to assist countless thousands and thousands and thousands of Ohioans over the last 20 years.

I am truly privileged to have had the extraordinary opportunity to work with Jenny and to call her my friend.

We wish her and her family all the best in the world.

In conclusion, let me thank Jenny for her dedication to the people of the State of Ohio—for her friendship, and for the work she has done for our country.

Thank you, Mr. President.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

## JUDICIAL NOMINATIONS

Mr. DURBIN. Mr. President, over the last few weeks, many conservatives have launched an extensive public relations campaign to assail Democrats on the Senate Judiciary Committee, and particularly Chairman PAT LEAHY. They have been critical of the pace of judicial nominations. This campaign is wholly unwarranted. Coming during a war when Democrats are committed to working with the President to shore up our Nation's defenses, it is particularly ill timed.

The Washington Times has compared Democrats to terrorists, referring to the pending nominations as a ''hostage crisis.'' Another conservative publication, Human Events, labeled my colleague, Chairman LEAHY, as ''Osama's Enabler.''

Sadly, these outrageous charges are not limited to right-wing media outlets. Many colleagues in the Senate from the other side have leveled the following accusations: One Senator said the Democrats are guilty of racial profiling. Another Senator said the Democrats on the Judiciary Committee are actively hindering the war effort. Another Republican Senator said we are drawing out a session to deny the President a chance to make recess appointments.

In truth, Senator LEAHY has done an excellent job of moving the President's nominees along—far better than the Republicans ever did over the previous 6½ years. We have already confirmed 27 judges since July of this year. When all is said and done, we may well end up confirming more than 30. That is more judicial nominees than were confirmed during the entire first year of President Clinton's term in office, when the Senate was controlled by the same party. It is double the number of nominees confirmed during the entire first year of the first Bush administration.

Chairman LEAHY has had to contend with Senate reorganization, terrorists attacks, a massive antiterrorism bill, and anthrax contamination that shut down his personal and committee offices. We all recall the news reports about the anthrax letter being sent to Chairman LEAHY. He has had ample occasions to delay hearings. Yet he has not. He easily could have used any of these obstacles as an excuse to cancel hearings, and he did not.

In little more than 5 months, Chairman PAT LEAHY has held more judicial nomination hearings than Republicans held in all of 1996, 1997, 1999, and the year 2000.

The Democrats, under his leadership, have eliminated the anonymous holds that crippled the judicial confirmation process for the last 6 years.

If you are not here in the Senate, anonymous holds may be a term you don't understand. Let me explain it. Under Republican leadership, any Senator could block a nominee for any reason, without even identifying him or herself to the rest of the Senate. A nominee would come before the Senate Judiciary Committee and sit there week after week, month after month, and in some cases year after year without any Senator standing up and saying: I am the person who is holding this judicial nominee. It was totally unfair.

On some of the nominees, I used to go around the Chamber begging Republican Senators to tell me: Do you have a problem with the nominee? I want to talk about it.

They wouldn't say. It was anonymous. That is over. Under Senator LEAHY's leadership, the anonymous holds that have crippled this process for the last 6 years has been eliminated. We have made public a Senator's support or opposition to judicial nominees from their home State. We have moved nominees approved by the committee swiftly to the floor. I presided personally over two or three of these hearings. And those nominees went straight from the committee to the floor in a matter of days. We have voted unanimously to confirm nominees vetted by the committee. The only vote against all of President Bush's nominees coming out of committee was cast by minority leader TRENT LOTT.

Quite frankly, it is a bit ironic to hear many of our Republican colleagues complain about unfair delays in judicial nominations. It is no secret that many of our colleagues systematically blocked Democratic appointments, regardless of qualifications, to the Federal courts of appeal. In 1996, for example, the Republicans failed to confirm one single appellate court nominee—not one.

In the 106th Congress, Republicans failed to act on an astonishing 56 percent of President Clinton's appellate nominees, despite the fact that his nominees received extraordinarily high ratings from the American Bar Association, and support on a bipartisan basis.

Some of President Clinton's nominees languished after a hearing or committee vote; many more never even got a hearing.

