Leahy	Murray	Rockefeller
Levin	Nunn	Sarbanes
Lieberman	Pell	Simon
Mikulski	Pryor	Wellstone
Moseley-Braun	Reid	
Moynihan	Robb	

The PRESIDING OFFICER. On this vote, the yeas are 54, and the nays are 46. Pursuant to the previous order, 60 Senators not having voted in the affirmative, the motion is rejected.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. BREAUX. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LOTT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

EXECUTIVE SESSION

Mr. LOTT. Mr. President, on behalf of the leader, I ask unanimous consent that the Senate now proceed to executive session to consider the nomination of James Dennis to be U.S. Circuit Judge.

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

NOMINATION OF JAMES L. DENNIS, OF LOUISIANA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The assistant legislative clerk read the nomination of James L. Dennis, of Louisiana, to be U.S. Circuit Judge for the Fifth Circuit.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I move to recommit the nomination to the Judiciary Committee.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Parliamentary inquiry: Does that call for immediate action, or is that a debatable motion?

The PRESIDING OFFICER. The motion to recommit is a debatable motion.

Mr. COCHRAN. Mr. President, I am prepared to describe to the Senate the reasons for my motion, and to give other Senators an opportunity to discuss this. We had undertaken to work out an agreement on the basis of time constraints allocating time for one side and the other because some did not want to set a precedent for doing the time agreement on a motion to recommit on the Executive Calendar. We have not reached that agreement in any formal way.

But, for the information of Senators, it is my expectation that there will be debate on this motion for at least 1 hour on this side in support of the motion to recommit. I expect that there will be a corresponding amount of time, or at least certainly the availability of that kind of time, on the other side. Then there would be a request for the yeas and nays on the motion to recommit the nomination. We expect to be able to get a record vote on that motion.

Mr. BIDEN. Mr. President, will the Senator yield?

Mr. COCHRAN. I am happy to yield to the Senator for a question.

Mr. BIDEN. Mr. President, I am the one who was reluctant to enter into a time agreement and/or a formal agreement on the motion to recommit. It is fully within the right of the Senator from Mississippi to do that. The reason I did not wish to do that is that it sets a precedent. As long as I have been here, I do not recall us moving to recommit a judicial nominee unanimously reported out of the Judiciary Committee.

The second point that I make to my friend is that I have no intention of doing anything to delay the vote on this motion to recommit.

I would like at the appropriate moment to explain why I believe Justice Dennis is qualified and should be confirmed and why there is no need to recommit. My colleagues from Louisiana, who have a genuine interest in this nomination, are both here, and I would look to them to speak to the qualifications of Justice Dennis and why a recommittal motion would be in effect a very bad precedent.

I wish to make it clear to my friend from Mississippi that the Senator from Delaware does not have any other agenda. I do not have any intention of slowing up a vote on this. This is a slightly different procedure from the general tradition of the Senate that when a nominee comes up from a committee the Senate debates and votes on the nominee. However, I will not object to this motion to recommit Justice Dennis because it seems to me a version of what the North in the War Between the States had hoped for for many years, that is, that two States in the heart of Dixie would fight over an issue that the rest of us think is not worthy of a fight.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. My response to the distinguished Senator from Delaware is I have no problem with his describing the committee's action. I know the chairman of the committee would probably want to do that at some point in this discussion.

Let me just say, if I can, in support of the motion that this is not a fight between two States. This is a question that is being presented to the Senate today under this motion to recommit on the basis of newly discovered information about the fitness of this judge to serve on the fifth circuit court of appeals. The motion to recommit is to give the Judiciary Committee an opportunity to review the facts, the evidence and the investigation that has just recently been concluded by the staff of the Senate Judiciary Committee, at the request of the chairman of that committee.

I have been briefed by the staff on the findings of that investigation, and I was advised at the time I was briefed that no other Senator had requested a briefing, no member of the committee had been briefed, other than the chairman had been given information from the investigators. I am convinced on the basis of what I heard that the Judiciary Committee should reconvene and reconsider the nomination.

That is the reason this motion is being made. If this were just a debate on the merits of the nominee or the fitness of this nominee on the basis of the record as already made by the Judiciary Committee—whether or not one State was being overly represented on the Court—these are all facts that we would debate at that time, and it may be a subject, a proper subject, for discussion at a later time. But this motion is directed to the fact that after the committee reported the nomination, information became available which brought into question the fitness of this judge to serve and whether or not he should have disqualified himself from participating in a case before the Louisiana Supreme Court and related matters.

That is the point we will address this morning. We hope the Senate will agree with us that this is clearly a situation where the committee ought to reconsider the nomination.

Mr. BIDEN. If the Senator will yield without losing his right to the floor——

Mr. COCHRAN. I will be happy to yield for a question.

Mr. BIDEN. The way the Judiciary Committee has operated for the roughly 20 years, I guess, that I have been on it is that the investigative staffs of the majority and minority work together and share all information. I wish to inform my friend from Mississippi that in addition to the Senator from Mississippi and the chairman of the committee, Senator HATCH, the Senator from Delaware has also been briefed on all of the investigative matters including the one to which the Senator refers.

I will be prepared and am ready to speak to that, but I will yield back. I do not have the floor. I thank my friend for his time, but assure him that I am aware the committee has been briefed. I see absolutely no need to refer this back to the committee, but I will speak to that in response to my friend's arguments.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator for his comments.

Let me just say for the purpose of putting this in some historical context that Judge James Dennis is a member of the Louisiana State Supreme Court.

He was nominated by President Clinton to serve on the U.S. Court of Appeals for the Fifth Circuit. That nomination was made during the 103d Congress, the previous Congress.

The Judiciary Committee had a hearing. At the hearing Judge Dennis appeared. No witnesses appeared other than Judge Dennis, as I am advised. There were four questions asked of Judge Dennis at that time. The committee reported his nomination to the Senate. There was no action on the nomination during the last Congress, and this year his name was resubmitted to the Senate by the President. No other hearings were held, no other inquiries were held, and he was reported out in due course to the Senate.

One day after the nomination had been reported by the Judiciary Committee, a Times-Picayune story revealed that Judge Dennis possibly committed a serious ethical violation by participating in a court decision involving Tulane tuition waivers. Tulane tuition waivers involve under Louisiana law the right of a member of the State legislature to bestow a favor on a friend by having the tuition that would otherwise be due and payable to Tulane University waived under an existing authority that goes way back to the last century in that State.

The issue was that Judge Dennis had a son who was given a judicial waiver by a member of the legislature for 2 years going to law school. Then he laid out of law school for a year, and he was going to go back to law school, and he contacted the legislator who had given him the waiver in the first instance and asked that he be reinstated. There was some question about the extent to which Judge Dennis may have been involved in contacting or trying to influence the legislator to grant that waiver for his son.

Anyway, Judge Dennis knew this story was being written. He had been contacted by the paper. He had been questioned by the reporter. Obviously, it was something that was getting a great deal of attention in the State of Louisiana.

This issue had been in the papers. There was some talk about whether this was a practice that needed to be changed, whether it was sort of a buddy system there in the State where legislators were giving friends of theirs tuition waivers. This abuse should be revisited.

Well, that is all really beside the point. The point is Judge Dennis knew he was right in the middle of this story being written, and he did not bring it to the attention of the Judiciary Committee, which was about to take action on his nomination to the second highest court in the land, the U.S. Court of Appeals for the Fifth Circuit that is based in New Orleans. There is an obligation—and I think the chairman and the distinguished ranking member of the committee will acknowledge this—there is an obligation and understanding with all nominees who come before the Judiciary Committee in situations of this kind for confirmation for a lifetime appointment to the Federal judiciary that, if they know of any circumstance or facts that would affect the consideration of the committee or the action that the committee is about to take to report out the nomination, they are obliged and under an obligation to bring such facts to the attention of the committee. Judge Dennis did not do this. There is no question in the record Judge Dennis did not do this.

There is a suggestion that Judge Dennis contacted someone in the Justice Department. I do not have a copy of any of the transcript, whether it was a letter, whether it was a fax, whether it was a phone call. I do not have the phone log or exactly what was said or to whom. But I am advised that there was contact made.

But, nonetheless, the Judiciary Committee proceeded to act without any knowledge of the fact that this issue had arisen and certainly not of the fact that it was going to be big news in Louisiana the next day, after it acted on the nomination. Judge Dennis knew that his ethics were in question and did not bring that knowledge of this to the Judiciary Committee.

The ethics of Judge Dennis were being questioned by the reporters who asked the questions. And the reason it was an issue is because the Supreme Court of Louisiana had been called upon to rule on a freedom-of-information request where a request had been filed by the newspaper asking legislators to provide records from their offices to show which citizens of Louisiana had been given these tuition waivers by them under the authority of existing Louisiana law.

Well, you can imagine some of the legislators did not want to reveal this information. They did not want to disclose the facts. Anyway, suit was filed by the paper, and that was decided in a lower court and worked its way up. It finally got up to the supreme court. Judge Dennis participated in a decision on the issue affirming a lower court decision that the paper had to make that information available.

Judge Dennis did not disclose his potential interest in this case at the time the case was decided by the Supreme Court of Louisiana. He participated in the case. He voted on the case. He did not disclose this information to the Judiciary Committee or the fact that this was an issue and a controversy in Louisiana that might be perceived as affecting his fitness to serve on the second highest court in the land.

He knew—he knew—that he had a continuing obligation to reveal any information to the committee which might affect his nomination or the committee's decision in this case. He did not call the committee to report that the story was coming out. He then knew his nomination had been voted out of the committee. There was some communication after he had been reported out of the committee and the nomination was pending here in the Senate.

The significance of this story, I think, can be best described in terms of its notoriety and its importance in Louisiana with the headline that was used by the Times-Picayune to call attention to this. As a matter of fact, it had in bold headlines: ''Hall of Shame, Public Confidence in Judge Dennis Is Destroyed.''

I think loss of confidence in a member of the judiciary, of course, affects the judicial system and not just at the fifth circuit, but throughout the country. The question that I think the committee ought to properly answer, and has not had an opportunity to address in any formal way, is: Was Judge Dennis' conduct an ethical violation? I think it was. I think it clearly rises to the level of improper conduct that would affect this committee's decision to report the nomination to the Senate.

I frankly do not believe after the committee reviews all the facts, hears all the evidence, calls witnesses who are familiar with this entire situation, I do not believe the committee is going to favorably report this nomination back to the Senate.

What I am disturbed about is that there has been pressure to call the nomination up, take action on the nomination. I do not want to personally, just because I am from a neighboring State and we have had discussions about whether this is a seat that should be filled by a Mississippian or a Louisiana person—I do not want that to cloud the real issue here, and that is the fitness of this nominee to serve on the court. That is why I have decided to move to recommit the nomination to the committee.

I am prepared to let the committee look further into this in an orderly way and in a deliberate way to determine whether my suspicions are correct, whether the suspicions of many people throughout the Louisiana-Mississippi-Texas area, where this court has jurisdiction, are correct. We have been getting phone calls and letters; people are disturbed about this. And we think that the committee ought to look further into the situation.

The Judiciary Committee ought to begin the opportunity to review its decision and either decide to report the nomination in light of this new information—I think the information reveals that Judge Dennis, first of all, failed to recuse himself properly in a case resulting in such an impropriety as to warrant public disapproval and the disapproval of the committee of his nomination.

Mr. President, I do not know what the procedure is in terms of being able to speak again, but I ask unanimous consent that I be permitted to yield the floor to other Senators who want to speak and then to speak again at some point under this motion. I do not

want to lose my right to the floor by so yielding.

The PRESIDING OFFICER (Mr. SHELBY). Is there objection?

Mr. BIDEN. Reserving the right to object.

Parliamentary inquiry. The Senator has an opportunity to regain the floor at any time under any circumstance, is that not correct?

The PRESIDING OFFICER. If the Senator from Mississippi gives up the floor, he may be rerecognized at the proper time.

Mr. COCHRAN. I do not want to violate the two-speech rule. You cannot under the rules of the Senate make two speeches on one legislative day. Is it because we are in executive session that the legislative day two-speech rule does not apply, I ask the Chair?

The PRESIDING OFFICER. If the Senator wants to waive the two-speech rule, he can do that affirmatively without keeping the floor. You can make the unanimous consent request at this time, or——

Mr. COCHRAN. That is why I made the request.

Mr. BIDEN. I have no objection.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

Mr. BIDEN. Mr. President, I love to hear the Senator speak. If the two-speech rule applied to this place, I imagine we would have only one or two Senators who ever spoke. I will be delighted to hear him again.

