

NOMINATIONS

Mr. LEAHY. Mr. President, I am very pleased the Senate voted 98-0 on Kermit Bye to be United States Circuit Court Judge for the Eighth Circuit and Justice George Daniels to be United States District Court Judge for the Southern District of New York.

Kermit Bye is an outstanding attorney from North Dakota. I will put his full record in the RECORD later. Justice Daniels is a distinguished New Yorker, with the strong support of the two distinguished Senators from New York—Senators MOYNIHAN and SCHUMER—in the same way Kermit Bye had the strong support of the two distinguished Senators from North Dakota—Senators CONRAD and DORGAN.

I wish to thank both the Republican leader and the Democratic leader for helping us get these nominations up. They had been reported last year. For some inexplicable reason, they were held up. We see that the Senate, in voting on them, has voted 98-0. I mention this because many times we have judges, who are judicial nominations, where it takes a long time to get their nominations to the floor, and then they are passed by overwhelming margins. Out of a sense of justice towards the people we are putting on our Federal courts, we, the Senate, should do a better job.

Many wait too long. The most prominent current examples of that treatment are Judge Richard Paez and Marsha Berzon. We have waited too long to vote on them. I understand, finally, after 4 years, we are going to vote on Judge Paez, who has one of the most distinguished records anybody has ever had who has come before the Senate. He is strongly supported by law enforcement, strongly supported by the bar, strongly supported by the Hispanic community. He is certainly proud of his Hispanic background, as well he should be. He has accomplished more than most people accomplish of any background. I hope that after 4 years he will be voted on.

Finally, I had hoped we would reach a vote on Timothy Dyk today. He was first nominated to a vacancy in the Federal Circuit in April of 1998. For anybody who is keeping track, that was well in the last century. After having a hearing and being reported favorably by the Judiciary Committee to the Senate in September of 1998, his nomination was left on the Senate calendar without action and then returned to the President 2 years ago as the 105th Congress adjourned. He was renominated in January 1999 and reported favorably in October 1999.

So he has been waiting for all these years. He has clerked for three Supreme Court Justices, including the Chief Justice. He has a remarkably distinguished career. He has represented people across the spectrum, including the U.S. Chamber of Commerce, which strongly backs him. I hope we can get him confirmed this week or next. They need him on the Federal Circuit Court

of Appeals. He is one of the most qualified people we have ever seen. We should do it.

Mr. Dyk has distinguished himself with a long career of private practice in the District of Columbia. From 1964 to 1990, he worked with Wilmer, Cutler & Pickering as an associate and then as a partner. Since 1990, he has been with Jones Day Reavis & Pogue as a partner and Chair of its Issues and Appeals Section.

Mr. Dyk received his undergraduate degree in 1958 from Harvard College, and his law degree from Harvard Law School in 1961. Following law school, he clerked for U.S. Supreme Court Justices Reed, Burton, and Chief Justice Warren. Mr. Dyk was also a Special Assistant to the Assistant Attorney General in the Tax Division. His has been a distinguished career in which he has represented a wide array of clients, including the United States Chamber of Commerce. I look forward to the confirmation vote on this highly-qualified nominee.

Kermit Bye is an outstanding attorney from North Dakota. From 1962 to 1966, Mr. Bye was the Deputy Securities Commissioner and Special Assistant Attorney General for the State of North Dakota. And from 1966 to 1968, he was an Assistant U.S. Attorney in the District of North Dakota. Since 1968, he has been a member and partner with the Fargo law firm of Votel, Kelly, Knutson, Weir, Bye & Hunke, Ltd. Mr. Bye received his undergraduate degree in 1959 from the University of North Dakota, and his law degree from the University of North Dakota Law School in 1962.

Mr. Bye's nomination is another of those that was favorably reported last year by the Judiciary Committee but which was not acted upon by the Senate. He is strongly supported by Senator DORGAN and Senator CONRAD, who are to be commended for their efforts on his behalf and on behalf of the people of North Dakota that has finally brought us to this day.

Justice George Daniels is a distinguished New Yorker. He has distinguished himself with a long career of service in the New York federal and state court systems. He was an Assistant U.S. Attorney in the Eastern District of New York from 1983 to 1989. From 1989 to 1990, and again from 1993 to 1995, he was a Judge in the Criminal Court of the City of New York. And from 1990 to 1993, he was a counsel to the Mayor of the City of New York. Since 1995, Mr. Daniels has been a Justice of the Supreme Court of the State of New York.

