

EXECUTIVE SESSION

NOMINATION OF FREDERICK J. MARTONE, OF ARIZONA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

The PRESIDING OFFICER. The Senate will now go into executive session and proceed to the nomination of Frederick J. Martone, of Arizona, which the clerk will report.

The legislative clerk read the nomination of Frederick J. Martone, of Arizona, to be United States District Judge for the District of Arizona.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, this nominee has the support of both Senators from his home State. Blue slips have been returned by both of them. We have had the hearing. He did very well.

The Senator from Arizona, Mr. KYL, is a valued member of the Judiciary Committee, and I would like to yield to him, as he is one of those who has proposed and supported this nominee.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I thank the Senator from Vermont, the chairman of the committee, and thank him for having Justice Fred Martone as one of the judicial nominees we will be voting on this evening. I understand the only rollcall vote will be on Justice Fred Martone.

Why do I call him Justice Fred Martone, when we are going to be voting on his confirmation to become a Federal district judge? The answer is, because he currently is one of the five justices on the Arizona Supreme Court, the highest court in the State of Arizona. He is a graduate of Holy Cross, Notre Dame Law School, and has an advanced degree from Harvard, and is an exceptionally fine jurist.

I thank the chairman and members of the committee who unanimously approved him for consideration by the full Senate. I would appreciate the support of the full Senate for his confirmation.

Mr. HATCH. Mr. President, I am pleased that the Senate is considering this afternoon three extremely well-qualified nominees for important positions in the Federal judiciary. I have no doubt that they will do great service for the citizens of this country upon confirmation.

The Honorable William Johnson has been nominated to be a Federal judge in the District of New Mexico. Born and raised in Roanoke, VA, Judge Johnson attended Virginia Military Institute and law school at Washington and Lee University. He began his career practicing law in Houston, TX, and then moved to Roswell, NM, where his practice included commercial liti-

gation, bankruptcy cases, and oil and gas litigation. Since 1995, he has served as a State district judge hearing domestic relations, child support enforcement, civil, criminal, and administrative agency cases. With such wide-ranging judicial experience under his belt, Judge Johnson comes to the Federal bench ready to hit the ground running.

Like Judge Johnson, the Honorable Frederick J. Martone is no stranger to the bench. Justice Martone currently serves on the Supreme Court of Arizona. Before then, he served as a judge on the Superior Court in Maricopa County. Although he has spent his professional life in Arizona, Justice Martone was educated further east: He graduated from Holy Cross College, from Notre Dame Law School, and earned an LL.M. from Harvard Law School. His demonstrated experience and judgment will make him a fine addition to the Federal district court for the District of Arizona.

Clay D. Land, our nominee for the Middle District of Georgia, has had an impressive career blending private practice and public service. Upon graduating *cum laude* from the University of Georgia law school, Mr. Land returned to his home town of Columbus, GA, where he has maintained a successful general civil practice ever since. His legal practice has not dampened his commitment to public service, however. In 1993, he served as chairman of the Georgia Indigent Defense Council, which is responsible for oversight of the funding and implementation of the State's indigent criminal defense programs. From 1993 to 1994, he served on the Columbus City Council. And from 1995 to 2000, he served as a Georgia State senator.

I want to commend President Bush on his selection of such outstanding candidates for the Federal judiciary. Each of these nominees was unanimously approved by the Judiciary Committee, and I expect that they will receive similar treatment from the full Senate. I urge my colleagues to join me in supporting their nominations.

Mr. LEAHY. Mr. President, the nominee is supported by both the Senator from Utah and myself; and we had a unanimous rollcall vote in support of the nominee in the committee. And I strongly urge a unanimous rollcall vote in support of the nominee here.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Frederick J. Martone, of Arizona, to be United States District Judge for the District of Arizona.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Washington (Mrs. MURRAY)

and the Senator from Illinois (Mr. DURBIN) are necessarily absent.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 370 Ex.]

