Mr. President, I yield the floor.

EXPRESSING THE SENSE OF THE SENATE CONCERNING DR. WILLIAM RANSOM WOOD

Mr. STEVENS. Mr. President, I send this resolution to the desk.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 195) expressing the sense of the Senate concerning Dr. William Ransom Wood.

Mr. STEVENS. 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. STEVENS. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. STEVENS. Mr. President, I express my gratitude to the secretary for the minority for clearing this resolution so quickly, and I ask for its consideration.

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. Without objection, the resolution and its preamble are agreed to.

The resolution (S. Res. 195) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 195

Whereas Dr. William Ransom Wood's tireless dedication and wisdom have earned him honorable distinction for his work in the city of Fairbanks, the State of Alaska, and the Nation;

Whereas Dr. Wood served his country with distinction in battle during World War II as a captain in the United States Navy;

Whereas Dr. Wood served the people of Alaska as president of the University of Alaska, chairman of the American Cancer Society, vice president of the Alaska Boy Scout Council, Member of the Alaska Business Advisory Council, Chairman of the Alaska Heart Association, and numerous other organizations;

Whereas Dr. Wood served the people of Fairbanks as mayor, chairman of the Fairbanks Community Hospital Foundation, President of Fairbanks Rotary Club, and in many other capacities;

Whereas the city of Fairbanks, the State of Alaska, and the Nation continue to benefit from Dr. Wood's outstanding leadership and vision;

Whereas Dr. Wood is the executive director of Festival Fairbanks which desires to commemorate the centennial of Fairbanks, Alaska with a pedestrian bridge which shall serve as a reminder to remember and respect the builders of the Twentieth Century; and

Whereas it shall also be in Dr. Wood's words, ''a memorial to the brave indigenous people. Who came before and persisted through hardships, generation after generation. The Centennial Bridge is a tribute to their stamina and ability to cope with changing times.'': Now, therefore, be it

Resolved, That the United States Senate urges the Secretary of Transportation Rodney Slater to designate the Fairbanks, Alaska Riverwalk Centennial Bridge community connector project as the Dr. William Ransom Wood Centennial Bridge.

Mr. STEVENS. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. STEVENS. Mr. President, pursuant to the consent agreement of Friday, October 1, I now ask unanimous consent that the Senate proceed to executive session for the consideration of judicial nominations.

The PRESIDING OFFICER. Without objection, it is so ordered. The nominations will be stated.

The legislative clerk read as follows:

THE JUDICIARY

Ronnie L. White, to be United States District Judge for the Eastern District of Missouri; Brian Theadore Stewart, to be United States District Judge for the District of Utah; and Raymond C. Fisher, to be United States Circuit Judge for the Ninth Circuit.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, we have a number of judges to discuss tonight:

There is Brian Theadore Stewart—I see the distinguished Senator from Utah on the floor, who I am sure will be speaking of him.

There is Justice Ronnie L. White—I see the distinguished Senator from Missouri, who will be speaking about him and has specific reserved time for that.

And there is the nomination of Raymond C. Fisher.

Utilizing some of the time reserved to me and the distinguished chairman of the Senate Judiciary Committee, I will make sure that whatever amount of time the distinguished Senator from Utah wishes will be available to him.

I would like to start by mentioning how we got here. On Friday, the Democratic leader was able to get an agreement from the majority leader scheduling an up-or-down vote on Ray Fisher, Ted Stewart, and Ronnie White tomorrow afternoon, with some debate this evening. I thank the Democratic leader for his assistance in obtaining those agreements. I know that it was not easy to obtain a date certain for a vote on the Fisher nomination and I am especially grateful that at long last, after 27 months, the Senate will finally be voting on the White nomination.

I begin with the Fisher nomination. Raymond Fisher is a distinguished Californian. After being confirmed by the Senate in 1977, he has served as Associate Attorney General of the United States. He served on the Los Angeles Police Commission from 1995 to 1997. He chaired it from 1996 to 1997. In 1990, he was deputy general counsel for the Independent Commission on the Los Angeles Police Department, better known as the Christopher Commission, chaired by Warren Christopher.

He received his undergraduate degree in 1961 from the University of California at Santa Barbara; And he received his law degree from Stanford Law School in 1966, where he was president of the Stanford Law Review. Following law school, he clerked for the Honorable J. Skelly Wright on the U.S. Court of Appeals for the District of Columbia Circuit and for the Honorable William Brennan on the U.S. Supreme Court. In other words, a lawyer's lawyer.

For almost 30 years, he was a litigation attorney in private practice in Los Angeles at Tuttle & Taylor and then as the managing partner of the Los Angeles offices of Heller, Ehrman, White & McAuliffe. He is a highly respected member of the bar and a dedicated public servant.

He has the very strong support of both California Senators. He received a rating of well qualified—in other words, the highest rating—from the American Bar Association. He has the support of Los Angeles Mayor Richard Riordan, the Los Angeles police department, the National Association of Police Organizations, and the Fraternal Order of Police.

He was nominated back on March 15, 1999. He had a hearing before the Judiciary Committee and in July he was promptly and favorably reported. I do not know why his nomination was not taken up immediately and confirmed before the August recess, but it is still here and will now receive consideration. The Senate should vote to confirm him, as I fully expect we will.

I note that the Senate has before it ready for final confirmation vote two other judge nominees to the same court, the Ninth Circuit, Judge Richard Paez and Marsha Berzon. Also pending before the Judiciary Committee are the nominations of Ron Gould, first nominated in 1997; Barry Goode, first nominated in June 1998; and James Duffy to the Ninth Circuit. It is a Court of Appeals that remains one quarter vacant with 7 vacancies among its 28 authorized judges.

We should be voting up or down on the Paez and Berzon nominations today. I think we need to fulfill our duty not only to each of these outstanding nominees as a matter of conscience and decency on our part, but also for the tens of millions of people who are served by the Ninth Circuit. Unfortunately, as was brought out Friday, a few Republican Senators—anonymously—are still holding up action on these other important nominations.

To his credit, the majority leader has come to the floor and said he will try to find a way for the two nominations to be considered by the Senate. I know that if the majority leader wishes the nominees will come to a vote. The way is to call them to a fair up-or-down vote. We should find a way to do that as soon as possible.

I certainly have tried to work directly and explain what I have done on the floor in working with the majority leader on the nominations. I am happy to work with the Senators who are blocking them from going forward, but we do not know who they are. In fact, we had a policy announced at the beginning of this year that we would no longer use secret holds in the Senate. Unfortunately, Judge Paez and Marsha Berzon are still confronting a secret hold as their nominations are obstructed under a cloak of anonymity after 44 months and 20 months, respectively. That is wrong and unfair.

The distinguished Senators from California, Mrs. BOXER and Mrs. FEINSTEIN, have urged continuously over and over again on this floor, in committee, in caucuses, in individual conversations with Senators on both sides of the aisle, that the nominations of Berzon and Paez go forward. I see the distinguished Senator from California, Mrs. BOXER, on the floor.

I think I can state unequivocally for her, as for Senator FEINSTEIN, that no Democrat objects to Judge Paez going forward. No Democrat objects to Marsha Berzon going forward. If nobody is objecting on this side of the aisle to going forward, I strongly urge those who support—as many, many do—Judge Paez and Marsha Berzon's nominations, that they call each of the 55 Senators on the other side of the aisle and ask them: Are you objecting to them going forward? Would you object to them going forward? Find out who is holding them up. They are entitled to a vote.

