would be 87,000, far lower than the 100,000-plus refugees admitted annually from 1989 to 1995.

The senators' letter has ignited a debate among administration aides, who must soon decide on the number of refugees to admit in 1998. They need look no further than the administration's own reports on religious persecution in the former Soviet Union. These reports document that:

Legislation passed last week by the lower house of Russia's parliament would require the registration of new religious groups, and would require these groups to wait up to 15 years to obtain full legal status. During this period, these groups would be barred from importing or distributing religious materials, and it would be difficult for them to own property or have bank accounts. This bill does not apply to Orthodoxy, Islam, Judaism or Buddhism; instead, it would affect faiths newer to Russia, especially evangelical Christians. President Yeltsin vetoed the bill once but now seems prepared to sign it.

About one fourth of Russia's regional governments have laws restricting religious activity.

Russian authorities have made Christian missionary work difficult or impossible in some regions, and they have made recovery of property difficult for non-Orthodox faiths, including the Catholic church.

As a result, Pentecostals and other evangelical Christians now account for about half the refugees from the former Soviet Union.

The State Department argues against any increase in refugee admissions. In spite of conditions in the former Soviet Union, it claims that interest in the U.S. refugee program is declining, even though 6,000 more were admitted this year than it proposes to admit next year.

But even if less than 30,000 admissions slots for the former Soviet Union are needed in 1998, the increase in overall admissions would give the administration greater flexibility to address other crises. This year, the administration exceeded its planned admissions from the former Yugoslavia by 25 percent. If the implementation of the Dayton accords continues to prove difficult, the need to resettle refugees from this region will grow. And, following the historical pattern in other refugee crises, American action to resettle refugees from the former Yugoslavia will cause European and other countries to accent greater numbers of these refugees for resettlement.

Last year, the House and Senate defeated legislative attempts to slash refugee admissions. The senators' action is one more demonstration of the bipartisan consensus supporting American action to help refugees fleeing oppression. President Clinton should view their proposal as an opportunity to help victims of religious oppression, and to revitalize American humanitarian leadership around the globe.●

## ENERGY AND WATER APPROPRIATIONS CONFERENCE REPORT

● Mr. GORTON. Mr. President, in the Energy and Water Appropriations Conference Report, which this body may consider as early as tomorrow, is a provision that encourages the Corps of Engineers to make a decision on permits for a 50-foot dock extension at the Port of Seattle.

Over the past several years the Port of Seattle, Muckleshoot Indian Tribe, and Corps of Engineers have been involved in a debate over the replacement of a 350-foot wood dock with a 400-foot concrete dock at the Port of Seattle. In an effort to move this process forward and break the deadlock between the parties, I included report language in the Energy and Water Appropriations Conference Report asking the Corps of Engineers promptly to consider the permit issue.

Due to the continued cooperation and hard work of the Muckleshoot Indian Tribe and Port of Seattle, an agreement was reached this past Friday evening over the dock extension. I would like to praise the judgment and cooperation of the Port of Seattle and the Muckleshoot Indian Tribe both. Their willingness to work together has not only averted a protracted conflict but also provide a positive example for other local governments and tribal governments in reaching agreements under similar circumstances.

As a result of this agreement, the language which I included in the Energy and Water Appropriation Conference Report is redundant and no longer necessary. I have discussed this point with Congressman NORM DICKS in the House and would like the official record to show that both the House and Senate agree that this language is effectively voided by the agreement. Furthermore, I would like to request that the final version of the Energy and Water Conference Report that will be considered by the Senate not contain this language. In any event, that language should be treated as having no effect.●

## JUDICIAL NOMINEES

Mr. HATCH. Mr. President, I rise this evening to say a few words in response to President Clinton's radio address over the weekend about the pace of the Senate's consideration of judicial nominees. In that address, the President chided Members of this body for what he described as ''a vacancy crisis'' in our Federal courts ostensibly resulting from politically motivated scrutiny of his nominees.