Let me tell you about one: Helaine White, a nominee for the Sixth Circuit in Michigan. She waited in vain for over 1,400 days for the Judiciary Committee to schedule a hearing. For approximately 4 years, she sat in that committee.

If my Republican colleagues got a letter marked ''Return to Sender'' after 1,400 days, they would abolish the Post Office.

They thought it was all right to let Ms. White, a nominee for this important judicial vacancy, sit there for approximately 4 years.

The situation was so bad under the Republican leadership of the Judiciary Committee that Chief Justice of the Supreme Court Rehnquist criticized the Republican leadership for creating so many vacancies in the Federal courts. In fact, one of President Bush's own judicial nominees, who was unanimously voted out of the committee last Thursday, criticized the Republicans last year for employing a double standard for a Democratic nominee to the courts.

Chairman PAT LEAHY of Vermont has already held more hearings for the Fifth Circuit than the Republicans held in over 6 years. In 6 months, PAT LEAHY has held more hearings to fill vacancies in that circuit than the Republicans held in 6 years. The Democrats have confirmed the first new judges to the Fifth and Tenth Circuits since 1995—6 years.

Details like this demonstrate there is simply no comparison between Democratic and Republican records.

Our Republican colleagues would have you believe the Democrats are dragging their feet because the ratio of President Bush's confirmations to the number of vacancies is relatively low. But what they don't tell you is this: Close to 70 percent of the current vacancies in the Federal courts have been open since President Clinton was in office, several of them since 1995. They are decrying the number of vacancies not filled, and yet during President Clinton's Presidency they would not fill them, even though he sent qualified nominees to the Senate.

The number of judicial vacancies increased by 60 percent during the 6½ years the Republicans were in charge of the Senate. Due to concerted opposition by their party, President Clinton appointed proportionately fewer appellate judges than either President Reagan or the first President Bush. Now, with a Republican President back in the White House, our Republican colleagues are suddenly very concerned about judicial vacancies.

In the wake of September 11, President Bush called on Members of the House and Senate to come together—and we have—to improve air safety, to stabilize the airline industry, to give law enforcement additional tools to fight terrorism, and to strengthen our

economy. That is exactly what the Democrats have done. We put aside partisanship to meet the demands of our country at war.

Quite frankly, we would have had an easier time of it, and fewer disputes with the Republicans over judicial nominees, if the President and his Attorney General had sent up more judicial nominees like those we have already confirmed, especially for the Federal Court of Appeals. This simple fact is often lost in the din of partisan rhetoric.

The Democratic leadership has worked hard, in just a few months, to confirm men and women of real integrity and accomplishment to the Federal judiciary. We have advanced judges who enjoy widespread bipartisan support. They have records which demonstrate a commitment to mainstream American values, including the protection and advancement of civil rights and civil liberties for everyone. We have intentionally avoided a contentious and draining fight over controversial nominees.

In the weeks and months ahead, with the immediate national crisis we face, we will still have to confront many controversial nominees. But let me remind my colleagues that we are filling lifetime appointments. These are not temporary. Judges sit on the Federal bench long after many of us have delivered our last speeches and after Presidents have come and gone. We will scrutinize them fairly, but carefully.

Our Republican colleagues have said they want us to work three times as fast because when they were in control they went three times as slow. Sadly, many of the nominees we have been sent do not really hew to the mainstream of American politics. The end result—if we follow and appoint every nominee sent—would be a judiciary that would not represent the values of this country, the mainstream values which we should push for when it comes to these important judicial appointments.

The American electorate has been evenly divided over the last 10 years. This country is entitled to a judiciary that reflects that diversity, not one hijacked by any political extreme, right or left.

Chairman PAT LEAHY has done an excellent job as the Senate Judiciary chairman, and his critics on the right should read the facts.

I yield the floor.

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I also have come to the floor, along with the Senator from Massachusetts and the Senator from Illinois, to talk about this very important topic; and that is, the confirmation process for Federal judges.