I would like to make several points to him, and I will not take long. I would like to ask him a question, if I may.

If I may ask the Senator from Mississippi, is it his—I realize there is no unanimous consent in any of this—but just as he postulated what he hoped would happen in terms of procedure here this afternoon, is it the Senator's intention that, if his motion to recommit fails, that we would go then to a vote up or down on the nominee?

Mr. COCHRAN. I have no objection to proceeding to voting on the nomination. As I understand it, though, it would be subject to debate.

Mr. BIDEN. No. It would.

Mr. COCHRAN. I do not want to foreclose any Senator's right by any agreement like that. My personal inclination would be to proceed to vote in due course whenever Senators—if they want to talk about it, they could, but there is no agreement to proceed to a vote at that time.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I know there is no agreement. What I am asking, does the Senator know of anyone who would have an interest in not allowing us to get to a vote today?

Mr. COCHRAN. If the Senator would yield. I know Senators are interested in this subject. Two or three have come up to me and said, ''You are not going to let this proceed to a final vote today if this motion is defeated?'' I said, ''I am not going to stand in the way of that. But if you want to speak you can. You have the right to do that.'' So I do not know what other Senators may do. I do not intend to filibuster the nomination, I say to my friend.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, let me make a few points before I respond to the specific concerns of the Senator from Mississippi. One, it is true that, to the best of my knowledge, only myself and Senator HATCH have availed ourselves of the investigative report done by minority and majority staff on the question that has been raised by the Senator from Mississippi.

Senator HATCH notified all Republican members on the committee, which is our practice, that follow-up work was conducted on a matter that had come up after we had voted and that professional staff who had done the investigation were there, ready, willing and able to brief people on it. My staff briefed the staffs of the Democratic members of the committee.

I will tell you why most people did not think it was so important. Justice Dennis has been around for a long time. His nomination came up in 1994. There has been, and I am not questioning the motivation of my friend from Mississippi, but let me put it this way, he has not been fast tracked. He has not moved very swiftly. The Senator from Delaware may be under the mistaken impression that the failure to move Justice Dennis had little to do with Justice Dennis' integrity, competence and/or forthrightness and ability to be on the bench, but had to do with a legitimate dispute—I guess any dispute between and amongst States is legitimate—about whose seat this should be.

It happens all the time. It happens in the first circuit, it happens in the second circuit, it happens in the third circuit. We had a debate in the third circuit about whether or not a seat should be a Pennsylvania vacancy or a New Jersey vacancy. I am not saying this only happens in the South. It happens all across the country, and Senators fight very hard for the prerogatives of their States to have folks represented on the circuit courts in numbers that they believe are appropriate.

That has, up to now at least, been the major impediment, at least from the perspective of the Senator from Delaware, of Justice Dennis getting a vote on the floor of the Senate.

Having said that, let me speak specifically to the question raised by my friend from Mississippi.

It has been argued that Justice Dennis should have recused himself from a case that came before the Louisiana Supreme Court involving a suit by a local newspaper against five State legislators.

Under Louisiana law, a judge may be recused for five reasons. I might point out that the Federal rules of recusal, and most State rules of recusal, are not designed to encourage judges to recuse themselves automatically. Otherwise, judges would be able to avoid all the tough decisions. So the presumption is that you should not recuse unless you meet a certain standard.

Let me tell you what Louisiana law says, because that is the law that Justice Dennis, then on the Louisiana Supreme Court, was obliged under his oath of office to follow.

Here are the five reasons for which a Louisiana judge may recuse himself or herself: First, he or she is a material witness in the cause of action before him or her; second, he has been employed or consulted as an attorney in the cause of action prior to being on the bench; third, he has performed a judicial act in the cause of action in another court; fourth, he is related to one of the parties involved in the suit; or fifth, and this is the important piece here, he has an interest in the cause.

My friend from Mississippi is making the case that Justice Dennis should have recused himself because of the fifth provision in Louisiana law—that Justice Dennis had an interest in the case before him. Only this last reason—where a judge is interested in the case—could possibly provide grounds for Justice Dennis to recuse himself from the Times-Picayune case. As the nominee explained to the committee, he had absolutely no interest in the case brought by the Times-Picayune.

Let me go through the facts, because I think it is very important to know what the specific facts are.

For over a century, since 1884, each Louisiana State legislator has had the right to nominate a Louisiana citizen to receive free tuition to Tulane University for 1 year. I might note parenthetically, that this is not something in the last several decades that the press has thought is a good thing.

To the best of my knowledge, and I am certainly not a historian or student of Louisiana history, no one questioned this practice for a long time. Along comes the Times-Picayune, which is their right, and they wanted to know who had appointed whom to Tulane University under this 1884 law.

Again, no one is questioning whether or not the law of Louisiana permitted a State legislator to nominate a Louisiana citizen to receive free tuition to Tulane University for 1 year. These tuition waivers are, under Louisiana law, as we understand it, privately funded.

In 1985, Justice Dennis' son—now, this is 1985, 10 years ago—Steve Dennis, received a tuition waiver from his legislator, a gentleman named Representative Jones. At that time, Justice Dennis' son, Steven, was a 26-year-old married man, financially independent of his father, and living apart from his father.

And, I might add, he lived in Representative Jones' district. Now, Steve Dennis received tuition waivers to attend Tulane law school in the years

1985, 1986 and 1988. He did not attend law school during the 1987–88 academic year.

In December 1993, 8 years after Steve Dennis was first nominated to receive this tuition waiver by his State legislator, the Times-Picayune and one of its reporters sued five legislators for failure to turn over copies of forms they used to nominate people for tuition waivers. The five legislators sued were: Emile ''Peppi'' Bruneau, Jr., Naomi White-Warren Farve, Garey J. Forster, Arthur A. Morell, Edwin Murray.

The reason I mention their names is that Representative Jones—the person who had nominated Steve Dennis—was not sued. He was not a party. He was not asked to submit the names of people he had, in fact, nominated to receive the tuition waiver.

There were two issues involved in this case brought by the Times-Picayune. First, the plaintiffs sought a declaration that the nomination forms of these five legislators were public documents, even if the forms were currently held by Tulane. Second, the plaintiffs sought a writ of mandamus ordering each defendant to produce all nomination forms in his or her custody, including those held by Tulane.

Now, in January 1994, the trial court, of which Justice Dennis was not a member, determined that the nomination forms were public and granted the writ of mandamus ordering the defendants, the five State representatives, to produce all the documents and forms held by them or Tulane. The trial court also awarded attorney's fees to the plaintiffs.

The legislators then appealed from the trial court. In October 1994, the State fourth circuit court of appeals—not the Federal circuit court of appeals—agreed that the nomination forms were public documents subject to disclosure. However, finding no indication that the defendants would not comply with the court's declaratory judgment, the court of appeal reversed the grant of the writ of mandamus against the defendants. The court felt that it was premature to subject the five legislators to mandamus, given that its declaratory judgment was the first definitive statement of the rights of the parties. The court of appeal also reversed the attorney's fee award.

Finally, the case came before the Supreme Court of the State of Louisiana. Enter Justice Dennis. There were only two issues that came up to the Supreme Court. One, whether a mandamus was appropriate, and, two, whether the plaintiffs should receive attorney's fees. It was no longer an issue as to whether the nomination forms were public documents. That was settled. That was not even appealed. The fourth circuit had already established that they were, and that the defendant legislators would have to turn over these documents to the Times-Picayune.

Now, in a 6–1 decision in which Justice Dennis was with the majority, the Louisiana Supreme Court denied the Times-Picayune application for review and refused to consider the untimely application of one defendant who challenged the newspaper's standing.

Remember what is being laid out, the predicate: That Justice Dennis committed some big ethical violation, and he did not tell the committee about it, either. First, he was hiding something from us, the Judiciary Committee, and, second, he was hiding it because it was unethical behavior.

I might add, I doubt whether there is a member of either party who would be willing to let his or her reputation be ultimately written in the great book based on only the headlines he or she has received throughout his or her life. I doubt whether there is a single, solitary person who holds public office who has not spoken to an editor and heard the editor say, ''I am sorry, BENNETT, but I don't write the headlines.'' ''I am sorry, THAD, but I don't write the headlines.'' What my good friend from Mississippi read was a headline from the Times-Picayune which I do not know means anything, except it is unintentionally, in my view, misleading about the character of Justice Dennis.

Now, it is the Louisiana Supreme Court decision from which some argue that Justice Dennis should have recused himself. As I said earlier, under Louisiana statute, there is only one possible reason why Justice Dennis, may have recused himself—and that is because he had an interest in the case.

Justice Dennis, through written and oral statements to our staff, gave three reasons why he determined that there were no grounds under which he should recuse himself.

One, he had absolutely no interest in the outcome of the only issues before the court. The only issues before the court were the writ of mandamus and attorney's fees. He had absolutely no interest in that at all or in the petition by a latecomer saying that the Times-Picayune had no standing.

Second, his son had no interest in the case's outcome. His son was long out of law school. His son was a married man, 26 years old, living on his own in the district of a legislator who was not named in the lawsuit. What possible interest could his son have had in the outcome of this case?

The third point Justice Dennis makes is that Representative Jones, who nominated Steve Dennis for the tuition waiver, did not have an interest in the outcome of the case.

Let me review each of these reasons and then I will sit down. First of all, Justice Dennis had no interest in the outcome of the issues before the court. He had no relationship to either party, the newspaper or any of the five legislators.

Second, Justice Dennis' son had no interest in the outcome of the case. Steve Dennis was first nominated for a tuition waiver by a Monroe legislator in 1985, 8 years before the suit was filed and 10 years before it came to the Louisiana court. Steve Dennis had no interest in the Times-Picayune application before the State supreme court because the public record status of the nomination forms had already been resolved. The fact that they were public documents meant anybody could go and find out whether or not in 1985 Steve Dennis had been nominated by Representative Jones.

Further, Steve Dennis had no interest or stake in the remaining issues: The mandamus order for the defendants to turn over the documents or the attorney's fees awarded to plaintiffs.

Last, Justice Dennis did not recuse himself because the Monroe legislator who nominated his son had no interest in the outcome of the case. Representative Jones was not a party to the case. He was not subject to the writ of mandamus or the award of attorney's fees.

The supreme court's denial of the Times-Picayune writ application was simply a decision not to review the mandamus and attorney's fees issues any further. The court did not decide any question of law or fact. It established no supreme court precedent that could affect future cases. Nor did the rejection by the court of appeal of the Times-Picayune suit for attorney's fees and mandamus establish any precedent that would have provided grounds for nondisclosure by the Representative Jones, or any other nonparty.

Once the court of appeal decision became definitive on March 17, 1995, no custodian of a tuition waiver nomination form could claim that the law was unclear as to whether there was a clear duty to disclose the nomination records. If the custodian refused to respond favorably to a request by an adult person for the records, he or she was subject to mandamus and attorney's fees awards against him.

Justice Dennis has explained clearly why he did not recuse himself in this particular case. He made a thoughtful and reasoned decision, after taking all the facts into consideration. And his record shows that he does not have a blithe disregard for Louisiana's recusal law. In fact, there were two cases in which Representative Jones was a party, and from which Justice Dennis did recuse himself. Both cases were bar disciplinary matters against Representative Jones that came before the Louisiana Supreme Court under its original jurisdiction over proceedings relating to disciplinary matters.

Mr. COCHRAN. Will the Senator yield for a question on the point of what was at issue in the case before the supreme court? Just a question.

Mr. BIDEN. Surely, I will be happy to.

Mr. COCHRAN. One question I have that has not been brought out here was that this suit not only requested a ruling as to these five legislators, but, more important, with respect to Judge Dennis, it involved all legislators' records, as to whether or not they were public records. And the reason this is important as far as Judge Dennis is concerned—and did the committee

know this?—that he was a legislator before he was a judge, and he had awarded scholarships to Tulane and therefore records that he had control over, under the ruling of the lower court, made him a party in interest even though he was not a named defendant?

Mr. BIDEN. If I can respond to my friend, the factual statement he made about Justice Dennis having been a legislator, that this affected all legislators, and the writ of mandamus would have affected all legislators, is absolutely accurate except for one big problem. That issue was not before the supreme court on which Justice Dennis sat.

Mr. COCHRAN. It was if they did not overrule the fourth circuit. The fourth circuit had reversed the lower court. The lower court ruled that was public property and that all legislators had control over the files that were held by Tulane. And the Tulane custodian of records, Carolyn LaBlaime, testified in the lower court that, on the request of legislators, she and Tulane would make those records available. So the question was whether all legislators would have this responsibility.