Justice Daniels received his undergraduate degree in 1975 from Yale University, and his law degree from the University of California at Berkeley, Boalt Hall School of Law in 1978.

He has the strong support of Senator MOYNIHAN and Senator SCHUMER and the ABA has given him its highest rating. Although he was reported favorably by the Judiciary Committee last

year, his was one of the nominations not acted upon by the Senate. I congratulate the Senators from New York and Justice Daniels and his family on his consideration today.

I thank the majority leader and commend the Democratic leader for scheduling the consideration of these judicial nominations. The debate on judicial nominations over the last couple of years has included too much delay with respect to too many nominations.

The most prominent current examples of that treatment are Judge Richard Paez and Marsha Berzon. With respect to these nominations, the Senate has for too long refused to do its constitutional duty and vote. I am grateful that the majority leader agreed last year to bring each of those nominations to a Senate vote before March 15. Nominees deserve to be treated with dignity and dispatch—not delayed for two or three or four years. The nomination of Judge Paez has now been pending for over four years. He has the strong support of his home State Senators and of local law enforcement.

His has been a distinguished career in which he has served as a state and federal judge for what is now approaching 19 years. His story is a wonderful American story of hard work, fairness and public service. He and his family have much of which to be proud. Hispanic organizations from California and around the country have urged the Senate to act favorably on his nomination without further delay.

Within the next two weeks the Senate will be called upon to vote on this outstanding nomination, and I trust that we will do the right thing. I recall when Judge Sonia Sotomayor, another outstanding District Court Judge, was nominated to the Second Circuit and her nomination was delayed. Reportedly, she was so well qualified that some feared her quick confirmation might have led her to be considered as a possible Supreme Court nomination and that was why Senate consideration of her nomination was delayed through secret holds. Ultimately, she was confirmed to the Second Circuit.

After all the delay in that case, I was struck that not a single Senator who voted against her confirmation and not a single Senator who had acted to delay its consideration uttered a single word to justify such opposition.

Of course it is every Senator's right to vote as he or she sees fit on all matters. But I would hope that in the case of Judge Richard Paez, where his nomination has been delayed for over four years, for the longest period in the history of the Senate, those who have opposed him will show him the courtesy of using this time to discuss with us any concerns that may have and to explain the basis for any negative vote against a person so well qualified for the position to which he has been nominated by the President.

Mr. DORGAN. Will the Senator yield?

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

Mr. DORGAN. Mr. President, I ask unanimous consent the Senator be recognized for an additional 30 seconds.

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

Mr. LEAHY. I yield to the Senator.

Mr. DORGAN. Mr. President, I am so pleased that the Senate has confirmed Kermit Bye's nomination to the Eighth Circuit Court of Appeals.

Kermit Bye is one of North Dakota's most distinguished and respected attorneys, and a senior partner in one of the top law firms in the Midwest. He has nearly 40 years of trial and appellate experience, he was President of the North Dakota Bar Association, and he's received the North Dakota State Bar Association's Distinguished Service Award.

I won't name every civic and community organization that Kermit Bye has chaired and served on, because the list is too long. Instead, I will say Kermit Bye cares deeply about the law and about the people our laws protect.

He is a man of impeccable integrity and sound judgment, possessing a formidable intellect and a healthy dose of North Dakota common sense. Kermit is temperamentally very well-suited for the bench, and can be counted on as a fair-minded jurist who understands the importance of the rule of law to society, and the judiciary's proper role within our constitutional system.

As many will recall, this seat on the Eighth Circuit Court of Appeals was first vacated in April 1997, and my fellow North Dakotan John Kelly was nominated and confirmed to this seat last summer. Tragically, just a few weeks after taking his oath, Judge Kelly took ill and passed away.

I am pleased today that Kermit Bye has been confirmed to fill this vacancy so that our Federal judiciary can benefit from his wisdom and judgment.

Mr. HATCH. Mr. President, I rise to commend the majority leader, Senator LOTT, for proceeding today with votes for these judicial nominees. As I have stated, we will continue to process the confirmations of nominees who are qualified to be federal judges. In that respect, the Senate Judiciary Committee held its first nominations hearing of this Session on Tuesday, February 22, and I expect to see more judicial nominees moving through the process in the coming months. There is a perception held by some that the confirmation of judges stops in election years. This perception is inaccurate, and I intend to move qualified nominees through the process during this session of Congress.