The first thing I want to do is commend the chairman of the Judiciary Committee, Senator LEAHY, for the professional and diligent way in which he has handled the confirmation process this year, since taking the helm of the committee in June. His, in some way, is a thankless job, because, as we have observed, no matter how many hearings he holds or judges he moves through the committee, there are those in this body who will never be satisfied. Indeed, it seems that the only thing that will satisfy the critics is for Chairman LEAHY to shortchange the important constitutional role that the Senate and the committee play in the confirmation process. But that, I know, he will never do, and the Nation should be very grateful to him for that.

There has been some harsh criticism of Chairman LEAHY from our colleagues on the other side, and in the press. Given how President Clinton's nominees were treated during 6 years of Republican control of the Senate, I find it kind of hard to believe some of the arguments we now hear. We have here, really, a numbers game. The argument has reached a new level of absurdity when our Republican friends start talking about things such as the average number of nominees per hearing. It is pretty obvious that is a meaningless calculation. To the extent that statistics matter, the numbers that count are the number of judges for which hearings have been held and the number of judges confirmed.

When you look at those numbers, the numbers that really matter, I have to say that our chairman really does have the better of the argument. In just 5 months since taking over the committee, Senator LEAHY has already held hearings for 34 judges. That is more than the number of judges who received hearings in the entire firs year of the George H.W. Bush administration and the entire first year of the Clinton administration. And so far, we have confirmed 27 judges this year. Remember again that the Democrats have only been in control since June I understand that probably 3 more judges will be confirmed before this session concludes, meaning that 30 judges will be confirmed this year. That would be more than were confirmed during the entire first year of President Clinton's first term in office and more than double the number confirmed during the entire first year of the elder President Bush's administration. Think about that. Given all that we have had to deal with on the Judiciary Committee this year, I think Chairman LEAHY has shown more than good faith in trying to move the process along, especially since September 11.

There have been times this year when I have been concerned about hearings being held too soon on some nominees. A hearing that is held before Senators can review the records of the nominees is really nothing more than just a formality. Particularly given the large number of circuit court nominees, I think our colleagues on the Republican side are asking us, in a way, to ignore our constitutional responsibilities when they make blanket demands such as: You should confirm all judges who were nominated before the August recess. Those kinds of arguments are particularly inappropriate when you think about the appointments we are being asked to confirm with to little scrutiny. Lifetime appointments to the circuit courts and district courts are not to be taken lightly. With the Supreme Court taking only about 100 cases each year, the decisions made in the lower courts are usually final, and have a huge impact on the development of the law. They also have a huge impact on the people's lives. In addition, there are a number of circuits in this country that are extremely unbalanced ideologically, and the nominations made by President Bush seem to be designed to exacerbate that imbalance. It is entirely reasonable—indeed, our constitutional role demands—that we examine the records of individuals chosen for the circuit courts very carefully before we approve their nominations

It is clear to me that neither side in a fight such as this is ever going to be satisfied. In the current situation, despite everything that the chairman has tried to do to move quickly on judges—including holding hearings in August, holding more hearings after September 11 when our committee was more than occupied with the so-called anti-terrorism legislation, and even holding a hearing in October when the Senate office buildings were closed and some of our staffs had had nowhere to work for the previous 2 days—despite all of this, my Republican colleagues continue to complain. At one point, they even held up appropriations bills on the floor for over a week, something that our side never did despite our frustration with the pace of confirmations under President Clinton. And now we understand that the minority leader placed a hold on every Judiciary Committee bill because of his displeasure with the pace of the nomination of a judge he has championed to the Fifth Circuit.

Let us recall that in the last 6 years of President Clinton's term, the Judiciary Committee did not hold a single hearing on a Fifth Circuit nominee. No fewer than three highly qualified nominees for positions on that court never got a hearing, much less a vote in committee or on the floor. The thing that has troubled me the most about the criticism of the pace of judicial confirmations is the complete unwillingness of those who are now criticizing Chairman LEAHY to acknowledge that they really contributed to the judge shortage that they are complaining about today, or that they did anything in the last 6 years to deserve our criticism of them at that time.

It is particularly frustrating to hear our Republican colleagues invoking the ABA review in support of President Bush and the Republican leadership in the Congress broke with over 40 years of tradition, dating back to the administration of Dwight D. Eisenhower, when they refused to submit the names of nominees to the ABA prior to the nominations being formally made. Now they complain about the delays in confirming nominees and invoke the ratings of the ABA panels as evidence that these nominees are beyond reproach. It just does not add up.