I will respond for a moment to the myths and distortions that the Clinton administration has engaged in; specifically the myth that there is a vacancy crisis in the Federal judiciary and the myth that there is a Republican slowdown of judicial confirmations.

There is no vacancy crisis. So far this year, the Senate has confirmed 18 of President Clinton's judges. This brings the total number of Clinton nominees on the Federal bench to 222—that is nearly 30 percent of the active Federal judiciary. There are more sitting Federal judges today than there were through virtually all of the Reagan and Bush administrations. As of September 26, 1997, just 3 days ago, there were 750 active Federal judges. Now, this figure excludes the approximately 79 senior status judges who continue to preside over and hear cases.

Yet at this point in the 101st Congress when George Bush was President and in the 102d Congress when George Bush was President, by contrast, when President Bush's nominees were being processed by a Democrat-controlled Senate, there were only 711 and 716 active judges, respectively. We have 750 as we stand here today.

Keep in mind that the Clinton administration is on record as stating that 63 vacancies—a vacancy rate just over 7 percent—is considered virtual full employment of the Federal judiciary, and they were right. Ninety-four vacancies, the current vacancy rate, is a vacancy rate of about 11 percent. So ask yourselves this question, how can a 4-percent rise in the vacancy rate from 7 percent to 11 percent convert full employment into a crisis?

Moreover, let's compare today's vacancy level, 94, with those that existed during the early 1990's when George Bush was President and the Democrats controlled the Senate. In May 1997 there were 148 Federal judicial vacancies, and in May 1992 there were 117 Federal judicial vacancies. I remember those years. I don't recall one comment about it in the media. I don't recall one television show mentioning it. I don't recall one writer writing about it. Nobody seemed to care. But all of a sudden it has become a crisis today with less vacancies at this time than the Democrat-controlled Senate and Judiciary Committee at that time had.

I should also note that at the end of the Bush administration, there were 115 vacancies compared to the 65 at the end of the last Presidential election; 115 vacancies, for which 55 nominees were pending before the Judiciary Committee. None of these 55 nominees even received the courtesy of a hearing.

I have heard all the yelling and screaming here on the floor and in the public media today and by the President on Saturday. In short, I think it is unfair and frankly inaccurate to report that the Republican Congress has created a vacancy crisis in our courts.

Now, it is also incorrect when we suggest there is a deliberate Republican slowdown of the nominations process. The President pointed out on Saturday, correctly I might add, that he has sent up to the Senate nearly 70 nominees to fill vacant seats on the Federal bench, 68 to be exact. By way of comparison, he notes that the Senate has confirmed fewer than 20 of his nominees, suggesting undue Senate delay in the face of an abundance of qualified nominees.

But the picture the President paints is less than complete. Of the 68 judicial nominees submitted to the Judiciary Committee this year, nearly half of them, 30 in all, have been nominated just since July 1 of this year. So, factoring in the Senate's August recess, when we were gone for better than 30 days, the Judiciary Committee has had scarcely 2 months to consider virtually one-half of the President's nominees this year.

Perhaps, then, it is fair to say the delay has been a factor in the face of

Senate confirmation. Unfortunately, the delay has to date been largely at the other end of Pennsylvania Avenue—at the White House, if you will.

Even the Administrative Office of the Courts has concluded that most of the blame for the current vacancies falls predominantly with this administration. It calculates that until his most recent rush of nominations, it has taken President Clinton an average of 618 days to name a nominee for a vacancy—nearly twice the time it has historically taken prior White Houses.

By contrast, it has taken the Senate an average of 91 days to confirm a judge once the President finally nominates him or her. In other words, the Senate is carrying out its constitutional responsibilities with respect to the confirmation of judicial nominees more than six times faster than the President. And in recent months, the Judiciary Committee has been moving noncontroversial nominees at a remarkably fast pace.