To continue this delay demeans the Senate. I have said that I have great respect for this institution and its traditions. Certainly after 25 years, my respect is undiminished. But in this case, I see the treatment of these nominations as part of a pattern of what has happened on judicial nominations for the last few years. If you are a minority or a woman, it takes longer to go through this Senate as a judicial nomination. That is a fact. It is not just me noting it, but impartial outside observers have reported in the last few weeks that a woman or a minority takes longer to be confirmed by the Senate as it is presently constituted.

The use of secret holds for an extended period is wrong and beneath the Senate. We can have 95 Senators for a nominee but 5, 4, 3, 2, or 1 can stop that person—after 4 years with respect to Judge Paez; after 2 years with respect to Marsha Berzon.

Let us vote up or down. If Members do not want either one of them, vote against them; if Members want them, vote for them. But allow them to come to a vote. Do not hide behind anonymous holds. Do not allow this precedent to continue that we seem to have started that women and minorities take longer.

Judge Richard Paez is an outstanding jurist and a source of great pride and inspiration to Hispanics in California and around the country. He served as a local judge before being confirmed by the Senate to the federal bench several years ago and is currently a Federal District Court Judge. He has twice been reported to the Senate by the Judiciary Committee in connection with his nomination to the Court of Appeals and has spent a total of 9 months over the last 2 years on the Senate Executive Calendar awaiting the opportunity for a final confirmation vote. His nomination was first received by the Senate in January 1996, 44 months ago.

Marsha Berzon is one of the most qualified nominees I have seen in 25 years and the Republican Chairman of the Judiciary Committee has said the same thing. Her legal skills are outstanding, her practice and productivity have been extraordinary. Lawyers against whom she has litigated regard her as highly qualified for the bench. Nominated for a judgeship within the Circuit that saw this Senate hold up the nominations of other qualified women for months and years—people like Margaret Morrow, Ann Aiken, Margaret McKeown and Susan Oki Mollway—she was first nominated in January 1998, some 20 months ago.

The Atlanta Constitution noted recently:

> Two U.S. appellate court nominees, Richard Paez and Marsha Berzon, both of California, have been on hold for four years and 20 months respectively. When Democrats tried * * * to get their colleagues to vote on the pair at long last, the Republicans scuttled the maneuver. * * * This partisan stalling, this refusal to vote up or down on nominees, is unconscionable. It is not fair, It is not right, It is no way to run the federal judiciary. * * * This ideological obstructionism is so fierce that it strains our justice system and sets a terrible partisan example for years to come.

It is against this backdrop that I, again, ask the Senate to be fair to these judicial nominees and all nominees. For the last few years the Senate has allowed 1 or 2 or 3 secret holds to stop judicial nominations from even getting a vote. That is wrong.

The Chief Justice of the United States Supreme Court wrote in January last year:

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

At the time the Chief Justice issued this challenge, Judge Paez' nomination had already been pending for 24 months. The Senate received the Berzon nomination within days of the Chief Justice's report. That was almost 2 years ago and still the Senate stalls and refuses to vote. Let us follow the advice of the Chief Justice. Let the Republican leadership schedule up or down votes on the nominations of Judge Paez and Marsha Berzon so that the Senate can finally act on them. Let us be fair to all.

Recently, the Washington Post noted: ''[T]he Constitution does not make the Senate's role in the confirmation process optional, and the Senate ends up abdicating responsibility when the majority leader denies nominees a timely vote. All the nominees awaiting floor votes * * * should receive them immediately.''

Democrats are living up to our responsibilities. The debate over the last couple of weeks has focused the Senate and the public on the unconscionable treatment by the Senate majority of selected nominees. The most prominent examples of that treatment are Judge Paez and Marsha Berzon. With respect to these nominations, the Senate is refusing to do its constitutional duty and vote.

The Florida Sun-Sentinel wrote recently: ''The 'Big Stall' in the U.S. Senate continues, as senators work slower and slower each year in confirming badly needed federal judges. . . . This worsening process is inexcusable, bordering on malfeasance in office, especially given the urgent need to fill vacancies on a badly undermanned federal bench. . . . The stalling, in many cases, is nothing more than a partisan political dirty trick.''

A recent report by the Task Force on Judicial Selection of Citizens for Independent Courts verifies that the time to confirm female nominees is now significantly longer than that to confirm male nominees—a difference that has defied logical explanation. The report recommends that ''the responsible officials address this matter to assure that candidates for judgeships are not treated differently based on their gender.'' Those responsible are not on this side of the aisle. I recall all too well the gauntlet that such outstanding woman nominees as Margaret Morrow, Ann Aiken, Margaret McKeown, Susan Oki Mollway, Sonia Sotumayor were forced to run. Now it is Marsha Berzon who is being delayed and obstructed, another outstanding woman judicial nominee held up, and held up anonymously because she will be confirmed if allowed a fair up or down vote.

I likewise recall all too well the way in which other qualified nominees were held up and defeated without a vote. The honor roll of outstanding minority nominees who have been defeated without a vote is already too long, including as it does Judge James A. Beaty, Jr., Jorge C. Rangel, Anabelle Rodriquez and Clarence Sundram. It should not be extended further. Senate Republicans have chosen to stall Hispanic, women and other minority nominees long enough. It is wrong and should end.

Nominees deserve to be treated with dignity and dispatch—not delayed for 2 and 3 and 4 years. I continue to urge the Republican Senate leadership to proceed to vote on the nominations of Judge Richard Paez and Marsha Berzon. There was never a justification for the Republican majority to deny these judicial nominees a fair up or down vote. There is no excuse for their continuing failure to do so.

I know the Senate will do the right thing and confirm Ray Fisher to the Ninth Circuit tomorrow and that he will be an outstanding judge. I will continue my efforts to bring to a vote the nominations of Judge Richard Paez and Marsha Berzon.

We also will get the opportunity tomorrow to vote on the nomination of Justice Ronnie White. As I reminded the Senate last Friday, he is an outstanding jurist and currently a member of the Missouri Supreme Court. We have now a judicial emergency vacancy on the District Court of the United States for the Eastern District of Missouri while his nomination has been held up for 27 months.

Ronnie White was nominated by President Clinton in June of 1997—not June of 1999 or 1998, but June of 1997. It took 11 months before the Senate would allow him to have a confirmation hearing. At that hearing, the senior Senator from Missouri, Mr. BOND, and Representative BILL CLAY, the dean of the State's congressional delegation, came forward with strong praise for the nominee. Senator BOND urged Members to act fairly on Judge White's nomination to the district court and noted Justice White's integrity, character, and qualifications, and concluded that he believes Justice White understands the role of a Federal judge is to interpret the law, not to make law.

Once considered at a hearing, Justice White's nomination was reported favorably on a 13–3 vote by the Senate Judiciary Committee on May 21, 1998. Senators HATCH, THURMOND, GRASSLEY, SPECTER, KYL, and DEWINE were the Republican Members voting for him, along with all Democratic Members.

Even though he was voted out 13–3, the nomination was held on the Senate Executive Calendar without action until the Senate adjourned last year, and returned to the President after 16 months with no Senate action. A secret hold had done its work and cost this fine man and outstanding jurist an up-or-down vote. The President renominated him back in January of this year. We reported his nomination favorably a second time this year a few months ago.