The very act of forcing the ABA to begin its assessment after a nomination has been made has delayed confirmation hearings for at least a month and often longer. Chairman LEAHY very sensibly has insisted that an ABA review on a nominee be completed before scheduling a hearing. So I suppose that if we are playing a numbers game and are going to compare apples to apples, we should subtract 30 to 45 days of consideration from each of President Bush's nominees.

My conclusion is that until I hear the critics of Chairman LEAHY say, ''Yes, it was wrong to let Judge Helene White go 4 years without even a hearing; yes, we now agree that Kathleen McCree Lewis should have at least had a hearing; yes, the delays in voting on the confirmations of Judge Berzon and Judge Paez were unconscionable; yes, it was wrong to not confirm a single circuit court nominee in 1996; yes, it was wrong to confirm only 44 percent of the circuit judges nominated by President Clinton in the last Congress of his term; yes, it was wrong to have 68 of President Clinton's nominees in the 106th Congress never come up for a vote in the Judiciary Committee; and yes, we are in large part responsible for the fact that there are now so many vacancies to fill on our federal courts,'' until I hear those statements, the statistics they cite, and the argument that they make ring a little hollow. If and when I do hear those statements accepting responsibility, I think a bipartisan solution will emerge. Because of my Republican colleagues acknowledge that they bear some responsibility for the situation we find ourselves in today, they can suggest to the President that he try to ''change the tone'' on this issue in a tangible and meaningful way. He can do that by renominating some of those highly qualified candidates who never got a hearing or a vote in the Judiciary Committee when it was chaired by my friend, the Senator from Utah. The President did that with Roger Gregory, and I applauded him for it. We can wipe the slate clean with some courageous work, and there are enough vacancies to do this in many circuits. That is the challenge. Are we gong to continue the numbers game? Are we going to continue the recriminations? Or are we going to move forward in a bipartisan way and get on with our business on this committee and in the Senate. I think the chairman of the Judiciary Committee is doing an admirable job under the circumstances. I urge him and the majority leader not to submit to pressure tactics. The ball is in the President's and the minority's court. They can decide if they want to ''change the tone in Washington.'' We simply cannot do it alone.

I yield the floor.

Mr. KOHL. Mr. President, I rise today to discuss judicial nominations and the pace being set by the Judiciary Committee. It is the Senate's responsibility to confirm judges and fill the vacancies in the Federal judiciary. Unfortunately, this constitutional responsibility has become increasingly politicized in the last few years. It seems that the people accused of slowing the process last year are the same ones that are pushing for faster confirmations today. And those who wanted more judges confirmed last Congress are now defending the pace of current confirmations. While we all expected that dynamic once the party in control of the White House and the Senate changed, it is still disappointing.

It would be a good idea to agree upon a set of rules that governed the pace of the confirmation process regardless of the party in control of the White House or the Senate. Since that is unlikely, we are now required to defend our rate of confirmations. The only way to do that is to compare the pace this year with that of past years. When we do that, we find that there is little to criticize in the performance of this year's Judiciary Committee.

By the end of this session of Congress, we will have confirmed at least 27 district court judges and 6 circuit judges. The Judiciary Committee has held 11 nominations hearings for judges since control of the chamber changed.

To put that in context, by the end of the year, the Senate will have confirmed more judges in the first year of the Bush Presidency than in either the first year of the first President Bush or President Clinton. It is also far more than the 17 judicial confirmations in 1996 and almost the exact number confirmed in 1999 and 2000 when 34 and 39 were confirmed respectively.

The record also shows that close to 70 percent of the vacancies have existed long before President Bush took office. The Senate chose not to act, in some cases for years, on President Clinton's nominees to fill the positions. The cries of judicial emergencies and demands for immediate action now ring a bit hollow when the judgeships could have been filled years ago.