Since returning from the August recess, we have already scheduled two nomination hearings. At the first, earlier this month, we considered four of the President's nominees. Tomorrow we will hold a hearing for seven judicial nominees, and in addition a hearing for the President's nominee for Associate Attorney General. Those were scheduled before the President, I think, ever dreamed of giving a speech last Saturday. I should note that the Clinton administration was made aware of this fact prior to the President's address, but he failed to mention that. In addition, we are planning to have another hearing in the next few weeks, so, clearly noncontroversial nominees are being considered at a responsible pace.

I will concede that some nominations have taken longer than is customary. But in many instances, this has been due to the unfortunate fact that some nominees have not been entirely forthcoming with the Judiciary Committee. In the interest of fairness, I have given these nominees repeated opportunities to fully respond to the committee's inquiries, and when they have done so, we have moved the nomination. Ms. Margaret Morrow is a good example of a nominee who was slowed by her reluctance to promptly answer questions posed by members of the committee. After I spoke with her and urged her to be more forthcoming, her nomination was reported to the floor—with my support, I might add—and I expect her nomination will be scheduled for a floor vote soon. I expect it to be scheduled. It should be scheduled. If people have differences with her, let them express those differences with their votes. But she has been reported by the Judiciary Committee, and with good reason as far as I'm concerned.

Nevertheless, other nominees have been similarly less than cooperative. While I appreciate and concur in the President's expression of concern for the integrity of our courts, we will all be better served by this administration's renewed commitment to sending up restrained, qualified nominees who respect the essential role that the Senate must play in the confirmation process. We cannot serve that function well when nominees are less than forthright with members of the committee.

The President was quite correct when he said over the weekend, ''This age demands we work together in a bipartisan fashion and the American people deserve no less.'' Indeed, they do deserve no less. But bipartisan cooperation depends not only on swift confirmations, but qualified and cooperative nominees as well.

Now, I also want to take a moment to address some of the personal criticisms directed at our majority leader. To suggest that the majority leader has acted irresponsibly with respect to the nominations is just plain wrong. Of 21 judicial nominees reported to the floor by the Judiciary Committee, only 3 remain on the calendar. One was reported within the last 2 weeks. So to suggest that this majority leader is playing games with nominations is not only unfair, it is grossly untrue.

Now, I have been pleased to have worked, over the past number of months, with White House counsel Chuck Ruff to ensure that the nomination and confirmation process is a collaborative one between the White House and Members of the Senate. I think it is fair to say that after a few months in which the process suffered due to inadequate consultation between the White House and some Senators, the process is now working rather smoothly. I think the process is due to the White House's renewed commitment to good faith consultation with Senators of both parties.

Now, I think it is important to note that I believe the Senate is doing its best to move nominees and to move them quickly. If we have noncontroversial nominees submitted, we can move them quickly. If and when the administration sends us qualified, noncontroversial qualified nominees, they will be processed fairly and promptly. In the last 6 weeks or so, the administration has finally began sending us nominees which I have, for the most part, found to be quite acceptable. Take Ms. Hull, who was nominated for a very important seat on the Eleventh Circuit. That is a circuit court of appeals judge. She was nominated on June 18, she had her hearing June 22, and was confirmed on September 4. That is a remarkably fast turnaround for both parties, the White House and the Senate. Or Mr. Alan Gould from Florida, who was nominated in February. We completed his paperwork and our review in March and April. He had a hearing shortly thereafter in May, and was reported out in committee and confirmed before the Fourth of July recess. Another good example is Janet Hall, from Connecticut, who was nominated to the U.S. District Court on June 5, 1997. The Committee had a hearing on July 22, and she was confirmed September 11. Clearly, when it comes to new noncontroversial nominees, we are in fact proceeding with extraordinary speed and diligence.

Now, more controversial nominees take a little more time. Of the 69 individuals nominated in this Congress, only 43 have been new. The other 23 are renominees that were nominated but never confirmed in the last Congress. Some have had committee consideration, but most of the nominees with completed paperwork who have not yet had consideration are ones who were renominated from the last Congress. When the administration simply sends back nominees who had problems last Congress, it takes much more time and it is much more difficult to process them, and they know it.