Justice White deserves better than benign negligence. The people of Missouri deserve a fully qualified and staffed Federal bench. He has one of the finest records and experience of any lawyer to come before the Judiciary Committee in my 25 years there. He served in the Missouri Legislature, the Office of the City Council for the city of St. Louis, and as a judge in the Court of Appeals for the Eastern District of Missouri before his current service as the first African American ever to serve on the Missouri Supreme Court.

I believe he will be an invaluable asset. I am pleased we are finally having a discussion, even though 27 months is too long to wait, too long to wait for a floor vote, on this distinguished African American justice. Finally he will get the respect he should have from this body.

Acting to fill judicial vacancies is a constitutional duty that the Senate—and all of its Members—are obligated to fulfill. In its unprecedented slowdown in the handling of nominees since the 104th Congress, the Senate is shirking its duty. That is wrong and should end.

Let us show respect to the federal judiciary and to the American people to whom justice is being denied due to this unprecedented slowdown in the confirmation process. I am proud to support the nomination of Justice Ronnie White for United States District Judge for the Eastern District of Missouri. I was delighted when last Friday, the Democratic leader was able to announce that we had finally been able to obtain Republican agreement to vote on this nomination. I thank the Democratic leader and all who have helped bring us to the vote tomorrow on the nomination of Justice White. It has been a long time coming.

Tomorrow the Senate will act on the nomination of Brian Theadore Stewart, who has not had to wait a long time with the others. I have said over the last few weeks that I do not begrudge Ted Stewart a Senate vote; rather, I believe that all the judicial nominations on the Senate Executive Calendar deserve a fair up or down vote. That includes Judge Richard Paez, who was first nominated 44 months ago and Marsha Berzon who was first nominated 20 months ago.

Tomorrow we will vote on the Stewart nomination but Senate Republicans still refuse to vote on these two other qualified nominees who have been pending far longer.

The Senate was able to consider and vote on the nomination of Robert Bork to the United States Supreme Court in 12 weeks, the Senate was able to consider and vote on the nomination of Justice Clarence Thomas in 14 weeks. It is now approximately 2 months from the Senate's receipt of the Stewart nomination, and we are now about to vote on his confirmation. I feel even more strongly that we should also be voting on the nomination of Judge Richard Paez, which has been pending almost 4 years, and that of Marsha Berzon, which has been pending almost 2 years.

Despite strong opposition from many quarters from Utah and around the country, from environmentalists and civil rights advocates alike, I did not oppose the Stewart nomination in Committee. I noted Mr. Stewart's commitment to examine his role in a number of environmental matters while in the State government and to recuse himself from hearing cases in those areas. In response to questions from Chairman HATCH and Senator FEINGOLD, Mr. Stewart committed to ''liberally interpret'' the recusal standards to ensure that those matters would be heard by a fair and impartial judge and to avoiding even the appearance of impropriety or possible conflicts of interest.

I cooperated in Chairman HATCH's efforts to expedite Committee consideration of the Stewart nomination with the expectation that these other nominees who have been held up so long, nominees like Judge Richard Paez and Marsha Berzon, were to be considered by the Senate and finally voted on, as well. The Chairman and I have both voted for Judge Paez each time he was considered by the Committee and we both voted for and support Marsha Berzon.

I have tried to work with the Chairman and with the Majority Leader on all these nominations. I would like to work with those Senators whom the Majority Leader is protecting from having to vote on the Paez and Berzon nominations, but I do not know who they are. Despite the policy against secret holds, there are apparently secret Senate holds against both Paez and Berzon. That is wrong and unfair.

As we prepare to vote on the nomination of Ted Stewart, the Senate should also be voting on the nominations of Judge Richard Paez and Marsha Berzon. The Stewart nomination has been pending barely 2 months, the Berzon nomination has been stalled for almost 2 years and the Paez nomination has set a new, all-time record, having now been pending for almost 4 years. The Paez nomination was referred to in the Los Angeles Times recently as the ''Cal Ripken of judicial confirmation battles.'' What is most shameful is that the Senate is obstructing an up-or-down vote on these nominations without debate, without accountability and under the cloak of anonymity.

Certainly no President has consulted more closely with Senators of the other party on judicial nominations, which has greatly expanded the time this Administration has taken to make nominations. The Senate should get about the business of voting on the confirmation of the scores of judicial nominations that have been delayed without justification for too long. We should start by voting up or down on the Paez and Berzon nominations without further delay. That is the fair thing to do. The Majority Leader committed last Friday to finding a way to bring these two nominations to a vote. It is time for those votes to be occur.

This summer, in his remarks to the American Bar Association, the President, again, urged us to action. We must redouble our efforts to work with the President to end the longstanding vacancies that plague the federal courts and disadvantage all Americans. That is our constitutional responsibility. I continue to urge the Republican Senate leadership to attend to these nominations without obstruction and proceed to vote on them with dispatch. The continuing refusal to vote on the nominations of Judge Richard Paez and Marsha Berzon demeans the Senate and all Americans.

It is my hope that the example we set here tonight and tomorrow will move the Senate into a new and more productive chapter of our efforts to consider judicial nominations. We are proceeding to vote on a judicial nominee that some Democratic Senators oppose in order to demonstrate our commitment to fairness for all. There was never a justification for the Republican majority to deny any judicial nominees a fair up or down vote. There is no excuse for their continuing failure to do so.

I will close with this. Let us move to a new and more productive chapter in our efforts to consider judicial nominations. Let us erase what has become a badge of shame for the Senate: You are a judicial nominee, and if you are a minority or a woman, no matter how good your qualifications are, you take much longer to go through this body than does a white male. That is a badge of shame on this great institution. Before we finish this year, we should erase it. We should say the Senate does not have a gender or a race or ethnicity qualification for judges. The Senate will vote on men nominees; vote them up or vote them down, but we will vote on them. We will not say if you are a woman or a minority you have to wait longer than anybody else because that is what the Senate has been doing and it is wrong. It is shameful. It is inexcusable. It demeans this great and wonderful institution.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. I yield time to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I know my colleague from Missouri is going to speak, as will others. But I did want to follow the great Senator from Vermont, Mr. PAT LEAHY, who has done such an admirable job as the ranking member of the Judiciary Committee in fighting for fairness. If you listen to his remarks carefully, what he is basically saying is: Bring to the floor of the Senate the nominees who have been voted out of the committee; let's debate them; let's talk about them; let's talk about their merits. If you have a problem with them, put it out there. But let's vote. That is the least we can do for these good people.

Every single one of these people who have gone through the committee, has a current job. When they were nominated, and especially when they were voted out of the committee, they assumed they would be going to a new job, to be a judge. They had every reason to assume that because a good vote out of that committee—getting the support of Senator HATCH and usually one or two or three more on the Republican side, and all the Democrats—means you had the votes to get to the floor of the Senate.

As my friend has pointed out, it is very sad. We have had some bad situations develop. I was very hopeful, in this new round of approvals we have gone through—and I am grateful for the fact we have moved a few judges through—I was hopeful we would break the logjam with Judge Richard Paez and with Marsha Berzon, for several reasons.