Nonetheless, it is our responsibility to take action on the judicial nominees in a timely manner. We have been doing just that. As we go forward, I want to work with my colleagues on both sides of the aisle to confirm more judges. The Judiciary Committee has a noble tradition of cooperation in approving judges who are qualified, respectful of the law, and moderate in their approach. It is our responsibility to return to that tradition and confirm judges who represent the ideological middle ground.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Madam President, I thank my friend from Kansas. I know he has some things to say. I will try to be brief. I was in the line to try to talk about this very subject. I will make it brief so we can get on and we can get an explanation of the lovely pictures he has behind his podium.

I, too, rise to say a few words about judicial nominations and in particular to defend the chairman of our Judiciary Committee, Senator LEAHY of Vermont. Our friends on the other side of the aisle have made a lot of hay about our record on judicial nominations, but the facts simply don't bear out the allegation.

Patrick LEAHY has conducted the Judiciary Committee, both when we had the hearings on Senator Ashcroft's nomination to be Attorney General, when he was chairman for 17 days, and now as chairman for 5 months, in the most gracious, fair, bipartisan way that I have seen a chairman conduct him or herself. It is sort of unfair to demonize. That seems to be a new technique used by some. They are doing it to our majority leader, Senator DASCHLE, another gracious and fair-minded man, because he doesn't agree with them. That seems to be the thing that has happened. Maybe it started a few years back with the contract on America and all the cohorts there. But it is not a nice way to do politics, to demonize an opponent.

I know there are certain newspapers and TV shows and radio shows that try to spread the word. I just want to say, first, I don't think the American people appreciate it. Second, it is not going to cower Senator DASCHLE or Chairman LEAHY. I know them both. They are very estimable people. They are very nice people. They are very strong people. To say that taking personal shots and demonizing somebody is going to make them back off is a silly policy. Put yourself in their shoes.

When we are all under the gun and personally attacked, that doesn't make us back off. It makes us maybe review what we have done, and then if we think we are right—and I know Senator DASCHLE and Chairman LEAHY have—we are all the much stronger. Let's go over the facts instead of talking about just kind of rhetoric.

First, under Chairman Leahy's leadership in the first 5 months since the Senate reorganization, despite the disruptions caused by the September 11 tragedy in my city and the anthrax in

our offices, we have held 11 hearings on nominations. That is more than two per month. There was an unprecedented August recess nomination hearing that Chairman LEAHY held. I chaired a hearing 2 days after the closure of all three Senate office buildings due to anthrax. We had to meet in the Capitol, in a cramped and crowded room. I believe it was on a Friday afternoon.

In 1999 and 2000, by contrast, when the committee was controlled by the people of the other side, there were only seven hearings per year, and that was the entire year, not just the 5 months we had.

Second, my friends from the other side of the aisle complain that we are confirming too few judges. We have put 27 on the bench up to now; that is in 5 months of being in the majority. We should get up to 32 by the time we leave this week. Let me underscore 32. That is 5 more than were confirmed in the entire first year of the Clinton administration, when Democrats controlled the Judiciary Committee. They argue we are stalling, but we are putting in more judges nominated by a Republican President, George Bush, in the first year or first 5 months, than we put in when there was a President of our own party, President Clinton, who was nominating. Claims ring hollow when you look at the facts.

Again, the idea of taking a 2 by 4 and trying to hit the chairman or the members of our committee over the head without the facts is not going to bear fruit. You can give as many speeches as you want.

Third, when we point to raw numbers, our colleagues change their arguments, and then they point to the percentage of seats that remain vacant. You can't create a problem and then complain that someone else isn't solving it fast enough.

Why are there vacant seats? There are vacant seats because when people from the other side controlled the Judiciary Committee during the last 6 years of the Clinton administration, vacancies on the Federal bench increased 60 percent—a 60-percent increase during the time they were in control. Now they are complaining there are record vacancies and we have to fill them all in 1 year. Give me a break.

We are not going to play games and say what is good for the goose is good for the gander. We are not suggesting two wrongs make a right. We are not going to increase the percentage of vacancies. Instead, we are going to decrease it, and we have gotten a good start to the task. But the proof is in the pudding or, in this case, in the numbers. We are going to fill these open seats as quickly as possible, but we are going to do it right. No one is going to cower us in the time-honored, constitutional way in which we select judges, which has been always in the history of this country, at least during our better moments, when we do it with care.