I am trying to work out the differences between the Senators of the respective States—I might add, Democrats and Republicans—and the White House so that we can move more of these. It was worth pointing out that there was, in nearly every instance, a reason why the Senate confirmed 202 other Clinton nominees, but not these 23. If all we are left with are judges that we are not ready to move, I will not compromise our advise and consent function simply because the White House does not send qualified nominees. As I said at the outset, the Senate's advise and consent function should not be reduced to a mere numbers game. The confirmation of an individual to serve for life as a Federal judge is a serious matter and should be treated as such. In fact, we have sent a letter down to the White House and Justice Department and explained the problem with each nominee, and they understand perfectly well why some of these nominees have not moved. When you talk about confirmation numbers, let me compare them to the previous Congresses. As of today, we have processed 24 nominees this year—18 confirmed, 3 on the floor, and 3 are pending in committee. Now, not all of these judges have been confirmed, but we expect that most all of them will be confirmed fairly promptly.

Assuming most of these nominees are confirmed, I think any reasonable person could see that our efforts compare quite favorably to prior Congresses in terms of the number of judges confirmed at this point in the first session of a Congress, especially if you look at recent Democrat controlled Congresses. In 1993, there were zero judges confirmed by the Democrat Congress by the end of July of that year. In 1991, 23 judges were confirmed, at a time when there were 148 vacancies—in a Congress controlled by Democrats. In 1989, only 4 judges were confirmed—a Democrat Congress. In 1987, only 17 judges confirmed—a Democrat Congress. I can go on and on. So the plain fact is, we are on track, if not ahead of previous Democrat Congresses.

Well, I can say so much more, but let me just say this. Some have argued

that the Republican leadership is holding up qualified nominees. Let me just point out for the record that there were a number of qualified nominees of President Bush who weren't even given the courtesy of a hearing. For instance, John G. Roberts, Jr., nominated on January 27, 1992, for the vacancy left by the now Supreme Court Justice Clarence Thomas. Among his long list of accomplishments, I note, was that he was a former law clerk to the Chief Justice of the Supreme Court. He had worked at various high level positions at the Justice Department, including serving as Deputy Solicitor General of the United States. He was an outstanding lawyer and he wasn't even given the courtesy of a hearing.

Another fine nominee was Maureen Mahoney. Keep in mind, we have had some Senators take to the floor here and try to imply that because it has been difficult to get a certain woman nominee through from time to time, that there must be something wrong with the Judiciary Committee for not doing that. Well, take the fine nominee, Maureen Mahoney, nominated for the U.S. District Court in the Eastern District of Virginia on April 2, 1992. Like Mr. Roberts, she, too, was a well-respected litigator. She clerked for Chief Justice Rehnquist and also served as a deputy solicitor general of the United States. Neither of these exceptionally qualified nominees were able to get a hearing on their nomination.

I could go on and on. Keep in mind that we have 750 judges on the bench today, compared to in 1991–92 when we had considerably less judges at that particular time—711 and 716, compared to 750 today. Plus, in addition to the 750, we have a number of senior status judges—79 as I recall—who are hearing cases and continuing their work even though they have taken senior status. So there is no crisis.

Now, having said all of this, I would like to move these nominees who are qualified as fast as we can. I would like them to come up on the floor as fast as they can be brought up. Thus far, the majority leader has virtually brought up everybody we have brought out of the committee, except a couple, and they will be brought up in the near future. Margaret Morrow will have her vote in the Senate. I will announce right here and now that I will vote for her, even though I did have some qualms as a result of her first confirmation hearing and as a result of some of the things that she had said while President of the California Bar Association, and on other occasions during the earlier years. But I have found her to be qualified and I will support her. Undoubtedly, there will be some who will not, but she deserves to have her vote on the floor. I have been assured by the majority leader that she will have her vote on the floor. I intend to argue for and on her behalf.