One, they are terrific people. They would make great judges. They were voted out of the committee several times. They deserve a vote. They have loving family members. I have had the wonderful opportunity to meet their families: In the case of Richard Paez, his wife and children; in the case of Marsha, her husband and children. They are waiting for something to happen. This is not fair.

So while I am glad we are moving some court nominees—I am pleased we are doing that—I think we need to do more in the interests of the country. We need to do more. In the interests of fairness to these people, we need to do more.

Let me go into a few details about Richard Paez. Currently, he serves on the Federal bench as a district court judge in the Central District of California. He was first nominated by President Clinton to the court of appeals on January 25, 1996. Seven months later, on July 31, 1996, the Judiciary Committee finally held a hearing on Judge Paez' nomination.

Let me point out something. This is the same Judge Paez who came right through this Senate when we supported him for district court. So he is not a stranger to the Judiciary Committee. He is not a stranger to the Senate. We already approved him when he was nominated and took his seat on the district court. So here we have a situation where it took him 7 months to get his first hearing and then the Senate adjourned for the year without having reported the nomination. That was 1996.

Now we get to 1997. The President nominates Judge Paez for the second time. On February 25, the Judiciary Committee held a second hearing on the nomination. That was 1997.

On March 19, 1998, 1 year and 2 months later, Judge Paez' nomination was finally reported by the Judiciary Committee to the full Senate. But in the 7 months following, the Senate failed to act on the nomination, and it adjourned with that nomination still on the Executive Calendar.

Again, this year, for the third time, the President nominates Richard Paez to the Ninth Circuit Court. May I say, there are several vacancies on that court, more than half a dozen. So we are looking at a court that is not running at full speed. When there are 28 members is when they are completely full. Now they have all these vacancies. So the nomination is reported favorably by the Judiciary Committee on July 29 of this year, but again the full Senate has failed to act.

So it brings us to this day, where we have a little bit of a breakthrough. We are going to move forward five judges. I am glad we are doing it. But we have to be fair and look at this terrific judge, Judge Richard Paez.

I think we have an obligation to him and his family, and frankly, to the President, who is the President who has nominated this gentleman several times.

Sure, if the shoe was on the other foot and we had a Republican President, I do believe my colleagues would be saying: Give us an up-or-down vote. I do not think that Richard Paez, the wonderful human being that he is, deserves to be strung out by the Senate—3½ years strung out. I cannot understand why. I looked back through the record, and there is no one else who has been treated like this.

I say to my Republican friends, we do not know who has put a hold——

The PRESIDING OFFICER. The time allotted to the Senator from Vermont has expired.

Mrs. BOXER. What is the agreement because Senator LEAHY's staff is surprised his time has run out. Can the Chair tell me how much time remains?

The PRESIDING OFFICER. There was to be 45 minutes equally divided between the Senator from Vermont and the chairman of the Judiciary Committee, Senator HATCH, with an additional 15 minutes reserved for the distinguished Senator from Missouri.

Mr. BENNETT. Mr. President, I will be happy to yield an additional 2 or 3 minutes to the Senator from California so she may finish her statement.

Mrs. BOXER. Can the Senator from Utah make that 7 minutes since we accommodated the Senator from Missouri? If I may have 7 minutes, I can conclude.

Mr. BENNETT. I accede to the unanimous consent request for 7 additional minutes, not coming off our time.

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

Mrs. BOXER. Mr. President, I thank my colleague. I will try to finish in 5. I have not gotten to Marsha Berzon yet.

We are setting a record of which we should not be proud. This man has been strung out for 3½ years. He is a good man. He has a solid record, and we have an obligation to him and his family, the members of the legal and law enforcement communities, to the judicial system itself, and to the Latino community that is so very proud of him. Again, the Senate approved him to the district court. He has served with distinction there.

Judge Paez not only served in the district court, but he also served 13 years as a judge on the L.A. Municipal Court, one of the largest municipal courts in the country. He is such a leader that his colleagues elected him to serve as both supervising judge and presiding judge.

His support in the law enforcement community is pretty overwhelming. The late Sheriff Sherman Block of Los Angeles, a Republican, supported him. He is supported by Sheldon Sloan, the

former chairman of the judicial selection committees for both Senators Pete Wilson and John Seymour.

He is supported by Representative JAMES ROGAN, who was his colleague on the municipal court. Those who know me and JAMES ROGAN know we do not agree on a lot of things. We agree on Judge Paez.

He is supported by Gil Garcetti, district attorney for Los Angeles.

All these people have written wonderful things about him.

James Hahn, the Los Angeles city attorney, says ''his ethical standards are of the highest caliber. . . .''

Peter Brodie, president of the Association of L.A. Deputy Sheriffs, a 6,000-member organization, wrote to Chairman HATCH in support of Judge Paez's nomination.

The commissioner of the Department of California Highway Patrol says that ''Judge Paez . . . [is very] well qualified,'' and ''his character and integrity are impeccable.''

We have a good man here. Let's vote him up or down. I know the Senate will vote him in. I know that. I have not only spoken, I say to my friend from Vermont, to Democrats, but I have spoken to Republicans who intend to support him. So he will win that vote.

The second nominee, Marsha Berzon, is another example of a longstanding nominee who is being denied a vote by the full Senate.

In 1998—Senator LEAHY laid it out—she received an extensive two-part confirmation hearing, written questions, written answers, and she extensively answered every question of the committee. In 1999, she was favorably reported out of the committee.

Again, she is so well qualified. Marsha Berzon graduated cum laude from Radcliffe College in 1966, and in 1973, she received her Juris Doctor from UC Berkeley, Boalt Hall Law School, one of the greatest law schools in the country.

She has written dozens of U.S. Supreme Court briefs and has argued four court cases before the U.S. Supreme Court. She has had extensive experience appearing in Federal appeals courts, and it goes on and on.

She has received significant Republican support. Former Republican Senator James McClure of Idaho says:

> What becomes clear is that Ms. Berzon's intellect, experience and unquestioned integrity have led to strong and bipartisan support for her appointment.

J. Dennis McQuaid, an attorney from Marin County, my opponent when I first ran for the House of Representatives in 1982, says of Marsha:

> Unlike some advocates, she enjoys a reputation that is devoid of any remotely partisan agenda.

W.I. Usery, a former Republican Secretary of Labor under President Ford, has said that Marsha Berzon has all the qualifications needed, and he goes on.

Senator SPECTER has said very flattering things about Marsha Berzon. She has strong support from both sides of the aisle.

We have lots of vacancies on this court, and we have two fine people who are just waiting for the chance to serve. These people do not come along every day.

I want to address myself to the question raised by my friend from Vermont who has shared with me that there have been some independent studies that show, sadly, that if you are a minority, or if you are a woman, you do not seem to get looked at by the Senate; you do not seem to get acted on. You hang around; you wait around for a vote.

This is not a reputation the Senate wants. We want to give everyone a chance, and these are two candidates, a woman and a minority, who are so qualified that they were voted out in a bipartisan vote of the committee. I call on my friends on the other side of the aisle who may be holding up these nominees—I do not know who they are. I thought we said you have to come out and identify yourself, but so far I do not know who is holding these up.

I beg of you, in the name of fairness and justice and all things that are good in our country, give people a chance. If you do not think they are good, if you have a problem with something they said or did, bring it down to the floor. We can debate it. But please do not hold up these nominees. It is wrong. You would not do it to a friend. You would not do it to someone of whom you thought highly, so do not do it to these good people. They have families. They have jobs. They have careers. They are good people.