Mr. BIDEN. If I may respond to my friend, he is again partially correct. That was the issue in the lower court. That was the issue in the court of appeal. But that was not an issue which was appealed to the Louisiana Supreme Court. The supreme court did not speak to, nor was it asked to rule on, or affirm or overrule the question of whether or not these were public records.

Mr. COCHRAN. Mr. President, will the Senator answer one other question?

Mr. BIDEN. Certainly.

Mr. COCHRAN. I do not want to delay this inordinately. I think there is a question that ought to be clarified; that is, at the point when the case reached the supreme court, none of those legislators, except one, had voluntarily requested Tulane to release the information they had regarding the appointments that legislator made to the scholarship privilege at Tulane. That was Peppi Bruneau. The others—even though the court had ruled at the district court level, and the fifth and the fourth circuit, the intermediate court had confirmed were public records—none of them had acted to respond to the Times-Picayune request. And, as a matter of fact, is not it true that it was only after all of these cases had been acted on did the paper realize they had won the case but they still did not have the records, and they had to sue again to compel delivery of the records? They had to sue Tulane because none of the legislators, including Judge Dennis or any of his colleagues who had given out these scholarships, had asked for the records.

So the point is Judge Dennis, in my view, certainly, had an interest in whether he acted on it in deciding the case and the ruling. He did not disclose the interest, but he went on and acted on it nonetheless. It seems to me—does it not seem to the Senator from Delaware—that would be a proper inquiry for the Judiciary Committee to make.

Mr. BIDEN. Mr. President, if I can respond, we did make that inquiry and reached a totally different conclusion than the Senator from Mississippi. Again, let me make clear why.

First, there was no question. The records were public documents. The issue was whether a mandamus should be issued.

Second, the fact that only one of the five legislators, turned over these records further underscores the point that they were the only five people involved in this matter. No one was asking for, in this court, case records from any other legislator.

Third, the question that the intermediate court responded to differently than the upper court was whether or not the vehicle to get these records from Tulane would be a writ of mandamus or a lawsuit. That was the issue; not just how do you get the records. And that issue did not go to whether or not they would have to be produced, but when and under what legal document would they have to be produced. And on that score, Justice Dennis affirmed the intermediate court's ruling along with five other justices.

Mr. COCHRAN. Mr. President, will the Senator yield for one more question?

Mr. BIDEN. I would be happy to. But let me finish this point.

I respectfully suggest, if the Senator looks at what the law says, what the court had said and what was before Judge Dennis, the matter that concerns him most, as it should, was resolved.

Mr. COCHRAN. Mr. President, if the distinguished Senator will yield, the distinguished Senator said that the committee had looked into this issue and had come to a conclusion different from the one I came to.

Mr. BIDEN. Correct.

Mr. COCHRAN. How could you have done that if the information about this nomination to Tulane and the scholarships did not come to the attention of anybody until the day after the Judiciary Committee reported the nomination to the Senate?

Mr. BIDEN. Mr. President, that is a legitimate question. Let me respond to that—the way we do in every such case. The standard operating procedure is, if we get something that even has the potential color of conflict, the majority and the minority get together. The standard procedure is they go back and investigate. Sometimes we call the FBI back in. ''Would you take a look at this? Is it specious? Is there anything to it? Is it real or not real?''

Staff may also call the person making the allegation. And the staff makes a judgment as to whether it is specious, whether it warrants further investigation, or whether or not they have enough information to make a recommendation to the committee.

The third thing we may do is call the nominee. We call the nominee and say, ''OK, look. This was raised. Here is the deal. These are the facts as we know them. Explain yourself.''

That is what we did here. The explanation was given. The nominee wrote a letter to the committee and he was interviewed by staff. We read the briefs that were filed and the newspaper accounts.

The staff concluded that Judge Dennis made the right decision, that he did nothing unethical.

Mr. COCHRAN. Mr. President, will the Senator yield for a question?

Mr. BIDEN. Yes.

Mr. COCHRAN. I think the staff has now concluded in another way. I do not know whether there is any evidence that the Senator can give the Senate about what the staff has concluded. But in today's Times-Picayune, there is a statement from a reporter who called and talked with staff members of the Judiciary Committee.

And it says, ''At issue is Dennis' vote in a 6-to-1 Supreme Court decision in March to deny'' the newspaper's ''request for access to the . . . forms.'' And it says one staff member says that there was nothing new discovered. Another says there are questions raised about whether he should have recused himself.

So the paper has discovered that committee staff has a difference of opinion. I was briefed and I can say that my impression was there is a serious question and that is why this motion is being made.

Mr. BIDEN. Let me respond to the Senator, if I may. I have not seen today's Times-Picayune. However, it is not unusual for staff, as well as Member of the Senate, to have different perceptions of a given situation but I am not sure that is relevant.

Let me explain the procedure. What happens is the majority staff goes to a gentleman named Manus Cooney, who has been on the staff for a long time, first-rate lawyer. He goes and speaks to the chairman of the committee. Karen Robb, a seasoned lawyer, who has been here a long time, comes to me and says now this is what the facts reveal. I then ask what I expect Orrin also asks: What do you think? My staff shows me the information. I look at it, and I say I think there is nothing here.

The next step in the procedure is to make this information available to committee members directly or through staff. Again, this is standard operating procedure. And I am the one who as chairman initiated this rule. ORRIN has followed the precedent—whatever investigative information we have, from the FBI, from any source, where there is any question raised. We notify members of the committee, and we say, hey, folks, there was a new issue raised or an old issue reraised. We have looked at it. If you want to know about it, come here, look at the information.

A lot of this information is FBI-related material on which we only brief

Senators. And a lot of it is non-FBI material, like this on which we brief staff. This is all non-FBI stuff here. It's not confidential.

And so I say to my friend there is nothing unusual about this case. There has not been a single time since I have been on this committee that I can think of where we have not voted somebody out and after having voted on it received new information. The most celebrated case? A Supreme Court nominee.

Were we to reopen a full committee hearing and a full committee vote every single time after we voted anybody raised an allegation, we would effectively shut down the nominating process. Every single time, if we had to reopen a hearing, have a new public hearing and have a vote, we, the Democrats, would effectively be able to keep nominees from being on the bench. And the Republicans could do the same. It is just not a way we could possibly operate. Now, let me say one other point. If, for example, we came forward and the information received after we voted we believed was of such a consequence, Senator HATCH and I, or any member of the committee, that it warranted further hearings, we would have them. Case in point: a Supreme Court nomination.

They have to be issues where the staff, Senators, or the ranking member and chairperson, somebody says, ''This is a big problem. We better take a look at this thing.'' Nobody said that here because nobody that I am aware of believes that here. So that is why we did not open up a new hearing.

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

Mr. BIDEN. I will yield for a question.

Mr. COCHRAN. If a member, who is a senior member, of the Judiciary Committee staff tells a Senator like I was told during the briefing on this issue that if the committee had had the information that came to light after the nomination had been reported, the committee would not have reported the nomination, does that not seem to the Senator to be sufficient grounds to request reconsideration of the issue by the committee?

Mr. BIDEN. The answer is no, if in fact the chairman of the committee, the ranking member of the committee and other members who had that information made available to them did not reach that conclusion.

I am confident that I could find in the Agriculture Committee, in every other committee here, a staff member who would say after we voted something out, if they knew all of that information they probably would not have voted that way. If we operate with that as the basis for whether or not it is worthy to refer back to a committee a nomination or a piece of legislation, we are not going to get very far.

Again, I am not in any way—please let my colleague understand and the record show—I am not in any way questioning the motivation of my colleague from Mississippi. What I am suggesting is that a close look at the facts and the law makes an overwhelming and compelling case that Justice Dennis did exactly the right thing when he concluded that there was no need to recuse himself.

I see my other friend from Mississippi and my two colleagues from Louisiana, who are very interested in this, are here. I will be available if they want to ask me any more questions.

So I will in the meantime yield the floor and stand ready to answer questions if anybody has them.

Mr. JOHNSTON. Mr. President, I have looked into this matter in great detail, and I think the Senator from Delaware is exactly correct. I have read the decisions and read the letters. I think he is exactly correct. I must say that it is a very fine legal point. Even with what my friend from Mississippi said, it is hardly the kind of matter that is so serious as to deny a person a role on the court.

The question of whether or not this issue was really at issue before the supreme court—it had not been appealed on actually what we call a writ of certiorari. So this question was not really before the supreme court. What was really before the supreme court was whether the Times-Picayune was entitled to its attorney's fees and whether or not the writ of mandamus was premature.

But, Mr. President, I daresay, if we gave our colleagues a pop quiz on this question nobody, save those at least on the floor, could answer the question, it is such a complicated legal matter.

Suffice it to say the matter has been, I believe, effectively and thoroughly decided by the Judiciary Committee. This matter was pending for a long time. I really do not think that is the real issue behind whether Judge Dennis ought to be on the fifth circuit.

Mr. President, the real question is should Judge Jim Dennis be on the circuit court of appeals? Mr. President, I have known him for over 30 years. We served in the State legislature together. He is one of the most distinguished jurists the State of Louisiana has ever produced. His life has been marked by excellence in everything he has done. In law school, he was in the Order of the Coif; that is, a top scholar. He was on the Law Review, again a top scholar.

He was in the State legislature, where he made an outstanding record. He has been on the bench in every level—the district court, the court of appeals, and the supreme court—for many years. He is one of those gifted legal scholars who can write things in ways that are clear and he can marshal up the English language and make it march, as someone said about Winston Churchill. He is that good, and recognized as such. He is a great favorite of both the bench and the bar in Louisiana. Mr. President, he would be an enormously popular judge.

Now, he has certainly come within the cross hairs of the Times-Picayune, no doubt. I must say, he is in very good company in that, Mr. President. You see, Paul Tulane, when he made his bequest to Tulane University, went to the legislature and said, ''We want people from every parish in the State. And we want a little financial help. Will you pass a law that says legislators are entitled to name people to Tulane tuition free?''

The legislature passed that law over 100 years ago. For over 100 years, it was in place in Louisiana and never questioned. I think my colleague said for 80 or 90 years. No, it was for over 100 years. But it has to be a real hot issue with the Times-Picayune. They have gotten Members of Congress in both Houses, in both parties—some of my colleagues on the other side of the aisle and in the other party are also in these cross hairs—and a former Republican Governor, one of the most honest and best we ever had, in my view. I liked him a whole lot. All of you know him and served with him. He is one of those in the cross hairs. Also a State treasurer and State legislators of both parties. I submit to you not all those folks are ethically deficient. That was a legal, ethical, proper thing. That is really what is involved.

The Times-Picayune, though, has a great story, and they are pursuing it. This judge ruled against them, denied them attorney's fees. I do not know whether that has anything to do with it, but I will tell you one thing: If this were an opinion, rather than a newspaper story, they would certainly be recused because they certainly had an interest in this matter.

Be that as it may, Mr. President, this is a good judge. He is a good man.

This is a complicated legal question. The staff has looked at it, majority and minority. Look, it is not something where JOE BIDEN is our Democratic head of this thing, and sort of squelched this matter. That is not it at all, Mr. President. That is not it at all.

This is a good man. He is not ethically deficient, I can guarantee you that. He ought to be confirmed to the fifth circuit. He deserves it.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi [Mr. LOTT], is recognized.

Mr. LOTT. Mr. President, I will rise in support of the motion to recommit the nomination of Justice James Dennis to be a member of the Fifth Circuit Court of Appeals back to the Judiciary Committee for further review. And I also am going to go ahead at this time and express my opposition to Judge Dennis for other reasons. I think clearly this nomination has not been sufficiently and properly reviewed by the Judiciary Committee.

There has been information that has been revealed since that nomination was approved by the Judiciary Committee back in July that has not been reviewed by the full committee, by many members of the committee.

As a matter of fact, I understand from what was said a few moments ago, that while the Senator from Delaware reviewed the accusations with regard to the Tulane matter, and perhaps the chairman of the committee, Senator HATCH of Utah, reviewed it, as a matter of fact, what happened after this information was given to the Judiciary Committee, I understand, is the staff sent a letter to Judge Dennis asking him to respond. Then there was a conversation by telephone regarding the allegations here without ever actually having an opportunity to interview him in person.

He did not come back before the committee. And, as a matter of fact, the staff members on the two sides of the committee do not agree on what we should have done or how this matter was handled by Judge Dennis.

So I do think there is very good reason to recommit this nomination. Before I talk about the specifics of the case, I want to take note that even the Judiciary Committee, I think, perhaps gave this nomination only cursory consideration. When the hearings were held, only five questions were asked of this nominee, and only one member asked the questions.