I believe that with continued cooperation from the White House, in consultation with Senators up here—keep in mind that this isn't a one-way street. Senators have a right to be concerned about lifetime-appointed judges serving within their areas, their States. Therefore, that is why the Senate has a noble and very important role in this confirmation process. I want to commend the current White House counsel, Charles Ruff for the work he is doing in meeting personally with Senators up here and trying to resolve their difficulties. I think he has made a lot of strides, and I think that is going to be helpful over the long run.

Mr. President, these are important matters. I do not believe they should be politicized. I think activist judges, whether they come from the right or left, are judges who ignore the law and just do whatever their little old visceral tendencies tell them to do. These are judges who act like superlegislatures from the bench who usurp the powers of the other two branches—coequal branches—of Government, the executive and legislative branches. These are judges who ignore the written law. These are judges who take their own political purposes to what the law should be. These are judges, a number of whom sit on the Ninth Circuit Court of Appeals, who have given me nothing but angst because of their activism. During this last year 28 of 29 cases on the Ninth Circuit Court of Appeals were reversed by the Supreme Court because of judicial activism.

Everybody knows that judicial activism is hard to define. But it is not hard to define when you look at some of those cases. Judges do have to try cases at first impression. And when they do, they do have to make decisions, and they have to split the baby, so to speak. But we are talking not about those cases. We are talking about judges who ignore the basic intents of the law, the basic languages of the law, who substitute their own policy preferences for what the law really is.

When we see judges like that, I tell them they are undermining the Federal judiciary, they are making my job as chairman of the Judiciary Committee much more difficult, and the job of the ranking member much more difficult, and they are doing wrong things.

It is important that this be brought to the attention of the American people because these judges are nominated by the President. They are confirmed for life. When they retire, they get full judgeship pay the rest of their lives. We need an independent judiciary in this country. There is no stronger voice for an independent judiciary than I. And we do need the lifetime tenure. But when judges ignore the basic laws and substitute their own policy preferences for what the law really is, they are undermining the Federal judiciary, and they are disgraces to the Federal judiciary.

Frankly, it is time that they wake up and realize that. It is embarrassing to the good judges throughout this country—manifestly embarrassing to them to have some of these judges who just think they are above the law; who think they are above the Constitution; who think they are above the other two coequal branches of Government.

Thank goodness there are not too many of them in the Federal judiciary. Thank good goodness we have people and a Senator willing to stand up and say, We have had enough. I happen to be one of them.

Mr. President, these are important issues. The Federal judiciary can determine what happens in this country for years to come. It is important that we have people of the utmost integrity and respect for the law and respect for the rule of law and respect for the role of judging on our Federal benches.

As long as I am on the Judiciary Committee, I am going to work as hard as I can to see that those are the kinds of people that we get there. I am not so sure it is that important whether they are liberal or conservative, if they will respect the role of judges and respect the rule of law. I have seen great liberal judges, and I have seen great conservative judges. And I have seen lousy ones in both categories as well.

I just suggest that they respect the role of judging. Judging generally has been pretty good.

## UNANIMOUS CONSENT AGREEMENT—HOUSE JOINT RESOLUTION 94

Mr. HATCH. Mr. President, I ask unanimous consent that the majority leader, after consultation with the minority leader, may proceed to the consideration of House Joint Resolution 94, the continuing resolution, which will be received from the House.

I further ask unanimous consent that no amendments be in order to the resolution and that the Senate then immediately proceed to a vote on passage of the resolution with no intervening action or debate.

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

Mr. HATCH. I now ask unanimous consent that, notwithstanding the receipt of the continuing resolution, it be in order to ask for the yeas and nays at this time.

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

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

## NATIVE AMERICAN PROGRAMS ACT AMENDMENTS OF 1997

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 57, S. 459.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 459) to amend the Native American Programs Act of 1974 to extend certain authorizations, and for other purposes.