All we are asking for is a vote. I do not want to see people throughout the country coming to see us in our offices and claiming that women and minorities are not getting fair treatment. That is not what we should be about, and I do not think that is what we are about. But that is the kind of reputation this Senate is getting across this land.

We can fix it. We should follow the leadership of Senator LEAHY from Vermont because he has said very clearly for many months now: Bring these good people forward.

I want to say a kind word about Senator HATCH. Senator HATCH has said to me from day 1: Senator BOXER, when you bring me a nominee, I want you to make sure that not only are they well qualified, but that they have bipartisan support.

He looked me in the eye, even though he is a foot taller, and said: You promise me that.

I said: Senator HATCH, I will do that.

I have done that in these cases. These are two Ninth Circuit nominees who were nominated by the President, but I have supported them and Senator FEINSTEIN has supported them. They got the vote of Senator HATCH because he knows we have been very careful to nominate people who have mainstream support in the community. I promised him that. I have done that. He has been fair to me. I hope all of the Senate will be fair to these two nominees.

Mr. President, I thank Senator BENNETT for his kindness in giving me the additional time. I look forward to moving forward with these nominees we have before us and certainly, at a minimum, on Marsha Berzon, Richard Paez, and the others who are waiting in the wings for their day. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Missouri.

Mr. ASHCROFT. Mr. President, I believe I have 15 minutes on the nomination of Missouri Supreme Court Judge Ronnie White.

The PRESIDING OFFICER. The Senator is correct.

Mr. ASHCROFT. Mr. President, I rise today to oppose the nomination of Judge Ronnie White to the United States District Court for the Eastern District of Missouri.

Confirming judges is serious business. People we put into these Federal judgeships are there for life, removed only with great difficulty, as is evidenced by the fact that removals have been extremely rare.

There is enormous power on the Federal bench. Most of us have seen things happen through judges that could never have gotten through the House or Senate.

Alexander Hamilton, in Federalist Paper No. 78, put it this way:

> If [judges] should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body.

Alexander Hamilton, at the beginning of this Nation, knew just how important it was for us to look carefully at those who would be nominated for and confirmed to serve as judges.

A judge who substitutes his will or her will for the legislative will, by displacing the legislative intent in enlarging the Constitution or amending it by saying, it is an evolutionary document and I am going to say now it has evolved to this state or that state, as opposed to an earlier state—that kind of judge is involved in what I call ''judicial activism.'' Judicial activism is simply the substitution of one's personal politics instead of the legislative will as expressed in our documents of the Constitution or in the law.

At no other place in our Republic do voters have virtually no recourse. This is an important thing for us to consider as we evaluate judges and we seek to determine whether or not their confirmation would be appropriate.

So as it relates to Judge Ronnie White, who serves now as a supreme court judge in the State of Missouri, upon his nomination I began to undertake a review of his opinions, and especially those circumstances and dissents where, as a judge on the Missouri Supreme Court, Judge White would have sought to change or otherwise extend or amend the law as it related to a variety of matters, especially in the area of criminal law. I also heeded carefully his answers during his confirmation

hearing and his answers to followup questions.

I believe Judge White's opinions have been and, if confirmed, his opinions on the Federal bench will continue to be procriminal and activist, with a slant toward criminals and defendants against prosecutors and the culture in terms of maintaining order; he will use his lifetime appointment to push law in a procriminal direction, consistent with his own personal political agenda, rather than defer to the legislative will of the people and interpret the law rather than expand it or redirect the law.

I believe the law should be interpreted as written, as intended by the legislature, not as amended or expanded by the courts. I believe Judge White will, as Alexander Hamilton so aptly described in Federalist 78, improperly ''exercise will instead of judgment.'' This is particularly true in the area of criminal law.

I am not alone in this view. Judge White's nomination has sparked strong concerns from a large number of Missouri law enforcement officials. Seventy-seven of the 114 sheriffs in the State of Missouri have decided to call our attention to Judge White's record in the criminal law. I do not take lightly the fact that 77 of these law enforcement, ground-zero sheriffs—people who actually are involved in making the arrests and apprehending those who have broken the law—would ask us to look very carefully at this nominee. They cite specific opinions he has written and say these are the kinds of opinions that give them great pause.

Anyone who knows something about Missouri's political system knows that 77 out of 114 sheriffs would be a bipartisan delegation. As a matter of fact, over 70 percent of all the public officials in Missouri who are nominated and elected are Democrats. So you have 77 of the 114 sheriffs of Missouri on record saying: Look carefully. Evaluate very carefully this nominee to the federal bench.

The Missouri Federation of Police Chiefs, an organization of police chiefs that spreads all across the State of Missouri, has indicated to us that we ought to tread very lightly here. As a matter of fact, they express real shock and dismay at the nomination. Prosecutors have contacted me with their public letters. And, frankly, other judges in the State have suggested to me I should think and consider very carefully whether or not we proceed in this matter.

The letter from the Missouri Federation of Police Chiefs is very direct. It says:

> We want to go on record with your offices as being opposed to his nomination and hope you will vote against him.

I want to express that the concern about Judge Ronnie White is far broader than some of us in the Senate; it goes to a majority of the sheriffs in the State, with an official letter of expression from the Missouri Federation of Police Chiefs. There are prosecutors who have come to me and asked me to think very carefully about the qualifications and the philosophy expressed by this nominee.

This opposition stems largely from Judge White's opinions in capital murder cases. These opinions, and particularly his dissents, reflect a serious bias against a willingness to impose the death penalty.

Judge White has been more liberal on the death penalty during his tenure than any other judge on the Missouri Supreme Court. He has dissented in death penalty cases more than any other judge during his tenure. He has written or joined in three times as many dissents in death penalty cases, and apparently it is unimportant how gruesome or egregious the facts or how clear the evidence of guilt. He has been very willing to say: We should seek, at every turn, in some of these cases to provide an additional opportunity for an individual to escape punishment.

This bias is especially troubling to me because, if confirmed, Judge White will have the power to review the death penalty decisions of the Missouri Supreme Court on habeas corpus. In the seat of district court, Judge White's sole dissents are transformed into a veto power over the judicial system of the State of Missouri. I do not think that should happen.

Let me give you an example of Judge White's sole dissent in the highly publicized case of Missouri v. Johnson.

James R. Johnson was a brutal cop killer. He went on a shooting rampage in a small town called Carolina, MO. It sent shock waves across the entire State in 1991—during the time I had the privilege to serve as Governor of the State. At that time, James Johnson stalked and killed a sheriff, two sheriff's deputies, and Pamela Jones, a sheriff's wife.

Johnson first shot a deputy who had responded to a call about a domestic dispute at Johnson's house. He shot the deputy in the back and then walked over, as the deputy lay on the ground, and shot him in the forehead, killing him.

Johnson then reloaded his car with guns and drove to the local sheriff's home. There the sheriff's wife, Pamela Jones, was having a Christmas party. Johnson fired a rifle repeatedly through the window, hitting Mrs. Jones five times. Mrs. Jones died of those wounds in her home in front of her family.

Then Johnson went to another deputy sheriff's home and shot him through a window as the deputy spoke on the phone. That deputy was lucky and survived.