So I really would have thought since there have been questions raised about this nominee almost from the beginning—in fact, I think from the beginning—that there would have been a fuller hearing and more questions would have been asked. And the questions certainly did not go into much probing detail. So I think just on that basis there is justification to ask the Judiciary Committee to review the matter further.

The committee staff that conducted the investigation in this case, as I understand it, determined that Judge Dennis should have recused himself in this matter. Now, at least on the majority side, that is the information I received. So maybe there is disagreement by the staff on the other side. But I wonder, when you have staff coming to that conclusion that he should have recused himself in this case involving Tulane University and the scholarships, should not the full committee have reviewed their recommendation?

This matter was reported by the Judiciary Committee on July 20, 1995. It was 3 days later that this matter appeared in the Times-Picayune. I believe Senator COCHRAN has already asked that this be printed in the RECORD. He has not.

I ask unanimous consent that the Times-Picayune article of Thursday, July 23, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Times-Picayune, July 23, 1995]

JUDGE DEFENDS HIS TULANE RECORDS VOTE

(By Tyler Bridges)

State Supreme Court Justice James Dennis, whose son received Tulane tuition waivers, later voted to deny a request by The Times-Picayune for review of a lower court decision in the newspaper's suit seeking access to five New Orleans legislators' Tulane scholarship nomination forms.

The newspaper eventually received the scholarship nomination forms of all Louisiana legislators by filing a subsequent lawsuit against Tulane.

The records obtained from that suit show that Stephen Dennis was awarded Tulane tuition waivers for three years in the late 1980s by then-state Rep. Charles D. Jones, D–Monroe.

An associate justice of the Louisiana Supreme Court since 1975, James Dennis last year was nominated to a federal judgeship by President Clinton. That nomination, to the 5th Circuit Court of Appeals, was approved by the Senate Judiciary Committee Thursday night and now goes to the Senate floor. Dennis, however, continues to face strong opposition from Mississippi's two senators, who argue that an appointee from their state deserves the judgeship and that Dennis is soft on crime. The appeals court hears cases from Texas, Louisiana and Mississippi.

Prior to his election to the Louisiana Supreme Court, Dennis, 59, a native of Monroe, was a state district judge, an appellate judge, and a state representative.

The Tulane scholarship that Dennis' son received is awarded under a century-old program that permits every legislator to award a tuition waiver every year.

Jones, now a state senator, declined to explain why he nominated Stephen Dennis.

In a written statement to the newspaper, Dennis said that his son in 1985 had sought the scholarship on his own, ''without my suggestion or help . . . At that time, Steve was 26 years old, married, and a resident of (Jones') district. He and his wife were struggling but fully self-supporting and financially independent of me. I was unable to assist Steve in going to law school because of my obligations of support owed to my wife and three younger children. I did not ask (Jones) to nominate Steve for the waiver. I believe that the nomination was made on the basis of Steve's academic record, his financial need of educational assistance and his outstanding extracurricular and other achievements.''

Dennis in March 1995 voted in the majority of a 6–1 decision to deny The Times-Picayune's request that the Supreme Court review an appeals court ruling in the newspaper's suit against the New Orleans legislators.

In a written statement to the newspaper, Dennis said the case did not pose a conflict of interest for him because the appeals court already had upheld The Times-Picayune's primary contention that the nominating forms were a public record. Dennis said further review of the ''collateral issues'' raised by The Times-Picayune's request for review was not warranted.

While the appeals court upheld the newspaper's position that the forms were public records, it also had ruled that legislators were not required to get their scholarship nomination forms from Tulane if they did not have the forms in their possession. This issue was important to the newspaper because numerous legislators had declined to identify their recipients, no longer held the forms themselves and had declined to get the forms from Tulane. In fact, even after the appeals court ruling, four of the five defendants refused to obtain their forms from Tulane and make them public.

''I did not have any interest in the outcome of the only issues to come before the Supreme Court,'' Dennis wrote the newspaper. He would not answer questions beyond his written statement.

Under the Louisiana Code of Civil Procedure, a judge may recuse himself when he ''is biased, prejudiced or interested in the cause or its outcome or biased or prejudiced toward or against the parties . . . to such an extent that he would be unable to conduct fair and impartial proceedings.''

After the Supreme Court denied The Times-Picayune's request for review, the newspaper filed suit to force Tulane to release the scholarship nomination forms of all Louisiana legislators. Civil District Judge Gerald Fedoroff ruled in the newspaper's favor in June, and Tulane released the records this month.

Mr. LOTT. Mr. President, so it was 3 days after the committee had acted when this whole issue started coming to the forefront and questions were being raised about Judge Dennis and his involvement in that ruling on the Louisiana Supreme Court.

Clearly, while you can argue that it came to the supreme court in a very narrow way, I think clearly this is a question of judgment. That is very key here. We are fixing to put a nominee on the Fifth Circuit Court of Appeals, a Federal court, for life, and a nominee's judgment is very critical in whether we vote for or against him.

He knew about the practice in Tulane. He knew about the Times-Picayune investigation. He had, in fact, participated in this process. I do not judge it, prejudge it, or condemn it. I know it went on. What was really involved here was a decision about whether or not this information should be made available, as I understand it. Clearly, he had had an involvement as a legislator and his son had been involved. It appears to me judgment would have dictated that he would have recused himself.

As a matter of fact, the Louisiana rules of court, canon 2 says:

A judge should avoid impropriety and the appearance of impropriety in all activities.

Surely there was at least an appearance of impropriety in this matter.

I have experienced some unusual things with regard to this judge. In the 7 years I have been in the Senate, this is, I think, maybe only the second time I have spoken against a judge, the only time where I have gotten into it to the degree that I have on this one. So it is unusual for me, and I do not take great pleasure in it. I am sure he is a fine man with a good education. Obviously, he is a good friend of the senior Senator from Louisiana and Senator BREAUX from Louisiana. They are both outstanding Senators and good personal friends. I do not take any pleasure in raising questions about a judge that they are recommending. There is nothing personal involved with them. In fact, I will always bend over to try to be cooperative with these two fine Senators.

But in this case, I think there are many reasons why this nomination should be recommitted to the committee and, furthermore, why this judge should not be approved for the Fifth Circuit Court of Appeals.

The second thing that is unusual about this one is I have been inundated with correspondence from people in

Louisiana from all stations in life saying that this nominee should not be confirmed—small business men and women, executives of corporations in Louisiana, just private citizens, prosecutors. We have a file that is probably 6 inches thick of letters from people raising questions about the qualification of this nominee.

I have been struck by that. I started off, quite honestly, being opposed to this nominee because it did damage to the proper balance on the Fifth Circuit Court of Appeals. But as I got into the merits, or demerits, of this nomination, I found that there were a lot of questions that surrounded this nominee.

I am just going to read some of the excerpts from some of the letters I received. One says:

As a Justice on the Louisiana Supreme Court he has been notorious for writing law from the bench. His actions have had a serious negative impact on the Louisiana economy.

This is a person who apparently is in the printing business.

Another one from the Louisiana Association of Business and Industry. Just one sentence from this letter:

In the area of expansion of government, taxation and tort law, he is far out of touch with both legislative intent and the sentiments of most Louisiana citizens.

From a college official, it says:

Judge Dennis is an enemy of not only small business, but Louisiana's workman's compensation program.

From an attorney:

Justice Dennis is the type of judge who is not content with following and applying the law to the facts of the case before him. Rather, he is the kind of judge who desires to bring about a specific result, and then conjures up dubious theories of law to reach that result. Justice Dennis is not the kind of judge who hesitates to ''make law'' when existing law does not suit his philosophy.

I think one of the most striking things came from an assistant district attorney in Louisiana who has had, obviously, a great deal of experience in criminal law practice in Louisiana. His letter was lengthy and gave example after example, citing specific cases where this is a judge that he felt should not be moved to a higher court. I will read two paragraphs from his letter:

I have been a violent crimes prosecutor for the past 20 years, beginning as an assistant district attorney in Baton Rouge, Louisiana, in 1974. Also for 2 years, I was dispatched all over our State prosecuting as an assistant attorney general. For the last 12 years, I have been the chief felony prosecutor in the rural but large parish of St. Landry, which lies between Baton Rouge and Lafayette. I wholeheartedly agree with statements that I have seen ascribed to you that James Dennis ''has a record of court activism inconsistent with the views of the majority.'' He has consistently crafted judicial decisions, while intellectually forceful, that are wrongheaded and unresponsive to the crime problems from which our communities are suffering.

So you see, this is not just a matter of a disagreement whether this judge should be from Mississippi or from Louisiana, and this is not a case where I have gotten a lot of mail from my own State about this judge. This is a case where I have been flooded with letters and calls and correspondence from elected officials, of people throughout Louisiana in all walks of life saying this nominee should not be confirmed.

One other thing before I go to this next part. Just a couple of weeks ago, I had another call from a State official who raised questions about another court action involving gaming versus gambling. I have submitted this material to the Judiciary Committee staff. I do not know whether it is a serious matter or not, but when a State official calls and says this is something the Judiciary Committee should consider, I think they should take a look at it. Maybe they have at the staff level. There is clearly enough question here surrounding this nomination that the committee should take another look at it.

Let me go to these other points that I think I must make. I generally err on the side of giving the President the benefit of the doubt on nominations in his administration. I think Presidents should have great latitude in selecting individuals for service in their administration, including Federal judicial appointments, especially the circuit courts. So barring character flaws or illegality or extreme policy positions which are inconsistent with American values, I generally am inclined to go along with him. But in this case, I do think there are some questions about character and judgment, and I think clearly some of the policy positions here are out of order.

After reviewing this nominee and his rulings, I reached two conclusions: He is clearly a judicial activist predisposed to create law from the bench instead of interpret it, and, second, his rulings fail to support severe and harsh punishment for convictions for violent and wanton criminal acts.

Last, I do not believe the nomination of Judge Dennis is fair or appropriate given the makeup of the Fifth Circuit Court of Appeals. The fact of the matter is, this position is vacant because the chief judge retired, Judge Charles Clark from Mississippi, and has been vacant since then.

If a Mississippian is not appointed to this position, our State will have only two members on the Fifth Circuit Court of Appeals, not nearly enough to try to stop a circuit court of appeals nomination. But this is a question that is affecting Senators and the circuit courts all over this country. I hear—and I believe this is true—a growing concern about disparity in the various circuits. So I think this is a question that should be reviewed by the Judiciary Committee. I know that several of the members of the committee were concerned about that and came to me and asked questions about it. I acknowledge that that alone certainly is not enough to oppose this nomination. But as a Senator from my State, I do have to put on the record the fact that I think that our State is not going to be properly represented in this circuit court.

So I invite Senators from other circuits in other States to be aware that if this pattern begins to develop, we will get to a situation where the big States—California, Texas, or New York—will not only have the margin of the majority, but dominate or have total control of these circuits. I think that we need to think about that.

Now, I want to cite my biggest concern, and that is the way this supreme court judge has been ruling. I think that is the real reason why he should not have been confirmed. Over the last several months, I have reviewed many of Justice Dennis' writings and opinions issued by the Supreme Court of Louisiana.

In two areas, I am particularly concerned with the views of this nominee. I urge my colleagues to take a look at his rulings on crime matters and on business. There is no question that James Dennis is intellectually a bright jurist, and you will see it in his opinions. They are very interesting in the way they are written. However, the intellectual energy he devotes to the law fails to lead to consistent rulings of justice and compassion for the victims of crime. You do not need to look far to see that when it comes to ruling on violent crimes, Judge Dennis is not the victims' judge.

So I would like to cite some of the cases that I think are really important.

At 5 a.m. on July 2, 1977, the defendant, Dalton Prejean, and three other people left a nightclub in a stolen 1966 Chevrolet. They had been drinking heavily for the entire evening in Lafayette Parish, LA. Prejean was driving. The vehicle was stopped by State Trooper Donald Cleveland—the car's taillights were not working.

Prejean, who was driving without a license, attempted to switch places with an occupant in the front seat. Trooper Cleveland saw the driver attempt to switch places and ordered the driver out of the car. Dalton Prejean emerged from the car with a .38 caliber revolver and shot Trooper Cleveland twice. Trooper Cleveland later died from his wounds.

Prejean was convicted of first-degree murder in the Fourth District Court of Louisiana and was sentenced to death. Prejean appealed on four issues, including his claim that he was due a new trial because one juror had failed to disclose his relationship with law enforcement officers on the voir dire. Justice Dennis dissented from the court's refusal to grant a rehearing, arguing that a ''proportionality rule'' should be applied. That is, Judge Dennis argued that before the death penalty should be imposed on the defendant, the sentence should be compared to sentences in all similar cases throughout the State of Louisiana. The

intellectual foundation of Judge Dennis' argument was found not to be proper and it was reversed.

