizens, the National Association of Latino Elected and Appointed Officials, and many, many others have been seeking a vote on this nomination for what now amounts to years.

I want to commend the Chairman of the Judiciary Committee for his steadfast support of this nominee and Senator BOXER and Senator FEINSTEIN of California for their efforts on his behalf.

Last year the words of the Chief Justice of the United States were ringing in our ears with respect to the delays in Senate consideration of judicial nomination. He had written:

> Some current nominees have been waiting considerable time for a Senate Judiciary Committee vote or a final floor vote. . . . The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.

Richard Paez's nomination to the Ninth Circuit had already been pending for 24 months when the Chief Justice issued that statement—and that was almost two years ago. The Chief Justice's words resound in connection with the nomination of Judge Paez. He has twice been reported favorably by the Judiciary Committee. It was been pending for almost 44 months. The court to which he was nominated has multiple vacancies. In fairness to Judge Paez and all the people served by the Ninth Circuit, the Senate should vote on this nomination.

Justice Ronnie White is another nominee who has been pending before the Senate without a vote for an exceedingly long time. In June I gave a Senate speech marking the 2-year anniversary of the nomination of this outstanding jurist to what is now a judicial emergency vacancy on the U.S. District Court for the Eastern District of Missouri. He is currently a member of the Missouri Supreme Court.

He was nominated by President Clinton in June of 1997. It took 11 months before the Senate would even allow him to have a confirmation hearing. His nomination was then reported favorably on a 13 to 3 vote by the Senate Judiciary Committee on May 21, 1998. Senators HATCH, THURMOND, GRASSLEY, SPECTER, KYL, and DEWINE were the Republican members of the Committee who voted for him along with the Democratic members. Senators ASHCROFT, ABRAHAM and SESSIONS voted against him.

Even though he had been voted out overwhelmingly, he sat on the calendar last year, and the nomination was returned to the President after 16 months with no action.

The President renominated him and on July 22 the Senate Judiciary Committee again reported the nomination favorably to the Senate, this time by a vote of two to one.

Justice White deserves better than benign neglect. The people of Missouri deserve a fully qualified and fully staffed Federal bench.

Justice White has one of the finest records—and the experience and standing—of any lawyer that has come before the Judiciary Committee. He has served in the Missouri legislature, the office of the city counselor for the City of St. Louis, and he was a judge in the Missouri Court of Appeals for the Eastern District of Missouri before his current service as the first African-American ever to serve on the Missouri Supreme Court.

Having been voted out of Committee twice, he has now been forced to wait for more than two years for Senate action. This distinguished African-American at least deserves the respect of this Senate, and he should be allowed a vote, up or down. Senators can stand up and say they will vote for or against him, but let this man have his vote. Twenty-seven months after being nominated, the nomination remains pending before the Senate. I would certainly like to see Justice White be accorded an up or down vote.

I have been concerned for the last several years that it seems women and minority nominees are being delayed and not considered. I spoke to the Senate about this situation on May 22, June 22 and, again, on October 8 last year. Over the last couple of years the Senate has failed to act on the nominations of Judge James A. Beaty, Jr. to be the first African-American judge on the Fourth Circuit; Jorge C. Rangel to the Fifth Circuit; Clarence J. Sundram to the District Court for the Northern District of New York; Anabelle Rodriguez to the District Court in Puerto Rico; and many others.

In explaining why he chose to withdraw from consideration for renomination after waiting 15 months for Senate action, Jorge Rangel wrote to the President and explained:

> Our judicial system depends on men and women of good will who agree to serve when asked to do so. But public service asks too much when those of us who answer the call to service are subjected to a confirmation process dominated by interminable delays and inaction. Patience has its virtues, but it also has its limits.

Last year the average for all nominees confirmed was over 230 days and 11 nominees confirmed last year took longer than 9 months: Judge William Fletcher's confirmation took 41 months—it became the longest-pending judicial nomination in the history of the United States; Judge Hilda Tagle's confirmation took 32 months, Judge Susan Oki Mollway's confirmation took 30 months, Judge Ann Aiken's confirmation took 26 months, Judge Margaret McKeown's confirmation took 24 months, Judge Margaret Morrow's confirmation took 21 months, Judge Sonia Sotomayor's confirmation took 15 months, Judge Rebecca Pallmeyer's confirmation took 14 months, Judge Ivan Lemelle's confirmation took 14 months, Judge Dan

Polster's confirmation took 12 months, and Judge Victoria Roberts' confirmation took 11 months. Of these 11, eight are women or minority nominees. Another was Professor Fletcher was held up, in large measure because of opposition to his mother, Judge Betty Fletcher.

In 1997, of the 36 nominations eventually confirmed, 9, fully one-quarter of all those confirmed, took more than 9 months before a final favorable Senate vote.

In 1996, the Republican Senate shattered the record for the average number of days from nomination to confirmation for judicial confirmation. The average rose to a record 183 days. In 1997, the average number of days from nomination to confirmation rose dramatically yet again, and that was during the first year of a presidential term. From initial nomination to confirmation, the average time it took for Senate action on the 36 judges confirmed in 1997 broke the 200-day barrier for the first time in our history. It was 212 days.

Unfortunately, that time is still growing and the average is still rising to the detriment of the administration of justice. Last year the Senate broke its dismal record. The average time from nomination to confirmation for the 65 judges confirmed in 1998 was over 230 days.