That said, in moving forward with the confirmations of judicial nominees, we must be mindful of problems we have with certain courts, particularly the Ninth Circuit. It was reported yesterday that the Ninth Circuit has a record of 0-6 this supreme court term. In addition, the President must be mindful of the problems he creates when he nominates individuals who do not have the support of their home-

State Senators. In this regard, I must say that it appears at times as if the President is seeking a confrontation with the Senate on this issue, instead of working with the Senate to see that his nominees are confirmed.

During this Congress, despite partisan rhetoric, the Judiciary Committee has reported 42 judicial nominees, and the full Senate has confirmed 36 of these—a number comparable to the average of 39 confirmations for the first sessions of the past five Congresses when vacancy rates were generally much higher. In total, the Senate has confirmed 340 of President Clinton's judicial nominees since he took office in 1993.

I am disturbed by some of the allegations that have been made that the Senate's treatment of certain nominees differed based on their race or gender. Such allegations are entirely without merit. For noncontroversial nominees who were confirmed in 1997 and 1998, there is little if any difference between the timing of confirmation for minority nominees and non-minority nominees. Only when the President appoints a controversial female or minority nominee does a disparity arise. Moreover, last session, over 50% of the nominees that the Judiciary Committee reported to the full Senate were women and minorities. Even the former Democratic chairman of the Judiciary Committee, Senator JOE BIDEN, stated publicly that the process by which the committee, under my chairmanship, examines and approves judicial nominees "has not a single thing to do with gender or race." That is from the transcript of a Judiciary Committee hearing on judicial nominations on November 10, 1999.

The Senate has conducted the confirmations process in a fair and principled manner, and the process has worked well. The Federal Judiciary is sufficiently staffed to perform its function under article III of the Constitution. Senator LOTT, and the Senate as a whole, are to be commended.

MORNING BUSINESS

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

Under the previous order, the Senate will now proceed to a period of morning business. The Senator from South Carolina is recognized.

VOLUNTARY CONFESSIONS LAW

Mr. THURMOND. Mr. President, I rise to discuss my concern regarding recent developments in the Dickerson case concerning voluntary confessions. Opponents are using some extreme tactics to encourage the Supreme Court to strike down this law.

For years, members of the Senate Judiciary Committee, including myself, encouraged the Clinton Justice Department to enforce 18 U.S.C. 3501, the law on voluntary confessions. In the Dickerson case, the Department re-

fused to permit career federal prosecutors to rely on the law in their efforts to make sure a serial bank robber did not get away.

When the Supreme Court was deciding whether to hear the case, the Department had the opportunity to defend the statute, as many of us encouraged it to do. While making its decision, the Department consulted with certain federal law enforcement agencies. The Drug Enforcement Administration explained that Miranda in its current form is problematic in some circumstances and encouraged the Department to defend the law.

The Department later wrote in its brief about the views of federal law enforcement in this matter, but that support for the statute and reservation about Miranda is nowhere to be found. Instead, the brief states "federal law enforcement agencies have concluded that the Miranda decision itself generally does not hinder their investigations and the issuance of Miranda warnings at the outset of custodial interrogation is in the best interests of law enforcement as well as the suspect." The brief should recognize that there is disagreement among federal law enforcement agencies about the impact of the Miranda warnings in investigations and the need for reform of the Miranda requirements. The Department should not generalize in a brief before the Supreme Court to the point of misrepresentation. Senator HATCH and I sent a letter to Attorney General Reno and Solicitor General Waxman last week asking for an explanation in this matter, and I look forward to their response.

One of the amicus briefs, which was filed by the House Democratic leadership, takes a very novel approach toward the statute. It seems to suggest that the voluntary confessions law is not really a law after all. It states that the "Congress enacted section 3501 largely for symbolic purposes, to make an election year statement in 1968 about law and order, not to mount a challenge to Miranda."

This statement is not only inaccurate. It is completely inappropriate.

I was in the Senate when the voluntary confessions law was debated and passed over 30 years ago. A bipartisan majority of the Congress supported this law, and Democrats were in the majority at the time.

We did not enact the law to make some vague statement about crime. We passed the voluntary confessions law because we were extremely concerned about the excesses of the Miranda decision allowing an unknown number of defendants who voluntarily confessed their crimes to go free on a technicality. We passed it to be enforced.

For the House Democratic leadership brief to state that the Congress did not intend for a law that it passed to be enforced trivializes the legislative branch at the expense of the executive. It is a dangerous mistake for the legislative branch to defer to the executive regarding what laws to enforce.