The U.S. Supreme Court has repeatedly affirmed the use of the death penalty, and the U.S. Congress has repeatedly voted to support the death penalty, particularly on crimes of wanton and reckless violence, particularly against law enforcement officers.

So I thought this was an extreme stretch to try to say that we should have an overruling of the death penalty based on some sort of proportionality rule. We have heard that theory discussed, but it has never been accepted as one we should go forward with.

Now, going to the business area. In a case entitled Billiot versus B.P. Oil, Billiot, while working in a B.P. Oil refinery, was burned with a valve when it failed and sprayed a hot substance on Billiot. His subsequent injuries were not the result of exposure to the substance, but to the heat of the substance. He sued the oil company, seeking compensatory relief under the workers compensation law, and punitive damages under a law allowing punitive damages to individuals injured by the storage, transportation, or handling of hazardous substances.

On September 29, 1994, Judge Dennis wrote a majority opinion for the Louisiana Supreme Court on the case. In his ruling he, in effect, reinterpreted two State laws—the workers compensation law and the law allowing individuals injured by hazardous materials to seek punitive damages.

Dennis breathed new and fictional life into a 1914 workers compensation statute by postulating that the exclusive remedy provision of the Louisiana workers compensation law did not apply to punitive damages. In addition, he interpreted that Billiot could sue for punitive damages under the hazardous materials damage law—even though the injury was not caused by the hazardous material.

The impact of this ruling was disastrous for business in the State of Louisiana and equated to the mother lode of case opportunities for lawyers in that State. The landmark ruling did not crack the dike of tort litigation—it blew it wide open, and thousands of small business owners stood downstream of these flooding waters. That ruling was a shining example of judicial activism at work, one where two laws were interpreted anew from whole cloth, creating this new area for litigation.

There are a whole series of cases where Judge Dennis has ruled in ways that can be of great concern to those who are interested in getting fair rulings and doing business. We have a whole list of these cases. I will submit these as part of the RECORD. I think we have about 15 cases.

I ask unanimous consent that the list of cases be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

ANTI-ECONOMIC DEVELOPMENT DECISIONS AUTHORED OR CONCURRED IN BY JUSTICE DENNIS

Billiot v. B.P. Oil Company, No. 93–C–1118 (La. Sup. Ct. Sept. 29, 1994) (Authored by Justice Dennis.):

This decision is a double-whammy against the business community. First, it is an absolute assault on the exclusive remedy provision of workers' compensation that says an employer cannot be sued in tort for a work-related injury of an employee. Justice Dennis reasoned that since the Workers' Compensation Act (enacted in 1914!) did not specifically provide for inclusion of punitive damages in the tort exclusion, it doesn't exist. Further, he argues that, although the statute that triggers the punitive damages refers to the transportation, handling or storage of hazardous substances, the hazardous nature of the substance does not have to cause the injury! Trying to assess risk under this decision is going to be a nightmare—but one thing is sure; your insurance (or your liability exposure if you are self-insured) is going to go up!

B.P. Oil Company v. Plaquemines Parish Government, 642 So.2d 1230 (La. 1994) (Sales Tax) (Concurred in by Justice Dennis.):

This decision would extend the state sales tax on utilities and other items to the local level where the law currently prohibits it from being collected. This decision—if not reversed when the Supreme Court rehears it—will cost businesses and all utility customers hundreds of millions of dollars. LABI has joined over 60 other businesses and associations—including the NAACP and the Public Service Commission—in filing amicus briefs to ask the court to change this disastrous decision.

Halphin v. Johns Manville Sales Corp., 484 So.2d 110 (La. 1986) (Products Liability) (Authored by Justice Dennis.):

This case was one of the worst assaults on economic development ever handed down by a court in Louisiana. Prior to Halphin, liability in products liability cases was determined by looking at alleged design defects, failures to warn properly or manufacturing defects. Halphin added a new category by saying that some products were ''unreasonably dangerous per se.'' Under Justice Dennis' decision, even though a product that caused an injury had no design or manufacturing defect and had proper warning labels, the manufacturer could be forced to pay damages because the machine was ''unreasonably dangerous per se.''

The case sent a shock wave through the manufacturing and retail communities in Louisiana and throughout the United States. The decision was so radical that, in spite of strong trial lawyer opposition, the state legislature overturned the decision in 1988.

Ross v. La Coste, 502 So.2d 1026 (La. 1987) (Strict Liability) (Authored by Justice Dennis.):

In this case, which expanded the doctrine of strict liability, the owner/lender of a ladder was successfully sued for damages by the borrower for injuries caused when the ladder collapsed. The owner had no knowledge of the ladder's defects, yet was held liable.

Mr. LOTT. Mr. President, I will conclude with these three points. I think that Justice Dennis' judgment in the Tulane matter clearly should be questioned and should be reviewed by the Judiciary Committee as a whole. I think there is no question that this is a judge who has been an activist, and there are many decisions that back up just the two that I cited that raise questions about his activism. I think that should cause real concern in the Senate in confirming his nomination.

I urge that this nomination be recommitted to the Judiciary Committee.

I yield the floor.

Mr. BREAUX. Mr. President, I think, first of all, it is a little interesting to note that if this issue was of such monumental importance that it should be recommitted to the Judiciary Committee for further consideration, the chairman of the Judiciary Committee, the distinguished Senator from Utah, ORRIN HATCH, would be here advocating that. He is not. In fact, he does not support the motion to recommit.

The distinguished ranking member of the Judiciary Committee, Senator BIDEN, spoke here on the floor about this very issue and said that, as the ranking Democratic member of the Judiciary Committee, he, too, felt that the committee had exercised their responsibility and looked at this nominee very carefully. After the committee had voted, additional material that was submitted to the committee was considered by the professional staff, by the chairman of the committee, the distinguished Senator from Utah, and by the ranking member of the Committee on Judiciary, the Senator from Delaware, Senator BIDEN. They and the professional staff circulated all of that information to all the Judiciary Committee members. As I look around to see if there are any of these members here who are saying they somehow have not had an opportunity to consider this nominee, I see none.

I think it is clear that this case has been carefully considered by the committee. I think that Senator BIDEN, very eloquently and in great detail, covered all of the allegations we have heard this morning with regard to information that the Senator from Mississippi was arguing was a reason to recommit this to the committee. I think Senator BIDEN's comments were right on target. There is no basis whatsoever to send it back to the committee. The only allegation I heard that supported that argument was basically the fact that Judge Dennis should have recused himself in a case before the supreme court that he ruled on.

Senator BIDEN made it very clear that he had no conflict in that case, that the supreme court voted 6–1 and he very carefully documented why not only should he not have recused himself, that it would have been wrong had he done that, that he had an obligation as a justice to rule on the case, that he had no interest in the case whatever. That, I think, has certainly been clearly established.

If the distinguished chairman of the Judiciary Committee disagreed with that, I think that he would make that opinion known. He does not, and neither does the ranking member of the committee.

Mr. President, I have known Jim Dennis for a number of years, a long number of years. I have known him personally and known him as a very

distinguished jurist on the State supreme court. Somehow to argue on the other hand that he is out of touch with our State is to not consider all the number of times he has gone before the people of our State and offered himself for election, because we elect judges.

If he was out of touch with Louisiana, basically a conservative Southern State, he would not have been elected to the district court which he has been elected; that he would not have been elected as a court of appeals judge that he was elected to and subsequently reelected; that he would not have been elected to the State supreme court which he was elected and has served and then reelected without opposition to a 10-year term.

Louisiana does not elect people that they disagree with. I suggest that his opinions as a judge, his record as a State-elected official, as a Member of the House of Representatives, indicates that not only is he acceptable to the people of Louisiana, that he is enthusiastically accepted as someone that they have taken great pleasure in having them represent in legislative bodies and on every court in Louisiana: the district court, elected; court of appeals, elected; and the State supreme court, elected and reelected without anybody running against him.

I think it is clear that this person fits the mold of the type of judges and members of the judiciary that the people of Louisiana like to see.

Some say that he is not a mainstream jurist. I point out that in the 20 years he has served on the supreme court, the information that we have by the supreme court itself says that he has sat on 7,655 cases in which an opinion was published. He voted with the majority in 7,148 cases. That is 93 percent of every case they wrote an opinion on, he agreed with the majority.

All of these judges are elected, from all parts of our State. If he was out of touch with the people of my State of Louisiana, they would have said so. If he was out of touch with the other members of the judiciary, he would not have voted with them in deciding the majority of the opinions in 93 percent of 7,655 cases.

To somehow allege that he is not part of the mainstream I think is totally contrary to the record in the case.

Some say that he is not strong enough on crime, and we have some letters from some nameless people who write and say that he is weak on the death penalty or not good for law enforcement.

I have a letter from the attorney general of the State of Louisiana, the highest elected law enforcement official in our State, Richard Ieyoub. He says:

> John Dennis is universally regarded as one of the brightest and most effective judges in the State of Louisiana. His opinions are excellent examples of legal scholarship and reasoning. I have carefully monitored the decisions of the Louisiana Supreme Court relative to victims' rights and the operation of the criminal justice system in general, and I feel very comfortable with the decisions rendered by Justice Dennis on these matters. His opinions in the criminal law area have generally benefited law enforcement.

One of the sheriffs of one of the largest areas in our State, greater New Orleans, Jefferson Parish, a distinguished sheriff, Harry Lee, who, probably more than any other sheriff in Louisiana, is noted for being tough on crime and good for victims of crime and tough on criminals. Harry Lee, the sheriff, says:

> In my opinion, Justice Dennis has done an excellent job, both from the standpoint of law enforcement and individual citizens. He has faithfully followed the law as written by the legislature. He is generally regarded as a fair-minded, scholarly, hard-working and effective jurist. In short, he is extremely well-qualified, perfectly suited, and well able to serve with distinction as a judge of the U.S. Court of Appeals.

This is probably the toughest sheriff in the State of Louisiana. Would he say a respected jurist on the fifth circuit is an outstanding person and well-qualified if he was weak on crime and weak on the rights of victims of crime? Of course not. He has staked his public reputation on the fact that this person is just the type of judge we need.

My friend from Mississippi, Senator LOTT, distinguished majority whip, has cited two cases he says are evidence of his judicial activism or taking positions that is not in keeping with what we want in members of the judiciary.

I respectfully disagree with his conclusion and think that the cases that he has cited give us exactly the opposite result. He cited one case, the Billiot versus B.P. Oil Co. where victims were protected by the law of the State of Louisiana, and there are some who were penalized because they violated the law of Louisiana and are now raising opposition to Judge Dennis because he interpreted the law as it was written.

When someone disagrees with the law, you do not criticize the judge for applying the law. You try and give the law a change if you disagree. That is what legislative bodies are for. In this case, it was a workmen's comp case. The person was injured and he was injured very, very severely.

The law of Louisiana, the State law passed by a majority of the people in the legislature, allows for punitive damages in limited cases, in limited categories, involving wanton or reckless conduct or reckless disregard of public safety in the handling or transporting or storage of hazardous or toxic substances.

In this case, it involved hazardous material that ended up—because it was mishandled—injuring a person very severely. In this case, the State supreme court said that the law does not preclude a worker from being able to get punitive damages for the wanton or reckless conduct or reckless disregard of public safety. In this case, they applied the law properly and correctly.

It was not a judge's fault, if you will, that the case did not come out as some of the defendants would have liked it to come out. That is what the law said. If Judge Dennis had been an activist judge, he could have said, ''I don't think the law should say that; therefore I will come to a different conclusion.'' The exact opposite was true. Not only not being an activist by trying to rewrite the law, he applied the law. For those that do not like the law, go change the law.

Mr. President, it is interesting, that is exactly what happened. They put a coalition together in the last session of the Louisiana legislature and they got the legislature to change that law because they made the argument, and a number of the members of the legislature agreed with them, that the law was too generous in that opinion—not mine, but in theirs. They changed the law.

But you do not get mad at the judge for interpreting it correctly. If you do not like the law, you think it is not correct, you change the law. Do not change the judge who carefully interpreted it. That is what happened in the Billiot case.

In addition, the case was decided by a 5 to 2 decision of the supreme court of the State. Were all the judges wrong? I think not. I think they correctly interpreted the law as it was.