Acting to fill judicial vacancies is a constitutional duty that the Senate—and all of its members—are obligated to fulfill. In its unprecedented slowdown in the handling of nominees since the 104th Congress, the Senate is shirking its duty. That is wrong and should end. The Senate recesses with a sorry record of inaction on judicial nominations.

Another example of a longstanding nominee who is being denied a Senate vote is Marsha Berzon. Fully one-quarter of the active judgeships authorized for that Court remain vacant, as they have been for several years. The Judicial Conference recently requested that Ninth Circuit judgeships be increased in light of its workload by an additional five judges. That means that while Ms. Berzon's nomination has been pending, that Court has been forced to struggle through its extraordinary workload with 12 fewer judges than it needs.

Marsha Berzon is an outstanding nominee. By all accounts, she is an exceptional lawyer with extensive appellate experience, including a number of cases heard by the Supreme Court. She has the strong support of both California Senators and a well-qualified rating from the American Bar Association.

She was initially nominated in January 1998, almost 20 months ago. She participated in an extensive two-part confirmation hearing before the Committee back on July 30, 1998. Thereafter she received a number of sets of written questions from a number of Senators and responded in August of last year. A second round of written questions was sent and she responded by the middle of September of last year. Despite the efforts of Senator FEINSTEIN, Senator KENNEDY, Senator SPECTER and myself to have her considered by the Committee, she was not included on an agenda and not voted on during all of 1998. Her nomination was returned to the President without action by this Committee or the Senate last October.

This year the President renominated Ms. Berzon in January. She participated in her second confirmation hearing in June, was sent additional sets of written questions, responded and got and answered another round. I do not know why those questions were not asked last year.

Finally, on July 1 more than two months ago and before Mr. Stewart was even nominated, the Committee considered the nomination and agreed to report it to the Senate favorably. After more than a year and one-half the Senate should, at long last, vote on the nomination. Senators who find some reason to oppose this exceptionally qualified woman lawyer can vote against her if they choose, but she should be accorded an up or down vote. That is what I have been asking for and that is what fairness demands.

Unfortunately, the list goes on and on. In addition, there is the nomination of Timothy Dyk to the Federal Circuit. Tim Dyk was initially nominated in April 1998, and participated in a confirmation hearing last July. He was favorably reported to the Senate by a vote of 14 to 4 last September. His was one of the several judicial nominations not acted upon by the Senate last year before it adjourned. Instead, the Senate returned this nomination to the President without action.

The President proceeded to renominate Mr. Dyk in January 1999. Since then, his nomination, which had been favorably reported last year, has been in limbo. I raised his nomination at our first Committee meeting of the year in February and a number of times thereafter. Still, he is being held hostage in the Committee without action.

There are the nominations of Barry Goode to the Ninth Circuit, who was first nominated in June 1998 and is still patiently awaiting a confirmation hearing; of Julio Fuentes to the Third Circuit, has been pending three times longer than the Stewart nomination and is still awaiting his confirmation hearing; of Ray Fisher to the Ninth Circuit, who is an outstanding lawyer and public servant now Associate Attorney General of the United States Department of Justice and was reported by the Committee on a vote of 16 to 2 but remains held on the Senate Calendar. There are the nominations of Alston Johnson to the Fifth Circuit, James Duffy to the Ninth Circuit, and Elena Kagan to the D.C. Circuit, among others who were nominated before Mr. Stewart. There are the district court nominations of Legrome Davis and Lynette Norton in Pennsylvania, Virginia Phillips, James Lorenz, Dolly Gee and Frederic Woocher in California, Rich Leonard in North Carolina, Frank McCarthy in Oklahoma, Patricia Coan in Colorado, and William Joseph Haynes, Jr. in Tennessee, to name a few.

All together, there are more than 30 pending judicial nominations that were received by the Senate before it received the Stewart nomination and they need our attention, too. That is the point I am trying to make. I understand that nominations are not considered in lockstep order based on the date of receipt. I understand and respect the prerogatives of the majority party and the Majority Leader. I appreciate the interest of the Chairman of the Committee in filling vacancies in his State and want to work with him. I ask only that the Senate be fair to these other nominees, as well. In my view, Ted Stewart is entitled to a vote on his nomination and should get it, but these other nominees should be accorded fair treatment, as well. Nominees like Judge Richard Paez, Justice Ronnie White, and Marsha Berzon should be voted on up or down by the Senate. We are asking and have been asking the Republican leadership to schedule votes on those nominations so that action on all the nominations can move forward.

Mr. EDWARDS addressed the Chair.

The PRESIDING OFFICER (Mr. BUNNING). The Senator from North Carolina.

Mr. EDWARDS. Mr. President, I ask unanimous consent to speak up to 10 minutes as in morning business.

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

HURRICANE DAMAGE IN NORTH CAROLINA

Mr. EDWARDS. Mr. President, I want to speak for a moment today about the hurricane and report to my colleagues on what we have learned about the damage Hurricane Floyd has done in North Carolina.

As most folks know, North Carolina, unfortunately, has borne the brunt of hurricanes over the last few years. I think this is the fifth major hurricane to hit North Carolina since 1996. What we know thus far is that four people have died in traffic-related accidents as a result of the hurricane.

First, of course, our thoughts and prayers go to the families of those folks who have lost loved ones. Secondly, we have had enormous flooding. That flooding will continue, and there will be some period of time before that