Johnson then went to the sheriff's office, where other law enforcement officers had assembled to try to address the ongoing rampage that was terrorizing the town. Johnson lay in wait until officers left the meeting and then opened fire on them, killing one officer.

Then as another officer arrived on the scene in her car, Johnson shot and killed her. It was then that Johnson fled to the house of an elderly woman who he held hostage for 24 hours. She eventually convinced Johnson to release her, and she notified the authorities who apprehended Johnson. He was tried and convicted on four counts of first degree murder and given four death sentences, convicted on all counts, received four separate death sentences. In a sole dissent urging a lower legal standard so that this convicted multiple cop killer would be allowed a second bite at the apple to convince a different jury that he was not guilty, Ronnie White sought to give James Johnson another chance.

Sheriff Jones, obviously, opposes this nomination. He is urging law enforcement officers to oppose it because he believes there is a pattern of these kinds of decisions in the opinions and dissents of Judge White. He believes there is a pattern of procriminal opinions, and I think if one looks carefully, one might see that pattern.

Judge White was also the sole dissenter in a case called Missouri v. Kinder. In that case, the defendant raped and beat a woman to death with a lead pipe. White voted to grant the defendant a new trial, despite clear evidence of guilt, including eyewitness testimony that Kinder was seen leaving the scene of the crime at the time of the murder with a pipe in his hand, and genetic material was found with the victim. White dissented based on the alleged racial bias of the judge, which he urged was made evident by a press release the judge had issued to explain his change in party affiliation. The judge changed parties at sometime prior to this case, and the judge, in explaining his change of party, said he was opposed to affirmative action, discriminating in favor of one race over another race. He left the one party he was in because he disagreed with their position on affirmative action. That was the only basis for Judge White to provide a new opportunity for this individual to get a second bite at the apple, not the evidence about his conduct, the genetic material, or the eyewitness testimony.

Judge White's procriminal jurisprudence is not limited to murder cases. It extends to drug cases as well. In the case of Missouri v. Damask, Judge White's sole dissent in a drug and weapons seizure case, I think, reveals this same tendency on the part of this judge to rule in favor of criminal defendants and the accused in a procriminal matter and procriminal manner.

This was a case, Missouri v. Damask, about a drug checkpoint set up by the Missouri State police. The State police had erected a traffic sign on the highway in the middle of the night indicating ''drug checkpoint ahead.'' The sign was placed just before a remote exit, one which only local residents would have cause to use. Those seeking

to avoid the ''drug checkpoint'' by exiting met with a real drug checkpoint at the top of the exit ramp. There were no gas stations, no restaurants or facilities at that exit. Motorists exiting at that exit were stopped and asked why they exited. If police were able to determine from their answers that they were suitably suspicious to warrant a search, they searched their cars. It was a very successful program, netting numerous arrests.

The Missouri Supreme Court upheld the practice as a reasonable search and seizure under the fourth amendment, consistent with many rulings of our Federal courts interpreting the fourth amendment.

Judge White was the sole dissenter in an opinion that seemed less concerned with the established fourth amendment precedent than with whether the search was intimidating. Judge White's opinion would have hamstrung this effective tool in the war on drugs.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BENNETT. Mr. President, I yield the Senator an additional 10 minutes.

Mr. ASHCROFT. I thank the Senator from Utah.

It is these opinions and other opinions like them that have generated the concern in the Missouri law enforcement community about Judge White and have caused me to conclude that I must oppose his confirmation. It doesn't mean I oppose his coming to the floor. I am entirely willing to let the Senate express itself in this respect. But I urge my fellow Senators to consider whether we should sanction the life appointment to the responsibility of a Federal district court judge for one who has earned a vote of no confidence from so many in the law enforcement community in the State in which he resides. Many of my fellow Senators on the Judiciary Committee determined we should not and voted against his nomination.

I ask my fellow Senators to review Judge White's record carefully. Keep in mind that he will not only sit for life, but he will still have occasion to vote on death penalty cases reviewed by the Missouri Supreme Court.

Again, as a district judge, he will be able to hear habeas corpus petitions challenging death sentences that have been upheld by the Missouri Supreme Court; only, as a district judge, his sole dissenting vote will be enough to reverse a unanimous opinion by the Missouri Supreme Court. He will have a veto over the Missouri Supreme Court in death penalty cases. And based on Judge White's track record, this is not a situation that the law-abiding citizens of Missouri should have to endure.

As I conclude my remarks, I will read some of the text of communications I have received concerning this nominee. Sheriff Kenny Jones, whose wife was murdered by James Johnson, put it this way: Every law enforcement and every law-abiding citizen needs judges who will enforce the law without fear or favor. As law enforcement officers, we need judges who will back us up and not go looking for outrageous technicalities so a criminal can get off. We don't need a judge such as Ronnie White on the Federal court bench.

I quote again from another paragraph: The Johnson case isn't the only antideath penalty ruling by Judge White. He has voted against capital punishment more than any other judge on the court. I believe there is a pattern here. To me, Ronnie White is clearly the wrong person to entrust with the tremendous power of a Federal judge who serves for life.

A letter from a prosecutor: Judge White's record is unmistakably antilaw enforcement, and we believe his nomination should be defeated. His rulings and dissenting opinions on capital cases and on fourth amendment issues should be disqualifying factors when considering his nomination.

A letter from the Missouri Sheriffs Association: Attached please find a copy of the dissenting opinion rendered by Missouri Supreme Court Judge Ronnie White in the case of State of Missouri v. James R. Johnson.

Then a recitation of how James Johnson murdered Pam Jones, the wife of the Moniteau County sheriff, Kenny Jones. And then: As per attached, the Missouri Sheriffs strongly encourage you to consider this dissenting opinion in the nomination of Judge Ronnie White to be a U.S. district court judge.

Mr. LEAHY. Will the Senator yield for a question? Mr. President, will the Senator from Missouri yield for a question?

Mr. ASHCROFT. Yes, I will.

Mr. LEAHY. It is my understanding that Justice White has voted 17 times for death penalty reversals. Is that the understanding of the Senator from Missouri?

Mr. ASHCROFT. I don't have the specific count.

Mr. LEAHY. The numbers I have seen are that he has voted 17 times for reversal. Justice Covington, however, has voted 24 times for reversal in death penalty cases; Justice Holstein, 24 times; Justice Benton, 19 times; and Justice Price, 18 times. It would appear to me that at least Justices Covington, Holstein, Benton and Price, all on the Supreme Court, have voted many more times to reverse death sentences than Justice White has. Are these numbers similar to what the Senator from Missouri has?

Mr. ASHCROFT. Mr. President, I think I can go to the question here that I think the Senator is driving at. I will be happy to do that. The judges that the Senator from Vermont has named have served a variety of tenures, far in excess of the tenure of Judge White.

The clear fact is that, during his tenure, he has far more frequently dissented in capital cases than any other judge. He has, I believe, participated in 3 times as many dissents as any other judge. To try to compare a list of dissents or items from other judges from other timeframes, longer intervals, and a variety of different facts, with the tenure that Judge Ronnie White has served is like comparing apples and oranges. And the numerics thereof, without that additional aspect of the situation being revealed, may appear to cause a conclusion that would be different.