The State versus Prejean case that the distinguished Senator LOTT cited, Justice Dennis voted merely to grant the defendant a rehearing based on a recent U.S. Supreme Court decision that set out the parameters under which a death penalty can be instituted by court. The only thing that Judge Dennis was saying is that he wanted to have a rehearing in light of the new supreme court decision to see if it affected this particular case. It has nothing to do with Judge Dennis' support of the death penalty or being tough on crime.

In fact, I point out that Judge Dennis has repeatedly voted in court to uphold the death penalty. Since the death penalty was reinstated, Louisiana Supreme Court has heard on direct appeal the capital cases of some 98 defendants, affirming 84 percent and reversing 16 percent of those capital convictions on lower court. Judge Dennis sat on 93 of those cases and voted to confirm the convictions 80 times, 86 percent, just about the same average of everybody else on the court.

In the cases where Judge Dennis has dissented, it is interesting here because if you say that he is out of step with the majority of the court, he clearly is not. When he has dissented, however, his dissent has been upheld by the U.S. Supreme Court.

Judge Dennis, the facts show, authored the dissenting opinion in six cases since he has been on the supreme court. In six cases he dissented from the majority. In all six cases subsequently reviewed by the U.S. Supreme Court, in all six cases, the U.S. Supreme Court reversed the Louisiana

Supreme Court. It said, ''Justice Dennis, you are right. The supreme court of your State made an error in all six cases.''

I think when you look at this man's record, his distinguished record in every court in Louisiana, I think you would have to agree with me that this person deserves a seat on the fifth circuit court of appeals. He would make an outstanding judge, an outstanding jurist, as he has all his life.

I will not go into an argument as to whether it should be a Mississippi judge or a Louisiana judge for this vacant seat because I think the record is clear. You determine what area justices come from based on the caseload. I think the caseload between Texas and Louisiana and the State of Mississippi is very clear; very, very clear. I do not think there is even an argument. This vacancy should be from the State of Louisiana.

In 1993, the last year we had numbers, there were 1,309 appeals filed from district courts in Louisiana to the fifth circuit court of appeals. There were only 450 appeals filed from district courts in the State of Mississippi. That is a 2.9-to-1 ratio—essentially a 3-to-1 ratio. If the present vacancy is filled with Justice Dennis, Louisiana would have six seats on the fifth circuit; Mississippi would have two seats, a 3-to-1 ratio. The ratio is as close to being proper, when you look at the caseload, as is humanly possible to reach.

Louisiana has 34 active and senior district judges in our State. Mississippi has only 10 district judges, a 3.4-to-1 ratio.

So, when you look at very objective numbers on where should this seat come from, I think it is very clear that the caseload and the number of judges clearly indicate that a judge from Louisiana is the proper recommendation.

Second, I would argue very strongly, and I think it is very clear, the background, the history of this judge has been carefully, carefully scrutinized by the Judiciary Committee, and I think we should all support the ranking member and chairman of that committee in voting against the motion to recommit.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Mississippi [Mr. COCHRAN] is recognized.

Mr. COCHRAN. Mr. President, I understand there may be one or more other Senators who wish to speak to this motion to recommit the nomination. For the information of those Senators, and others, I am going to again point out the reasons why I am filing this motion and why I think the Senate should approve it. But I do not expect to take much time in arguing this point further.

We have had a pretty full discussion of the issue, particularly in the colloquy on the floor with the distinguished Senator from Delaware, the ranking member of the Judiciary Committee. I remain concerned about the attitude of the committee concerning the issue involving the case that was filed in Louisiana that made its way to the supreme court, in which Judge Dennis participated as a member of the Supreme Court of Louisiana, wherein legislators, who had provided tuition-free scholarships to Tulane University to friends and supporters, were sued by the Times-Picayune newspaper to compel the production of documents relating to that scholarship program.

I want to be sure the Senate understands exactly what the issues were and why Judge Dennis' refusal to recuse himself and his action in participating in the ruling on that case strikes me as inappropriate and a clear violation of the code of conduct of judges, both U.S. judges and judges who at the time were serving in Louisiana.

The Times-Picayune had tried to obtain, as I understand the facts, information from legislators, or from Tulane University itself, about the names of those who had been given scholarships by legislators. I am not suggesting this was violative of the law in itself. As a matter of fact, there was a specific statute authorizing these scholarships to be given. I do not know all the history, but, as I understand it, it had something to do with the fact that Tulane University has certain tax benefits under the laws of the State of Louisiana. The legislators who make the laws of the State of Louisiana were, in the last century, given the right to name certain scholarship recipients each year to attend Tulane without having to pay tuition.

Over the years, the tuition at Tulane has become quite substantial. As a matter of fact, Stephen Dennis, who is the son of Judge Dennis, received 3 years of tuition-free scholarship benefits to Tulane University from a member of the legislature in Louisiana, Representative Jones, that is estimated to have a value of about $60,000.

The suit involved a refusal of legislators to say or to disclose or provide records of information about who they had given scholarships to. Tulane had likewise refused to give this information to the paper. Tulane took the position that this was information that should be made available by the legislators. They had customarily made it a practice of providing that information to legislators who requested it, but not to others, third parties.

So, the case proceeded to a trial. The legislators refused to provide the information, so a district court judge at the trial level ruled that these records were public documents and public access was a matter of right.

A second question that had been asked—and relief demanded—was that the legislators be made to turn over those documents to the newspaper. The district court agreed with that and made a part of its judgment an order granting a writ of mandamus. A writ of mandamus requires a public official to do what they ought to do under the law. Having ruled that this was public information, public records to which the Times-Picayune were entitled, the court followed it to the next step and ruled that the legislators who had access to these documents should be required and mandated by the law and by the court to turn those documents over.

And the third issue was whether or not the Times-Picayune should be awarded attorneys' fees, having been forced to file the suit by the refusal of the legislators to turn over these documents. And the judge also ruled that they were entitled to attorneys' fees. So the case, because the legislators disagreed with the ruling, was appealed to the next step. It was a fourth circuit court of appeals in the State of Louisiana.

That court decided the district court had ruled correctly in the first instance, that these were public documents, but they did not grant the writ of mandamus. So they reversed the decision of the district court as to the writ of mandamus and they also reversed on the question of attorney's fees. So in this situation, the Times-Picayune disagreed with that ruling and they appealed, or filed for a writ of certiorari for a hearing before the State supreme court.

Enter Judge Dennis. Judge Dennis' son had been granted a tuition waiver. Of course his name would be among those in the records held by Tulane University. These tuition waivers had a value to his son of about $60,000. Judge Dennis himself had been a member of the legislature and, as such, had the right to grant scholarships himself when he was a member of the legislature, so the records of his own decisions were also among those records that would be subject to being disclosed to the public, not only as a matter of right that the public would have, but as it relates to the responsibility of each legislator. If the supreme court sided with the district court, it would actually rule that the legislators were required to make this information available on request to newspapers such as the Times-Picayune. And, of course, the issue of attorney fees was also raised before the supreme court.

Now the Judiciary Committee, not having had any of that information before it but simply the nomination from the President—President Clinton nominated Judge Dennis in the last Congress—had a cursory hearing. Judge Dennis was asked five questions. There was no witness who appeared for him or against him to testify to any other matters. The committee did not inquire into any of these issues raised by that suit, by Judge Dennis' participation in the rulings on that suit at all. No one had heard about it. Judge Dennis knew about it. He had been questioned by the newspaper about it. He did not tell the Judiciary Committee that.

So the Judiciary Committee reported out the nomination. And after they had done that, then the Times-Picayune wrote this story based on the information they had obtained as a result of this lawsuit and other and independent investigations they had undertaken.

So the issue, it seems to me, is whether or not Judge Dennis adhered to the rulings of the courts, adhered to the standards of ethical conduct, adhered to the code of judicial ethics that he had to be aware of, that was in effect in Louisiana at the time, and which is in effect for all U.S. courts throughout the land. I am going to read from canon 1 of the Code of Conduct for Federal Judges.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary may be preserved.

In the commentary below it says:

Deference to the judgments of rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor.

And in canon 2:

A judge should respect and comply with the law, and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment.

Mr. President, I submit that the circumstances of this case involving the tuition waivers in Louisiana, the legislators and their rights under the law—this case that was filed asking for information about the records and past practices of legislators was acted upon by Judge Dennis in disregard of the canons of code of conduct of judges—that should be reviewed and considered by the Judiciary Committee.

I am hopeful that Senators will approve the motion to recommit this nomination to the Judiciary Committee to give the committee an opportunity, each member of the committee an opportunity, to become familiar with the facts, to ask questions of Judge Dennis or others who may have information touching on this subject, so that we in the Senate will have a full report and can base a decision about whether or not to vote to confirm Judge Dennis on a full and complete inquiry, which, in my judgment, ought to be undertaken by the Judiciary Committee at this time.

Mr. President, I understand that Senator KYL is here and is interested in addressing this issue.

I ask unanimous consent that I may be permitted to yield the floor so that he may speak, and then I will reclaim my recognition without losing my right to continue my remarks.

The PRESIDING OFFICER (Mr. FRIST). Is there objection? Without objection, it is so ordered.

Mr. KYL. Thank you, Mr. President. I thank the Senator from Mississippi for yielding. I would like to address this for 2 or 3 minutes.

I am a member of the Judiciary Committee. But, as is the Presiding Officer, I am a freshman and, therefore, was not present when the Judiciary Committee held its meetings on this matter in September 1994. There are five new members of the Judiciary Committee. So roughly one-third of the committee is new and did not have an opportunity to review the application, to question the witness, and to resolve matters that may have been raised at that time.

I understand that most of the questions have actually been raised since then. But I suggest that probably raises the question of perhaps having an additional hearing to deal with these questions.

I have the greatest respect for Senators BREAUX and JOHNSTON, and I certainly admire their support for this nominee. I know that Senator HATCH has thought long and hard about this as chairman of the Judiciary Committee, trying to abide by his commitment to the administration to move these nominees along with a minimum of difficulty. But, given the fact that about one-third of the members of the Judiciary Committee have not had an opportunity to question Judge Dennis, and, second, that the transcript from the hearing where that opportunity was afforded is very meager to say the least, it seems to me that perhaps the motion to recommit would be the best course of action to consider at least these new allegations.

I have a copy of the transcript of the proceedings that were held on September 14, 1994. Only one member of the committee was present, the Senator from Alabama. He asked five rather perfunctory questions. I do not mean that to demean his questioning. They are the same questions that I have asked nominees after I have satisfied myself that they possessed the requisite qualifications for the position. The questions were simply to the point of would he follow precedent, would he abide by the Supreme Court law, and so on. Of course, the judge answered yes. So those five minimal questions really do not establish much of a record upon which to make a decision.

Since then we have these allegations—again most recently in the newspaper—that, frankly, pose some very serious questions about whether the judge should have recused himself in an extremely important matter in his own State.

I first became aware of this nomination because of the question in my mind about whether or not the proper relationship of judges in Mississippi and Louisiana was being satisfied as a result of the nominee from Louisiana as opposed to a nominee from Mississippi. I am very concerned that the proper relationship always exist within the circuits. We are in the circuit of California, and, obviously, California is a very big part of the ninth circuit. We always want to make sure that we have the proper relationship there, and, if there is an Arizona position available, that position be filled from within Arizona.

I understand that issue has essentially been worked out based upon commitments that would be made about future nominees, and I may be wrong in this. But I also understand that Judge Abner Mikva was the person from the White House who wrote the letter expressing the commitment. Judge Mikva, of course, is no longer there, which illustrates the fact that commitments are important between people but sometimes circumstances change and it is not always possible to fulfill those commitments. So I thought that was resolved. I am not sure that it is. I would like to satisfy myself on that as well.

But, Mr. President, in view of the fact that these allegations are new, they were not before the committee at the time, and, therefore, certainly the Judiciary Committee cannot be blamed, but given the fact that a third of the committee has not participated in hearings on this judge, it seems to me that we would all be better served by having another hearing allowing the judge to come before us so we may question him about these matters. And I would feel much better about the decision that I would have to make later on as a member of the Judiciary Committee having that knowledge before me. Then, when colleagues who are not on the Judiciary Committee ask me what I think as a result of the fact that I participated in the nomination process, I would be in a better position to with some confidence say to them I reviewed it, we had him before us, I am convinced he will be just fine, or perhaps I still have some questions about it. But I will not know that unless we have this kind of an opportunity.

So I support the motion that has been made to recommit by the Senator from Mississippi reluctantly because it is more work for our chairman and our committee. But I think that is probably the proper thing to do with such an important nomination as a member of the fifth circuit court of appeals.

Again, I appreciate the Senator yielding the time.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator for his comments, and I appreciate the information that he has made available to the Senate which has not yet been brought up on the floor; that is, that this is a new Congress, this is a new committee, and there are members of the committee and their staffs who have not had an opportunity to become familiar with this nominee.