YEAS—97

Akaka	Edwards	McCain
Allard	Ensign	McConnell
Allen	Enzi	Mikulski
Baucus	Feingold	Miller
Bayh	Feinstein	Murkowski
Bennett	Fitzgerald	Nelson (FL)
Biden	Frist	Nelson (NE)
Bingaman	Graham	Nickles
Bond	Gramm	Reed
Boxer	Grassley	Reid
Breaux	Gregg	Roberts
Brownback	Hagel	Rockefeller
Bunning	Harkin	Santorum
Burns	Hatch	Sarbanes
Byrd	Helms	Schumer
Campbell	Hollings	Sessions
Cantwell	Hutchinson	Shelby
Carnahan	Hutchison	Smith (NH)
Carper	Inhofe	Smith (OR)
Chafee	Inouye	Snowe
Cleland	Jeffords	Specter
Clinton	Johnson	Stabenow
Cochran	Kennedy	Stevens
Collins	Kerry	Thomas
Conrad	Kohl	Thompson
Corzine	Kyl	Thurmond
Craig	Landrieu	Torricelli
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lieberman	Wellstone
DeWine	Lincoln	Wyden
Dodd	Lott	
Dorgan	Lugar	

NOT VOTING—3

Domenici	Durbin	Murray
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The nomination was confirmed.

Mr. LEAHY. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, what is next on the agenda?

NOMINATION OF WILLIAM P. JOHNSON, OF NEW MEXICO, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO

The PRESIDING OFFICER. The clerk will report Calendar No. 599.

The legislative clerk read the nomination of William P. Johnson, of New Mexico, to be United States District Judge for the District of New Mexico.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

Mr. LEAHY. I thank the Chair.

Mr. President, I thank the distinguished majority leader, Mr. DASCHLE, and the distinguished deputy majority leader, Mr. REID, who have worked so hard to get these nominations on the calendar so we can vote on them.

William Johnson is the third Federal judge confirmed from New Mexico in

just the past few weeks. We expedited the consideration of Christina Armijo in October, who was confirmed last month; likewise, Harris Hartz, President Bush's nominee to the Tenth Circuit from New Mexico. I had a hearing at the end of October, and he was confirmed last week. All three of these nominees came to us with the strong support of both Senator DOMENICI and Senator BINGAMAN.

I mention this because it is so helpful to our committee when the White House takes time to consult with both Senators from the home State and get their support. We got this kind of consensus: When we confirm Mr. Johnson, we are going to fill another judicial emergency vacancy. After that, we are going to another nominee, Clay Land, who has been supported by Senators CLELAND and MILLER. I mention this because if we confirm both these next 2, we will have confirmed 27 Federal judges since July, when I took over the chairmanship, and 6 court of appeals judges.

To put that in perspective, since July, in those 5 months, we have confirmed as many as we confirmed all of the first year of the last President's administration—actually, a lot more judges in the courts of appeals.

Everybody has been working very hard. I also mention to my colleagues, this morning we were finally able to get a quorum in the Judiciary Committee. We had 10 nominations go through, 5 of them judges, 5 other nominations from the Department of Justice, all of which will go now on the calendar.

Mr. REID. Will the Senator yield for a question?

Mr. LEAHY. Of course.

Mr. REID. When did the Senator take over as chairman of the Judiciary Committee?

Mr. LEAHY. I had a fully constituted committee I think it was in late July.

Mr. REID. It is my understanding that following September 11, the Senator and his staff literally worked night and day for how long before the committee came up with an antiterrorism bill?

Mr. LEAHY. We worked several weeks. It really was night and day. We had people going home at 2 o'clock in the morning and coming back at 5 o'clock in the morning to do that. I was getting e-mails at home at 3:30 in the morning from members of my staff and continued to do that until we got that bill out.

Mr. REID. Will the Senator also answer this question: It is my understanding the committee's work was hampered as a result of the anthrax problem that occurred in Senator DASCHLE's office and in the Senator's office; is that true?

Mr. LEAHY. The Senator from Nevada is right. We actually had to move much of the Judiciary staff out of the

Dirksen Building. Some had been in the Hart Building in the proximity of the distinguished leader's office when the anthrax letter was opened. We were hampered by that because of medical treatment and still came to work.

In fact, we went so far, as the Senator probably knows, as to hold hearings during the recesses to keep this going.

Mr. REID. I was going to ask the Senator if he remembers another time when hearings were held regarding judges and other judicial matters during recess periods?

Mr. LEAHY. I have only been on the committee 25 years, but I cannot remember a time during those 25 years—in fact, the Senator from Nevada may be interested in this. Maybe he was involved in this. Does the Senator recall the day that part of the Capitol Building was evacuated because of the anthrax scare and all the other buildings were evacuated? The distinguished Senator from West Virginia made available his conference room in the Appropriations Committee. We held hearings in that conference room on more judges as the building was being evacuated and held a markup in executive session with 150 of us crowded into one room in the back, the President's Room, to get even more judges out which then the distinguished majority leader put on the calendar within, I think, 24 hours of that time and we were voting on them a couple days after that.