With that in mind, if you will think carefully about what I said, I believe I thought carefully when I said ''Judge White's record during his tenure''; that is what you have to be able to compare, judges during the same interval of time. With that in mind, during that same interval of time, he has been the champion of those dissenting in death penalty cases and has dissented in ways which, very frankly, have occasioned an outcry from the law enforcement community in Missouri. None of the other judges that I know of have been the recipients of that kind of outcry.

There is one final point that I will make. Those are other notable judges and they have records and serve on the Missouri Supreme Court. They are not persons against whom the law enforcement community has raised issues. But they are also not persons who have been nominated for service on the U.S. District Court, a court which could set aside the verdicts of the Missouri Supreme Court in habeas corpus cases. So while I think those particular judges are important—and if they are nominated for the Federal Court, I think we ought to look carefully at their work product.

So there are two points to be made here. One, the relevance of the numbers is only relevant in the context of the interval. To suggest that the numbers are out there, without defining the interval, would be inappropriate and misleading. So I would not do that.

Secondly, I think the relevance of a record that is unsatisfactory is directly appropriate to the judge who has been nominated. So we are not here to talk about other judges so much as we are to talk about whether or not Ronnie White ought to be confirmed as a member of the U.S. District Court. In my judgment, the law enforcement community in Missouri has expressed serious reservations about his lean toward defendants, and I think we should not vote to confirm him. I urge my colleagues not to vote to confirm Judge White, based on this understanding of the Missouri law enforcement community and a reading of his judicial papers.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. LEAHY. Will the Senator yield me 30 seconds?

Mr. BENNETT. I am happy to.

Mr. LEAHY. I just note that Justice Ronnie White is far more apt to affirm a death penalty decision than to vote as one of many members of the Supreme Court to reverse it. He has voted

to affirm 41 times and voted to reverse only 17 times.

Mr. BENNETT. Mr. President, the Senator from Alabama has asked for 5 minutes. I yield 5 minutes to the Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from Utah for his leadership in this matter. I want to share a few thoughts with Members of this body. I do believe in the rule of law. I believe that we ought to maintain it. I practiced full time in Federal Courts throughout my career, for almost 17 years. I respect Federal Judges and Federal law deeply. When appropriate, I have tried to support President Clinton's nominees for Federal Judgeships, because I believe a President should have some leeway in deciding who should serve on the Federal bench.

But I want to say a couple things about the Ninth Circuit. Since I have been in this body—a little over 2 years now—having left the practice of law as a full-time Federal prosecutor, I have had an understanding of the Ninth Circuit better than a lot of other people. I see Ninth Circuit criminal cases cited in Alabama and other areas very frequently because they are usually very pro-defendant. There will be no other criminal case in America that has been partial to a defendant in a given situation—for example a search and seizure, or something like that—and they will find a pro-defendant case in the Ninth Circuit.

I can say with confidence, from my experience, that the Ninth Circuit authorities are not well respected by the other circuits in America. They are out of the mainstream. In fact, the Supreme Court has begun to really rap their knuckles consistently. In 1996 and 1997, 28 cases from the Ninth Circuit went up to the U.S. Supreme Court for review, and 27 of them were reversed. In 1997 and 1998, 13 out of 17 were reversed. In 1998 and 1999, it was 14 out of 18. In the past, the numbers have been equally high—for over a decade.

The New York Times recently wrote that a majority of the members of the U.S. Supreme Court consider the Ninth Circuit to be a ''rogue'' circuit, a circuit out of control based on the history of their reversal rates. This is not me making this up; that is according to the New York Times.

I have been urging the President of the United States to nominate mainstream judges for the Ninth Circuit. That is what we are asking for. Let's get this circuit back into line so that we can have the largest circuit in America give the 20 percent of the people in the United States who are under the Ninth Circuit's jurisdiction justice consistent with the other circuits in America. These people are currently denied this justice because of their extremely liberal, activist circuit. There is no other way to say it. There was an Oregon Bar Bulletin article that studied this issue. The article examined the question of why the Ninth Circuit was being reversed so much in 1997. The article says: ''There is probably an element of truth to the claim that the Ninth Circuit has a relatively higher proportion of liberal judges than other circuits.'' It goes on to note how many are Carter and Clinton nominees. Already, a substantial majority—12 of the active 21 judges—were Carter or Clinton nominees. There is nothing wrong with that per se, however the nominees the White House has been sending to us from California have been even more liberal than the nominees President Clinton has nominated in other circuits. I don't see this kind of activism in nominees to other circuits. So the way I see this thing—and this is important for the members of this Senate to realize—we have the responsibility of advice and consent on judicial nominations. That is a responsibility given to us. We have to exercise it.

What I have been saying to President Clinton is, Mr. President, listen to us. Let's get this circuit—this rogue circuit—back into line. Give us mainstream nominees.

Mr. Fisher is, in my view, a fairly liberal Clinton appointee.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. SESSIONS. If I could have 1 more minute.

Mr. BENNETT. I yield the Senator an additional minute.

Mr. SESSIONS. It is part of our responsibility to advise and consent. It is our duty to examine the state of justice in America, and to tell President Clinton that we are not going to continue to approve activist nominees for the Ninth Circuit. We have to have some mainstream legal talent on that circuit, not ACLU members or the like. And, if he will give us that, we will affirm them. If he does not, this Senator will oppose them.

I thank the Chair. I yield my time to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I am somewhat unfamiliar with the assignment of handling judicial nominees, that being the daily bread of my senior colleague, Senator HATCH. He is unable to be here, and therefore has asked me to step in in his place. I am glad to do whatever I can to help.

Ted Stewart has a background that, in my view, qualifies him to be a Federal judge, a view shared by the American Bar Association that has labeled him as qualified, and by a large number of Utahans of both political parties.

I first met Ted Stewart when I decided to run for the Senate. I found that he had beat me in that decision and was already in the field. I knew little or nothing about him. But I quickly learned as we went through the process of traveling the State in tandem with the other candidates that he was a man of great wisdom, an articulate man, and a man of good humor. We became fast friends even though we were opponents for the same seat.

One of the proudest moments in my campaign was the fact that after the State convention had narrowed the candidates to two, eliminating Ted Stewart, his organization became part of my organization. He maintained an appropriate judicial neutrality between me and the other candidate. But our friendship was established and has gone forward until this day.

I point out that judicial neutrality because it is typical of Ted Stewart. I know he had a personal preference. I will not disclose what it was. He was appropriately judicial, however, in keeping that personal preference to himself and taking the position that was right and proper under those circumstances. That demonstrates what we hear referred to around here from time to time as ''judicial temperament.''

The Senator from Alabama has talked about the reversal rate of the Ninth Circuit. We have had experience with the reversal rates in the State of Utah from Federal judges.

I remember on one occasion where I was in the presence of a young woman who had served on a jury of a highly celebrated case in the State of Utah and had voted in a way that was reversed when the case got to the circuit court. I asked her about it because it was interesting to me. She said: Well, I didn't want to vote that way, and neither did any other member of the jury, but the charge we received from the judge made it impossible for us to vote any other way.

After the trial was over, she said she and the other members of the jury were visiting with the lawyer who had supported the losing side, and they apologized to him for voting against him. They said: We thought you had the best case. But under the charge we were given by the judge, we had no choice but to vote against you. The lawyer smiled, and said: I know. And I expected that to happen because the judge in this case has such a high record of reversal that I didn't want to run the risk of having won a trial in his court. I knew my chances of winning on appeal were far greater if I had this judge on record against me.