That leads to my fourth point. Because so many Clinton nominees never got a hearing and never were voted on by the Senate when it was controlled by the folks from the other side, the courts now more than ever hang in the balance. Some of the nominees have records that suggest extreme viewpoints. We need to examine their records closely before we act.

Again, one of the most awesome powers we as Senators hold is the power to approve judges. We can't just blindly confirm judges who threaten to roll back rights and protections won through the courts over the last 50 years: Reproductive freedom, civil rights, the right to privacy, environmental protection, worker and consumer safety.

In my State of New York, the administration has so far worked with us in good faith to select nominees who have met what I told them are my three criteria for nominating people to the bench: Excellence, moderation, and diversity.

Nominees who meet those three criteria will win my swift support. But for those nominees whose records raise a red flag, whose records suggest a commitment to extreme ideological agendas, we have to look more closely.

These days, the Supreme Court is taking fewer than a hundred cases a year. That means these trial and, particularly, appellate court nominees will have, for most Americans, the last word on cases that are oftentimes the most important matters in their lives.

We need to be sure the people to whom we give such power—for life—are fairminded, moderate, and worthy of such a deep, powerful, and awesome privilege.

We have worked well together with our Republican colleagues on several matters since September 11. By and large, we have done well to keep things bipartisan. On judicial nominees, both sides must work together to correct the imbalance on the courts and keep the judiciary within the mainstream—not too far left and not too far right.

We need nominees who are fair and openminded, not candidates who stick to a narrow ideological agenda.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

## INDIAN GAMING

Mr. BROWNBACK. Madam President, I have an issue I want to explain to my colleagues before the Labor-HHS conference report comes before the body. In that conference report, there was an item that was going to address a wrong that had been placed in an earlier appropriations bill and that was not the Interior appropriations bill. This body passed a particular piece of legislation, a very small paragraph, that dealt with a situation in Kansas that was then taken out of the conference report. That is why I am objecting to the Labor-HHS conference report until I get some assurances that we are going to have this issue dealt with next year. It has to do with a cemetery in Kansas.

The pictures I have here are of a beautiful site in Kansas City, KS, that is called the Huron Indian Cemetery. The area overlooks the Kansas River. It is up on a bluff. It is in downtown Kansas City, KS. It is where a number of Native Americans are buried who lived in this area—the Wyandotte Tribe who lived in this area, before a number of them moved to Oklahoma, before the tribe moved to Oklahoma.

You can see the pictures we have of a peaceful site in Kansas City, KS. It is virtually a park for a lot of people, a very solemn cemetery that is maintained quite nicely in this area.

We have Indian gaming in Kansas, and four tribes are recognized in Kansas. Each has a casino in the State. There is a tribe in Oklahoma, the Wyandotte Tribe, that wants to build a casino in Kansas, even though they are now located in Oklahoma. Initially, they wanted to build it on top of the cemetery. Local people protested, saying: Why are you ruining this sacred site to put in a casino?

They said: OK, we will put stilts on it and you will still have the cemetery, but this will sit on top of it.

Next they said: We want to build it right next to it. We are going to buy property next to the cemetery and we want to put in a casino, even though we are not a Kansas tribe and we are from out of State; some of our ancestors from the Wyandotte Indians were buried here 200 years ago, so we want to be able to claim this as an Indian reservation in Kansas, even though we are an Oklahoma tribe; we want to be able to claim it in Kansas so we can build a casino in Kansas.

That is what they desired to do.

The four recognized tribes in Kansas opposed it and said: Look, you left the State, and we stayed here; we have the appropriate authorization to build casinos; we don't want another one in the State; we don't want you coming here. The unofficial Wyandottes who stayed in Kansas said: We don't want you to have a casino next to our graveyard. It is a sacrilege to put a casino on it, on top of it, or next to it. We oppose that.

The Governor of Kansas opposed them doing that, saying this isn't fair to our tribes in the State. It isn't fair to the Wyandotte Indians and their ancestors who stayed in the area for an Oklahoma tribe to come in. They fought them on doing that. This matter was litigated first in Federal court, lower court, and in the Tenth Circuit Court. In each case, Kansas, and the