Mr. REID. The majority leader is in the Chamber, and I will not engage the Senator in any more dialog. Speaking for the people of Nevada and I think this country, when books are written over what transpired in this critical period of history, there is going to be a chapter on PAT LEAHY and the tremendous job he did. It is precedent setting, and he has set a mark to which others will have to try to adhere.

Mr. LEAHY. That means a great deal to me, and I appreciate that. I appreciate the help of Senators on both sides of the aisle in helping to move this forward.

Mr. DASCHLE. Will the Senator yield?

Mr. LEAHY. Yes.

Mr. DASCHLE. I also commend the distinguished chair of the Judiciary Committee along the lines the assistant Democratic leader has noted. It is important at a time such as this that we recall for the record just what has transpired. The distinguished chairperson has been chairperson now for about 5 months, almost 6 months, and in one-half year's time, he has compiled a record that may at the end of this period actually exceed the number of judiciary appointments confirmed during the Clinton administration in an entire 12-month period of time in 1993. That is quite a remarkable accomplishment to exceed perhaps the num-

ber of judicial nominations in 6 months over and above what was confirmed in 1993 under a Democratic administration with, I might add, a Democratic Senate.

Also, as the Senator from Nevada has noted, this has been an extraordinarily difficult time, filled with adversity. September 11, the anthrax attack, not only on the Senate and my office, but on the Senator's office itself—all of the disruption, the need for accelerated efforts on appropriations, and yet through all of that, with all of the work he had to do with counterterrorism, this Senator has very diligently, persistently, and with remarkable leadership brought us to this point.

I publicly commend him, thank him, and tell him how proud I am for his effort and the work he has done to get us to this point.

I yield the floor.

Mr. NICKLES. Will the Senator from Vermont yield?

Mr. LEAHY. Of course, I will.

Mr. NICKLES. Mr. President, to add to some of the statements that were made, I compliment my friend. He has assisted this Senator, and he has assisted other Senators, particularly on district court judges.

If my numbers are correct, I believe we are now at 27 judges confirmed, which equals the number of judges that were confirmed in President Clinton's first year. President Clinton, nominated 47 individuals for judicial positions, and the Senate confirmed 27 of those in his first year.

President Bush has made 64 judicial nominations at a time when there are a great number of vacancies. We have now confirmed 27, and I hope we will confirm some more.

I say to my friend and colleague from Vermont, we have done pretty well on district court judges. However, we are way behind on circuit judges. President Bush nominated eleven circuit court judges in May. Of those eleven, eight have not even had a hearing. One of these nominees is Miguel Estrada, who is a Honduras immigrant who graduated with honors from Columbia and graduated at the top of his law school class from Harvard.

Another is John Roberts, again a Harvard Law School grad. Among his many accomplishments, Mr. ROBERTS has argued 34 cases before the Supreme Court. I might also mention that Mr. Estrada has argued 14 cases before the Supreme Court. Both nominees are eminently qualified.

I wonder if my friend and colleague from Vermont can tell us when we will begin considering or having hearings on some of these exceptionally qualified individuals, both rated unanimously well qualified by the ABA and who have bipartisan support, who were nominated in May of this year?

Mr. LEAHY. Mr. President, the Senator from Oklahoma, my friend, has

talked to me about this on several occasions. We are trying to get through these calendars as quickly as we can. As I say, I have only been here as chairman for 5 months. Actually, there were a number of nominees prior to my becoming chairman who never got a hearing at the beginning of this year.

We will have had far more courts of appeals judges than I think have ever been, or I can remember going through in a President's first year in office. We are going way beyond what the Senate usually does. It is certainly a much faster pace than the Senate has had in the last 4, 5, 6 years.

If we can slow down a little bit the things that are happening around here—anthrax, September 11, all the things we wish we did not have—if the chairman of the committee could deal with just a few less death threats—not from my friend from Oklahoma. The anthrax letter did not have an Oklahoma return address, nor would I expect it to.

Mr. NICKLES. I appreciate it.

Mr. LEAHY. We are moving through them. We have done Fifth Circuit Judge Clement, Second Circuit Judge Parker, Fourth Circuit Judge Gregory. I mentioned from New Mexico a circuit judge.

Mr. NICKLES. If the Senator will yield, we have confirmed six circuit court judges, but in this particular instance, the President has made many more circuit court nominees during his first year in office than any recent time in history. In fact, 28 have been nominated. I urge my colleague—and I will stop here—to have more hearings, especially for some of these individuals nominated in May. They are outstanding individuals.

I am more than certain that once they have their hearings, they will be confirmed by an overwhelming majority, both in the committee and on the floor of the Senate. I urge the chairman to have hearings on those individuals as soon as possible.