Those who know this judge rated him as one of the most brilliant men ever appointed to the bench. He may have had that great intellect, but he did not have the common sense and the judicial temperament that made it possible for him to do his job. Tragically, the circuit court did his job for him again and again and again at great expense and inconvenience not only to the judicial system but to those plaintiffs and defendants who came before him.

I cite that because I am convinced in Judge Stewart's court you will not find that kind of bullheadedness and determination to have his own way as we saw in this other court.

In Judge Stewart's court, you will find the kind of levelheadedness, the desire to find the right answer, and the

willingness to work things out wherever possible as he has demonstrated throughout his career up to this point.

He has already had experience on a commission that required him to demonstrate that kind of judicial temperament. He handled his assignment there in such a way as to win him the endorsement of Democrats as well as Republicans.

I know there is some controversy surrounding him because he is the Governor's chief of staff. There are many people who, looking at the things he has done in his loyalty to the Governor, have said: Well, his opinions are not acceptable to us.

They have been critical of him. They do not know the man if they maintain that criticism because he will never depart from his conviction that the law comes first. He has demonstrated loyalty to those who have appointed him. But he has also demonstrated a capacity to handle the law and handle the regulations that he is charged with enforcing in a way that will make all Americans proud.

I am happy to join my senior colleague in endorsing the nomination of Ted Stewart for the Federal bench. I look forward with great enthusiasm to voting for him tomorrow.

I am grateful to the senior Senator from Vermont for his announcement that he, too, will vote for Ted Stewart. I hope, with both the chairman and the ranking member of the Judiciary Committee solidly in Judge Stewart's behalf, that we will have an overwhelmingly positive vote for him.

NOMINATIONS OF RAY FISHER, MARSHA BERZON, AND RICHARD PAEZ

Mrs. FEINSTEIN. Mr. President, I want to first thank our minority leader for all of his effort in bringing public attention to the plight of pending judicial nominees.

Thanks to Senator DASCHLE's efforts, we have made some progress. Jim Lorenz, a fine California attorney who served seven years on my judicial selection committee, was confirmed on Friday along with Victor Marrero of New York.

Jim Lorenz's confirmation will help address a desperate shortage of judges in the Southern District of California. I have spoken several times with Marilyn Huff, Chief Judge of the Southern District of California, about the District's caseload crisis.

A recent judicial survey ranked the Southern District as the most overburdened court in the country. The weighted average caseload in the Southern District is 1,006 cases per judge, more than twice the national average.

It is also a significant step forward for the Senate that we will have a vote tomorrow on Associate Attorney General, Ray Fisher, to be a Circuit Judge on the Ninth Circuit Court of Appeal.

Ray Fisher is an extraordinary nominee who will add some support to the skeleton crew of judges currently presiding on the Ninth Circuit.

Currently, the Ninth Circuit has seven vacancies, which is 25 percent of the total judgeship positions on the circuit.

Each one of these judicial vacancies qualifies as a judicial emergency. The Chief Judge of the Ninth Circuit reports that the Circuit could handle 750 more cases right now if the vacancies were filled.

Prior to his appointment as Associate Attorney General, Ray Fisher was considered one of the top trial lawyers in Southern California. His legal skills are so highly regarded that he recently was inducted into the American College of Trial Lawyers, an honor bestowed on only the top one percent of the profession.

During his 30 year career in private practice, Ray Fisher specialized in the toughest of cases, complex civil litigation, and in alternate dispute resolution. In 1988, he founded the Los Angeles Office of Heller Ehrman, White and McAullife, an office that has grown from 6 attorneys to 48.

The Standing Committee on Federal Judiciary of the American Bar Association has deemed Mr. Fisher ''Well Qualified'' for appointment as Judge of the United States Court of Appeals.

Ray Fisher graduated from Stanford Law School in 1966, where he was president of The Stanford Law Review and awarded the Order of the Coif. Following law school, he served as a law clerk for Judge J. Skelley Wright of United States Court of Appeals for the District of Columbia Circuit and Supreme Court Justice William Brennan.

I am confident Ray Fisher's acute interest in public service, specifically in public safety, and his overarching concern for fairness will serve the Ninth Circuit well.

However, I am disappointed that the Senate could not confirm other pending Ninth Circuit nominees. Ray Fisher is a start, but six vacancies remain on the Ninth Circuit Court of Appeals.

Two of those vacancies should be filled by Marsha Berzon and Judge Richard Paez.

It is a disturbing fact that women and minority nominees are having a difficult time getting confirmed by the Senate.

A report by the independent, bipartisan group Citizens for Independent Courts released last week found that during the 105th Congress, the average time between nomination and confirmation for male nominees was 184 days, while for women it was 249 days—a full 2 months longer.

This disturbing trend continues this year. Women and minorities constitute over 55 percent of the President's nominees in 1999; by contrast, only 41 percent of the nominees confirmed this year by the Senate are women or minorities.

All we have ever asked for Marsha Berzon and Richard Paez is that both nominees get an up-or-down vote. If a Senator has a problem with particular nominees, he or she should vote against them. But a nominee should not be held up interminably by a handful of Senators.

Let me assure my colleagues, this does not mark the end of a fight. At some point, legislation is not going to move until Marsha Berzon and Judge Richard Paez get an up-or-down vote. Let me take a moment to discuss the nominations process that these two nominees have experienced.

Judge Richard Paez, the first Mexican-American District judge in Los Angeles, was nominated on January 25, 1996—almost four years ago. He still hasn't made it to the Senate Floor for a vote. Any problem with his nomination can't be with his legal background.

He has 17 years of judicial experience. The American Bar Association found him to be ''well-qualified.'' He is also strongly supported by the legal community in Los Angeles including Gil Garcetti, the District Attorney, the Los Angeles County Police Chiefs' Association and the Association for Los Angeles Deputy Sheriffs. Judge Paez has described this interminable nominations process as a ''cloud'' hanging over his head. Litigants in his court constantly query him if the case is going to be continued, if his case is going to be assigned to someone else, or if Judge Paez is going to keep it. No nominee should have to face this uncertainty. His family has been thrust into the public limelight, and for four years every action he has taken has been subject to microscopic scrutiny.

Marsha Berzon was nominated almost a year and a half ago. She had her first hearing on July 30, 1998, and a second hearing in June 1999. Only in July 1999 was she reported out of committee and her nomination is pending before the Senate. Nationally renowned appellate attorney with over 20 years of appellate practice, she clerked for Supreme Court Justice Brennan and U.S. Court of Appeals Judge James Browning. She graduated Order of the Coif from Boalt Hall, has the support of law enforcement including the National Association of Police Organizations (NAPO) and the International Union of Police Organizations, has strong bipartisan support including former Idaho Senator James Mclure and former EPA Administrator William D. Ruckelshaus.

The slow pace of this nomination has caused an incredible burden on Marsha Berzon both personally and professionally. Due to uncertainty over her future, she has significantly curtailed her private practice, and no longer is representing clients before the Supreme Court or the Ninth Circuit.

Chief Justice Rehnquist recently said that ''[t]he Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.''

Richard Paez and Marsha Berzon do not deserve to have their distinguished