He was reported out during the last Congress, and, frankly, had not been on the screen and had not been something that has been on the minds of members of the committee. As a matter of fact, I have had several Senators ask me who the nominee was and what the

issue was. This is just simply something that has not been discussed around the Senate this year. It may have been remembered by some Senators who were here last year. But it is a matter of first impression, and that is why I think it is important to take a little bit of time to explain why the concerns are being raised and why the motion to recommit this nomination to the committee is being made.

The Senator from Delaware was good enough to discuss this nomination from his point of view as a former chairman of the Judiciary Committee and his recollections and his information from his staff about this case, but his attitude about it obviously is different from mine on the question of whether or not this is a serious issue and should be carefully considered by the Judiciary Committee after the new information about whether the judge should have recused himself in that case involving the Times-Picayune or whether this leads to a reasonable conclusion that this is not the kind of judgment that we want to see reflected by judges who occupy the second highest court in the land.

The court of appeals is just beneath the supreme court in terms of power and position in the hierarchy of our Federal judicial system. Most cases are disposed of at the court of appeals level which are appealed from the district courts. Very few cases go beyond the court of appeals to the supreme court. So this court, for really all practical reasons, is the court of last resort for most litigants, and so the power and the influence of courts of appeals are immense in our judicial system.

So those who are nominated to serve on that court should be subjected to the most careful scrutiny to determine their qualifications to serve on that court, their quality of judicial temperament, how they would approach the role of court of appeals judge, and, third, their adherence to the code of conduct of judges, their own personal judgment about ethical standards and the extent to which they should set a very high standard and an example, so that persons having business before the courts in our Federal judicial system will have confidence in the integrity of the judges, in their impartiality and in their abilities to be able to discharge these responsibilities at a high degree of excellence.

That is a pretty tall order when you have clearly laid out here a situation where Judge Dennis refused or neglected to let the Judiciary Committee know about this controversy that had arisen which involved him, not just as a judge on the Supreme Court of Louisiana but as a legislator, where he had actually participated in a decision made by the State supreme court not to grant certiorari in a case being appealed to that court from an intermediate court of appeals in the State, which involved issues in which he was personally involved and his son was personally involved, not to say that they had, either one, done anything illegal but nonetheless the fact that records of information involving their activities were at issue, and the question was whether or not there was a duty under the law to make this information available on the request of the Times-Picayune newspaper.

That was the question before the court. He was on the court, and he participated in ruling that they did not want to hear that case. The supreme court did not want to grant the right of appeal on this case to that court.

And so the net effect was to affirm or not disturb the decision that had been made by the intermediate court. And one aspect of that intermediate court's decision was not to require legislators to provide that information to the paper. The district court said they had to and they should and granted a writ of mandamus requiring legislators to respond affirmatively to requests and provide that information. They did not have the records in their custody.

The testimony at the trial level from the custodian of records at Tulane University was that Tulane did not give this information to anybody who asked for it. They gave the information to the legislators who wanted their records that were kept there about whom they gave these scholarships to, but Tulane was not going to respond to a request from the paper. And the legislators were not cooperating. They were not asking Tulane to give them the information so they could give it to the paper. So the question was whether these legislators could be compelled by a court of law or under a writ of mandamus to provide that information to the paper when it was requested.

That was the issue. And the distinguished Senator from Delaware says that was resolved before it got to the supreme court. Well, it was decided but it was not resolved.

I wish to read from the brief of the appellants who were asking the supreme court to take jurisdiction and to hear this appeal in assigning the errors committed by the intermediate court of appeals on page 9 of their brief.

> Assignments of error. The Fourth Circuit erroneously reversed that portion of the District Court's judgment which ordered that a writ of mandamus issue directing the respondent legislators to produce to the Times-Picayune those of the legislators' scholarship nomination forms in the possession of the legislators and/or in the possession of Tulane University.

That puts at issue the interests of Judge Dennis as a legislator. Forget about the fact that his son has gotten a scholarship from another legislator worth $60,000, and his name is in the records and that will be subject to being produced by that legislator upon request from the Times-Picayune. Forget that. Set that aside. I am talking about the judge's personal interest is at issue in that assignment of error. For the Senate to be told today that that issue was settled, it was not before the State supreme court, is just not true.

I am not suggesting it is an intentional misrepresentation, but I am reading from the brief where the assignments of error are laid out, and this is to the Supreme Court of the State of Louisiana. And all supreme court justices reviewed it and decided not to hear the case, and Judge Dennis decided to vote on that case without revealing his personal interests, without discussing his personal interests with litigants.

Now, that is an erroneous view of the responsibilities of a judge, under my state of reference, with the code of conduct clearly spelling out here about the duty to remain impartial, the duty to disqualify oneself in cases where there is a personal interest. That is a personal interest. The Judiciary Committee did not know at the time it reported out this nomination that this was even an issue. They did not know about this case. They did not know that it was becoming a controversy.

Only after they reported the nomination in the last Congress did this issue really become public. And because this new information came to light after the Judiciary Committee has acted, it is incumbent upon the Senate, in my judgment, to approve this motion to recommit the nomination to the Judiciary Committee and allow Senators like the Senator from Arizona, who spoke, who are new members of the committee, who never had an opportunity to look into these issues, to do so, and, I suggest, to have a hearing, to have a hearing that goes beyond five perfunctory questions that were asked of this nominee when he was before the committee in 1994.

The Senate ought to demand that more be done to satisfy us as to whether or not this nominee has the kind of attitude about judicial ethics and personal responsibilities of judges in cases in which they have an interest to deserve confirmation to a lifetime appointment on the second highest court in the land.

Mr. President, that is just as clear to me as anything can be, that to require the Senate to vote up or down on this nomination at a time when we have not had a full review of this issue by the committee in a hearing, if that is the disposition of the chairman and other members—and to give them that opportunity, we ought to vote for this motion.

I hope that Senators will look on their desks. I have put a copy or asked the pages to put a copy of an article that was written today by the Times-Picayune on this issue. I did not know the article was going to be written when this was being pushed to be brought up. But it has been written, and we made available copies. There are other newspaper articles that have been published by the Times-Picayune on this issue, and they all point to the fact that this is a case of great notoriety and importance in Louisiana.

I think it is a case that we should take a more active interest in than we

have up to this point, and hence the opportunity today for the Senate to review the situation under this motion to recommit.

I hope the Senate will look with favor on the motion, and I urge approval of the motion to recommit the nomination.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I had not planned to speak on this, but there have been some issues raised by both sides that I would like to clarify and put to rest.

One of the most difficult committees in the Congress is the Judiciary Committee. Its work is very important. We handle the confirmation of all judges in the Federal courts and confirmation of many, many other officials.

Nobody takes this responsibility any stronger or any more significantly than I do. Since I have been in the Senate, 19 years, a high percentage of judges who currently sit on the Federal bench have come before the committee while I have been a member. I consider the review of judicial nominees to be one of the most important functions of the Senate.

The committee has completed its investigation of Judge Dennis and into Justice Dennis' decision not to recuse himself from a lawsuit involving a Louisiana newspaper. Additionally, we have thoroughly investigated the nominee's failure to notify the committee of the newspaper's inquiry.

In my humble opinion, a case can be made that Justice Dennis should have recused himself pursuant to canon 2 of the Louisiana Code of Judicial Conduct. I do not believe that he intentionally violated any code of conduct. But, having said that, a case can be made that he should have recused himself in order to avoid the appearance of impropriety.

Now, this is a point Senator BIDEN and I may disagree on. Nevertheless, so everyone understands this, the committee has completed its investigation. Given the evidence before us, I am not satisfied that this isolated incident warrants Justice Dennis' disqualification from the Federal bench. In this instance, I do not think it does. Justice Dennis has provided answers on these questions to the Committee. It depends on whether you accept his answer or not and whether you will give him the benefit of the doubt. I accept his answer.

As chairman, I instructed my staff to offer to brief every member of the committee or members of their staff who wanted to be briefed on this matter prior to it coming to the floor. Additionally, we offered to brief anyone else who wanted to be briefed on this prior to the floor consideration.

I just want to make it very clear that, if the nominee is recommitted, it is my intention that the committee take no further action. I am not going to look into this any further. Everybody knows what there is to know about this. We are not going to hold any further hearings on the matter. If the nomination is recommitted, that is going to be it, as far as I am concerned. Accordingly, I am going to oppose the motion to recommit.

Now, I understand that the distinguished Senators from Mississippi believe there is an imbalance on the fifth circuit. I think Mississippi has not been treated as fairly as it should have been. In that regard, I have gone to the White House and made it very clear that the very next vacancy that is created, if we pass a new judgeship bill, that Mississippi is going to get that vacancy. And I will personally try to correct that deficiency.

But let us have nobody miss any bets here. The fact is, there is no excuse for anybody saying that we should recommit this and have rehearings and redecide this all over again. We are not going to do that. That decision is going to be made right here, right now. And if the motion to recommit is granted, that is going to be it for Justice Dennis.

I am going to oppose the motion to recommit because we have come a long way. I have seen judge after judge, whether a Republican administration or a Democratic administration, who had some problem in their lifetime that somebody can find some fault with. Some problems are valid to a degree. In this case, the judge claimed to have voted the right way, said that it was an oversight on his part, and basically he has an answer for it. Whether you agree with the judge's opinions or not, this justice appears to be an honorable, decent justice.

Frankly, I just want to make that clear so everybody knows as they vote here what is going to happen. There were no dissenting votes against the nominee from the committee. Justice Dennis was favorably reported out by unanimous consent. These questions came up afterwards. The committee reviewed this matter, and we offered every Senator or their staff members an opportunity to be briefed on the findings. I do not think there is any reason for anyone to think that this is something that is a first impression that has to upset this particular nominee.

I am willing to abide by the decision of the Senate in this matter, however I want to make the record clear, I am going to vote against this motion to recommit.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the motion?

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I do not intend to prolong the debate. I do want to add to the RECORD a copy of the newspaper article that has not been printed. I know Senator LOTT put a copy of an article from the Times-Picayune in the RECORD. I think he put in the article dated September 25. There is another article, July 23. I ask unanimous consent that both articles, to be sure we have them in the RECORD, be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Times-Picayune, July 23, 1995]

JUDGE DEFENDS HIS TULANE RECORDS VOTE

(By Tyler Bridges)

State Supreme Court Justice James Dennis, whose son received Tulane tuition waivers, later voted to deny a request by The Times-Picayune for review of a lower court decision in the newspaper's suit seeking access to five New Orleans legislators' Tulane scholarship nomination forms.

The newspaper eventually received the scholarship nomination forms of all Louisiana legislators by filing a subsequent lawsuit against Tulane.

The records obtained from that suit show that Stephen Dennis was awarded Tulane tuition waivers for three years in the late 1980s by then-state Rep. Charles D. Jones, D-Monroe.

An associate justice of the Louisiana Supreme Court since 1975, James Dennis last year was nominated to a federal judgeship by President Clinton. That nomination, to the 5th U.S. Circuit Court of Appeals, was approved by the Senate Judiciary Committee Thursday night and now goes to the Senate floor. Dennis, however, continues to face strong opposition from Mississippi's two senators, who argue that an appointee from their state deserves the judgeship and that Dennis is soft on crime. The appeals court hears cases from Texas, Louisiana and Mississippi.

Prior to his election to the Louisiana Supreme Court, Dennis, 59, a native of Monroe, was a state district judge, an appellate judge and a state representative.

The Tulane scholarship that Dennis' son received is awarded under a century-old program that permits every legislator to award a tuition waiver every year.

Jones, now a state senator, declined to explain why he nominated Stephen Dennis.

In a written statement to the newspaper, Dennis said that his son in 1985 had sought the scholarship on his own, ''without my suggestion or help * * * At that time, Steve was 26 years old, married, and a resident of (Jone's) district. He and his wife were struggling but fully self-supporting and financially independent of me. I was unable to assist Steve in going to law school because of my obligations of support owed to my wife and three younger children. I did not ask (Jones) to nominate Steve for the waiver. I believe that the nomination was made on the basis of Steve's academic record, his financial need of educational assistance and his outstanding extracurricular and other achievements.''

Dennis in March 1995 voted in the majority of a 6–1 decision to deny The Times-Picayune's request that the Supreme Court review an appeals court ruling to the newspaper's suit against the new Orleans legislators.

In a written statement to the newspaper, Dennis said the case did not pose a conflict of interest for him because the appeals court already had upheld The Times-Picayune's primary contention that the nominating forms were a public record. Dennis said further review of the ''collateral issues'' raised by The Times-Picayune's request for review was not warranted.