Mr. LEAHY. The Senator from Oklahoma asks an appropriate question. I can assure him we are trying to move through as many as we can. I hope, for example, the President will nominate more district judges, too. There are about 77 percent district court vacancies; about 77 percent do not even have a nominee. There is a real problem and we will work with the administration.

Some of the slowdowns have been taken care of, as the Senator from Oklahoma knows. We had a number of judges who were held up because the White House did not directly answer the question whether they had been arrested or convicted in the last 10 years. We thought that was at least a worthwhile thing to know for someone getting a lifetime appointment. I think the White House might have realized it made sense and allowed them to answer the question, and it broke a log-

jam. We had 10 nominations, 5 judges, that went through this morning. My intention is to keep moving as rapidly as we can.

I ask the distinguished acting Republican leader, we could have rollcalls on the next two judges, or if he has no objection, I would ask we do them by voice vote. If he would like rollcalls, that is his right.

Mr. NICKLES. Senators want to get to the Defense authorization bill. There is no reason we cannot. I am sure it is not necessary to have a recorded vote. A voice vote is more than acceptable for the other two judges. I thank my friend and colleague and look forward to having a hearing on Mr. Estrada. Forty-nine Senators have requested a hearing on Mr. Estrada and on Mr. Roberts and other nominees for the circuit court. As soon as we get hearings, it would be much appreciated.

Mr. HATCH. Mr. President, since the topic of the Judiciary Committee's record on judicial confirmations was raised, I would like to take just a minute to make an observation.

As everyone here knows, I do not like to engage in the typical statistics judo that seems to be intrinsic to this issue. But I do want everyone to understand that, despite the progress that was just mentioned, we really have a lot more work to do.

Look at the percentages: The Senate has exercised its advice and consent duty on only 21 percent of President Bush's circuit nominees this year. The other 79 percent of our work remains unfinished. And our overall record is not much better: the Senate has confirmed only 37.5 percent of all judicial nominations we received from President Bush. We will conclude our work by leaving nearly 100 vacancies in the judicial branch.

Now, these facts are not escaping wider attention outside the Judiciary Committee. Last week, Vice President CHENEY sent a letter noting that "vacancies on the Federal bench are occurring at a faster pace than the confirmations of new judges, and barely one in four of President Bush's nominees has received a hearing and a vote." The Washington Post editorialized on November 30 that the committee should hold more judicial nominations hearings, concluding that, "[f]ailing to hold them in a timely fashion damages the judiciary, disrespects the President's power to name judges and is grossly unfair to often well-qualified nominees." And the Wall Street Journal observed on November 27 that there is a "pattern of judicial obstruction that has left 108 current vacancies on the Federal bench. . . . With only days to go before the Senate adjourns for the year, only 28 percent of George W. Bush's nominees have been confirmed."

Of course, the reason why people are taking notice is that the process of ad-

vice and consent on the President's judicial nominations is not a game. This is not football or baseball, and the goal here is not a particular set of numbers. These are nominations for very important positions in the Federal Government, and it is the Senate's constitutional obligation to review them. Despite the work that we have done, there is simply no escaping the fact that we are about to stop work for the year with a judicial vacancy rate of 11.3 percent, which I believe is unacceptable by any measure. And, by the way, there is absolutely no point in accusing the administration of not sending more nominations to us, when we have made it clear that we will not devote any effort at all to reviewing 30 of the nominations the President did send.

All this being said, however, I have reason to look forward to hitting the ground running next year. The Judiciary Committee's obvious focus on confirming nearly the same number of judges as we did President Clinton's first year, reassures me. After all, during President Clinton's second year in office, the Senate confirmed 100 of his judicial nominees. I fully expect that we will do the same for President George W. Bush, in fact, I take it as a pledge that we will confirm 100 Bush nominees in 2002.

Mr. LEAHY. I did not request a roll-call vote. I ask for a voice vote.

The PRESIDING OFFICER (Ms. STABENOW). The question is, Will the Senate advise and consent to the nomination of William P. Johnson to be United States District Judge for the District of New Mexico?

The nomination was confirmed.

NOMINATION OF CLAY D. LAND, OF GEORGIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA

The legislative clerk read the nomination of Clay D. Land, of Georgia, to be United States District Judge for the Middle District of Georgia.

Mr. LEAHY. I ask for a voice vote.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Clay D. Land, of Georgia, to be United States District Judge for the Middle District of Georgia?

The nomination was confirmed.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I ask unanimous consent under the previous order we allow the