While the appeals court upheld the newspaper's position that the forms were public records, it also had ruled that legislators

were not required to get their scholarship nomination forms from Tulane if they did not have the forms in their possession. This issue was important to the newspaper because numerous legislators had declined to identify their recipients, no longer held the forms themselves and had declined to get the forms from Tulane. In fact, even after the appeals court ruling, four of the five defendants refused to obtain their forms from Tulane and make them public.

''I did not have any interest in the outcome of the only issue to come before the Supreme Court,'' Dennis wrote the newspaper. He would not answer questions beyond his written statement.

Under the Louisiana Code of Civil Procedure, a judge may reuse himself when he ''is biased, prejudiced or interested in the cause or its outcome or biased or prejudiced toward or against the parties . . . to such an extent that he would be unable to conduct fair and impartial proceedings.''

After the Supreme Court denied The Times-Picayune's request for review, the newspaper filed suit to force Tulane to release the scholarship nomination forms of all Louisiana legislators. Civil District Judge Gerald Fedoroff ruled in the newspaper's favor in June, and Tulane released the records this month.

[From the Times-Picayune, Sept. 28, 1995]

TULANE ROLE MAY KILL POST

(By Bruce Alpert)

WASHINGTON.—Louisiana Supreme Court Justice James Dennis, role in the Tulane University scholarship scandal may kill his dream of winning Senate approval as a federal appeals court judge.

Sen. Thad Cochran, R-Miss., believes that the Senate Judiciary Committee ''should reconsider'' its earlier decision to support Dennis' nomination to the 5th Circuit Court of Appeals ''because of information that came to light after the committee acted,'' said Stephen Hayes, the senator's spokesman.

Cochran referred to revelations that Dennis voted to deny a request by The Times-Picayune for review of a lower court decision in the newspaper's suit seeking access to Tulane scholarship information; even though his son received one of the tuition waivers.

Cochran and fellow Mississippi Sen. Trent Lott, the Senate's second most powerful member, have long opposed the Dennis nomination; arguing that the appointment should go to a resident of their state. But the revelations about Dennis' role in the Tulane case have given their efforts new life.

Hayes said Cochran would make a motion to delay a floor vote and return the issue to the Senate Judiciary Committee if Senate Majority Leader Bob Dole, R-Kan., bows to pressure from Louisiana's two Democratic senators, John Breaux and J. Bennett Johnston, to move the matter for a yes-or-no vote.

Breaux, in particular, was instrumental in getting President Clinton to nominate Dennis for the appeals court, which handles cases from Louisiana, Texas and Mississippi. But the nomination, first made in 1994, has never reached the Senate floor.

On Wednesday, Bette Phelan, spokeswoman for Breaux, said both her boss and Johnston ''continue to urge Senator Dole to schedule a vote on Judge Dennis' nomination as soon as possible.''

Judiciary Committee staff conducted a review of the judge's role in the Tulane scholarship case, a committee spokeswoman said. But she would not discuss the findings, saying only that interested senators can call the committee and get an oral summary.

Two people familiar with the committee staff finding offer different assessments of what the committee staff found. One described the findings as ''more critical than positive'' about the judge, while another said the staff simply summarized information previously reported in The Times-Picayune.

At issue is Dennis' vote in a 8-1 Supreme Court decision is March to deny The Times-Picayune's request for access to five New Orleans legislators' Tulane scholarship nomination forms.

Dennis declined to comment Wednesday. But earlier, in a written statement to the newspaper, Dennis said the case did not pose a conflict of interest because the appeals court already had upheld The Times-Picayune's primary contention that the nomination forms are public records.

Charles D. Jones, the one-time state senator who granted the scholarship to Dennis' son, wrote a letter to the committee last week. In it, he supports the judge's account that Dennis had nothing to do with the awarding of the scholarship to Stephen Dennis.

''Stephen contacted me, expressed his need for financial assistance to pursue his education, requested the tuition waiver and I was glad to recommend him for it,'' Jones wrote Committee Chairman Orrin Hatch, R-Utah. ''Justice James Dennis did not participate in any request directly or indirectly in my initial decision to recommend Stephen for the tuition waiver.''

Ironically, both Louisiana senators have children who benefited from the scholarship program. Johnston's two children received legislative tuition waivers, and a son of Breaux got a waiver from former New Orleans Mayor Sidney Barthelemy.

Mr. COCHRAN. Mr. President, it seems to me that the facts that led me to file this motion have been fully provided to the Senate. The code, the canons of ethics involving impartiality, the responsibility of judges under these circumstances have been discussed.

I do want to point out that the Fifth Circuit Court of Appeals for the State of Louisiana itself handed down a case in August 1986 in which the obligation of judges to disqualify themselves in cases in which they have a personal knowledge is one that the court takes very seriously.

One of the head notes in that case is as follows:

> Under the disqualification statute, recusal is required even when a judge lacks actual knowledge of the facts, indicating his interest or bias in the case, if a reasonable person knowing all the circumstances would expect that the judge would have actual knowledge.

It strikes me in reading that and then looking at the underlying decision of the court of appeals—incidentally, this case came out of the State of Louisiana, so it should have been within the knowledge of the judge as to what the law is, not just the canons of ethics, but what the law is regarding recusal and disqualification.

But it strikes me that this clearly applies to this situation. Not only did the judge have personal knowledge about the scholarship benefits that State legislators could award, he had to know that these records were kept at Tulane, he had to know that legislators did not like to provide information from those records to the general public, he had to know the importance of this to the class to which he personally belonged, the legislators of the State of Louisiana.

So irrespective of the fact that his son had been given a scholarship worth $60,000 to Tulane by another legislator and that that information would be made available, or arguably could be, under a writ of mandamus or would be required to be made available if the court upheld the district court's rule, all of this information and the involvement of the judge personally in this program, the benefits that had been given to his family as a result of this program, all would become public knowledge at a time when he had been nominated to serve on the court of appeals and the Judiciary Committee of the United States had his nomination under consideration. And were it divulged that this information was coming to light at that time, this could have had an adverse effect on the proceedings to consider his nomination.

All of that is clear now, but it was withheld from the Judiciary Committee by his neglect to advise that he had been contacted by a reporter at the Times-Picayune. But it is just as clear as it can possibly be that this should have been the subject of inquiry by the Judiciary Committee at the time. And a senior staff member, when we were getting a briefing in my office about the follow-up investigation that the chairman ordered, said that if the Judiciary Committee had that information at the time they reported out the nomination, they would not have done it.

This is an opportunity to give the Judiciary Committee the opportunity to make a decision based on the full facts, a full investigation. If a hearing is required, any member of the Judiciary Committee can ask the chairman to have a hearing. He says it is not the intent to have a hearing. Well, I think it ought to be looked into further. I think closer scrutiny ought to be brought to bear on this nomination by this committee so that all members of the committee will have a set of facts on which to base a decision about the fitness of this person to serve on the court of appeals.

Mr. President, I urge the Senate to approve the motion to recommit.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. For the benefit of all our colleagues, so they will know on their schedules what is coming, I ask unanimous consent that the vote occur on the motion to recommit the Dennis nomination at 3 p.m. today, 25 minutes from now.

Mr. FORD. Mr. President, I want to inform the Chair that this side has no objection to the distinguished Senator's motion.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

Mr. COCHRAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. COCHRAN. Mr. President, I ask for the yeas and nays on the motion to recommit.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. COCHRAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Under the previous order, the question occurs on the motion to recommit.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 46, nays 54, as follows:

[Rollcall Vote No. 473 Leg.]

YEAS—46

Abraham	Frist	McConnell
Ashcroft	Gorton	Murkowski
Bond	Gramm	Nickles
Brown	Grams	Pressler
Burns	Grassley	Roth
Chafee	Gregg	Santorum
Coats	Helms	Shelby
Cochran	Hutchison	Smith
Cohen	Inhofe	Snowe
Coverdell	Kassebaum	Specter
Craig	Kempthorne	Thomas
D'Amato	Kyl	Thompson
DeWine	Lott	Thurmond
Dole	Lugar	Warner
Domenici	Mack	
Faircloth	McCain	

NAYS—54

Akaka	Feinstein	Levin
Baucus	Ford	Lieberman
Bennett	Glenn	Mikulski
Biden	Graham	Moseley-Braun
Bingaman	Harkin	Moynihan
Boxer	Hatch	Murray
Bradley	Hatfield	Nunn
Breaux	Heflin	Packwood
Bryan	Hollings	Pell
Bumpers	Inouye	Pryor
Byrd	Jeffords	Reid
Campbell	Johnston	Robb
Conrad	Kennedy	Rockefeller
Daschle	Kerrey	Sarbanes
Dodd	Kerry	Simon
Dorgan	Kohl	Simpson
Exon	Lautenberg	Stevens
Feingold	Leahy	Wellstone

So, the motion to recommit was rejected.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of James L. Dennis, of Louisiana, to be U.S. circuit judge for the fifth circuit?

The nomination was confirmed.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

Mr. DOLE. I ask unanimous consent that the President be immediately notified that the Senate has given its consent to this nomination.

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

LEGISLATIVE SESSION

Mr. DOLE. I ask unanimous consent that the Senate now resume legislative session.

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

DEPARTMENT OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1996

Mr. DOLE. I now ask unanimous consent that the Senate turn to the consideration of the State-Justice-Commerce appropriations bill.

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

Mr. DOLE. Mr. President, I will just give my colleagues an update on where we are on the items to be completed before the recess.

The State-Justice-Commerce appropriations bill. I understand there is some great progress being made on that bill.

The Interior appropriations conference report is coming from the House on Friday. We did have a rollcall vote on the bill. I am not certain we will need a rollcall vote on the conference report. We have had a request for a vote on one or the other.

The DOD appropriations conference report is coming from the House Friday. A rollcall vote was taken on that bill, too. If somebody requests a vote, obviously we will have one.

The continuing resolution arrived from the House this afternoon. We hope to pass that by unanimous consent.

Then the adjournment resolution, which I do not think there will be a vote on.

Then the Senate Finance Committee needs to complete action on their portion of the reconciliation package, and I could announce to members of the Finance Committee right now we have staff on each side going through a number of amendments to see if they, staff, can agree, Republican and Democratic staff, and put them in a little ''cleared'' pile and a ''rejected'' pile and then ''above our pay grade'' pile, which will be for Members' consultation. We hope to save a lot of time that way. The chairman has indicated that he will call us back to the Finance Committee meeting as soon as that has been completed.

So it seems to me there is no reason for us to be anything but optimistic about next week at this point. Much will depend on the leadership of the distinguished Senator from Texas [Mr. GRAMM] and the distinguished Senator from South Carolina [Mr. HOLLINGS].

Mr. DASCHLE. Will the Senator yield?

Mr. DOLE. I will be happy to yield.

Mr. DASCHLE. The majority leader did not mention the Middle East facilitation bill. Is that on the list?

Mr. DOLE. I think that is going to be resolved. I need to talk to the Senator about that.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2076) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1996, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with amendments, as follows:

[The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.]

H.R. 2076

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1996, and for other purposes, namely:

TITLE I—DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For expenses necessary for the administration of the Department of Justice, $74,282,000; including not to exceed $3,317,000 for the Facilities Program 2000, and including $5,000,000 for management and oversight of Immigration and Naturalization Service activities, both sums to remain available until expended*: Provided, That not to exceed 45 permanent positions and full-time equivalent workyears and $7,477,000 shall be expended for the Department Leadership program: Provided further, That not to exceed 76 permanent positions and 90 full-time equivalent workyears and $9,487,000 shall be expended for the Executive Support program: Provided further, That the two aforementioned programs shall not be augmented by personnel details, temporary transfers of personnel on either a reimbursable or non-reimbursable basis or any other type of formal or informal transfer or reimbursement of personnel or funds on either a temporary or long-term basis.*

(TRANSFER OF FUNDS)

For the Joint Automated Booking Station, $11,000,000 shall be made available until expended, to be derived by transfer from unobligated balances of the Working Capital Fund in the Department of Justice.

POLICE CORPS

For police corps grants authorized by Public Law 103-322, $10,000,000, to remain available until expended, which shall be derived from the Violent Crime Reduction Trust Fund.

COUNTERTERRORISM FUND

For necessary expenses, as determined by the Attorney General, $26,898,000, to remain available until expended, to reimburse any Department of Justice organization for (1) the costs incurred in reestablishing the operational capability of an office or facility which has been damaged or destroyed as a result of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City or any domestic or international terrorist