

abide by Oregon State Bar ethics rules that prohibit deceit.

A former senior Justice Department official, speaking on condition of anonymity, said investigators have found information about the court decision during searches of suspects, unrelated to the terrorist investigation.

"If the ordinary garden variety of crooks know this, it paints a bull's eye on the state," the official said. "Looking at what these guys did on Sept. 11, you can see they paid attention to some pretty sophisticated things."

Mr. WYDEN. Thank you, Mr. President. I yield the floor.

The PRESIDENT pro tempore. The Senator from Arizona, Mr. KYL, is recognized.

Mr. KYL. Mr. President, I believe that among staff there is an informal agreement we would extend the morning business time for a period up to 5 o'clock, which would take us beyond the 4:30 time. When someone is ready to propound that unanimous consent request, I will be prepared to stop since my time will go beyond 4:30, which I understand is the current time. I thought I would note that, I will be particularly speaking after 4:30 based upon that understanding.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The Senator is recognized.

Mr. KYL. I thank the Chair.

#### JUDICIAL VACANCIES

Mr. KYL. Mr. President, I could not help thinking, particularly as I listened to the distinguished majority leader discuss the activity in his office today and the concern about his staff and their current terrorist threat that reaches the U.S. Capitol staff now, about how many ways this threat of terrorism affects all of us. I certainly hope all of the majority leader's staff is well and suffers no ill effects from what may well have been another reach of terrorist attack here in the United States.

It reminds us how this kind of unlawful extralegal activity can affect a society which has always been so free and so open, precisely because we are a nation of laws and precisely because we believe in the rule of law.

Of course, in our society that rule of law ultimately rests upon the judge and our courts for its administration. Of course, it is the judges who are the ultimate arbiters of the law. We could not function long as a free society without our judges. Yet today we are speaking about the fact that an unacceptable number of vacancies exist in our courts, vacancies that must be filled if we are to be able to properly administer that law we revere so much.

Currently, there are 108 empty seats in the Federal judiciary. We are speaking of the Federal courts alone. That represents a 12.6-percent vacancy in the total number of judgeships.

I note, as others I believe have perhaps also noted, that of those, there

are 41 judicial emergencies. In other words, more than a third of these vacancies, according to the Administrative Office of the Courts, represents judicial emergencies—meaning that they are in districts and in courts in which there is an overwhelming burden of cases in which, without having a judge to fill the court position, essential justice will not be done. It certainly raises the question about why we as a Senate are not able to act on the judges or the candidates for judge whom the President has nominated.

It is in this regard that I feel my responsibility most strongly because not only am I a Member of this body but I am also a member of the Judiciary Committee. Until the Judiciary Committee acts, we as a body are not able to give our final advice and consent. In fact, I am especially keen on the issue because three of these vacancies represent nominations for a district court for my own State of Arizona. All three of them are also designated by the administrative office as judicial emergencies.

This is not a hypothetical or a theoretical matter; it is a very real matter for us today, which should touch all of us, but it certainly touches some of us very strongly. It is, therefore, with some sadness that I hear my colleagues talk about the potential of holding up action on appropriations bills in order to take up the matter of judicial nominations.

Historically, the Senate has been able to do many things at the same time. We have considered legislative matters on the floor when we have had other calendars from which we took up matters. Indeed, many of the nominations, including judicial nominations, are considered as a relatively routine matter, sometimes at the end of the legislative day when the majority leader will simply ask for unanimous consent to consider a number of nominees. It is mostly the case that judicial nominees as well as others are considered in that fashion without even having a rollcall vote.

It has been the custom of the current chairman of the Judiciary Committee this year to call for, I believe in most all cases, rollcall votes, which is fine. I would actually prefer to do it that way. But it has not been deemed necessary in the past because most of these nominations are not controversial—my point being that we can consider and act upon frequently large numbers of nominations without having to take a lot of the Senate's time for debate. It has always been that way. The Senate can do many things at once. We hold committee hearings when we have actions pending on the floor. It is simply not true that we can only do one thing at a time.

Part of the reason we don't have the number of judges confirmed we should is that some have made the arguments that we are too busy doing other things and we have to be on the floor doing the antiterrorist legislation, or some

other business before the Senate, and therefore we can't take up the nominations. That, I submit, is not an accurate statement of the way the Senate operates.

But for those who say we can't do more than one thing at a time, I have said: Fine; then given the fact that we have time and time again asked for action on judicial nominations that has not been forthcoming by and large, perhaps it is time to give those nominations the proper priority they deserve and to get them on the calendar so we can consider them. As a result of that, I, on a couple of other occasions, suggested that rather than taking up a particular appropriations bill, we should get on with nominations. No. Some colleagues argued: We need to get on with these appropriations bills. We will take up those nominations in due course.

As a matter of fact, there have been two explicit agreements reached between the majority leader, minority leader, and others about how to follow this process, with the specific commitment made to take action on those nominees, at least those who were nominated prior to the August recess. Still, we do not see action occurring at a pace fast enough to be able to conclude that by the end of our session this year we will have, indeed, taken action on the nominations pending prior to the August recess.

That is why I have decided that if, in fact, it is the case that we cannot do more than one thing at a time, then we will simply call a timeout on the appropriations process, go to these nominations, see how many of them we can get done as appropriate, and then return to the appropriations process.

No one suggests we will not complete that process this year. We have to do it. We will do it. I will be supportive of it, as well. That is essentially the reason why I have suggested we call a timeout on that process, so we can get those nominations done.

I will continue my statement, but I know the distinguished majority whip wishes to speak.

Mr. REID. I apologize for the interruption, but I want to make clear I thought there was going to be a request for morning business. We have no one on our side wishing more morning business.

I want to make sure that everyone understands the next hour is that time set aside for Senator LEAHY and Senator MCCONNELL. So any time that is going to be used would have to be, under the previous agreement, given to them by the managers of the legislation or whoever decides to dole out the time for each side.

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

Mr. REID. Yes.

Mr. THOMAS. Would it be appropriate to ask unanimous consent that we have morning business until 5 p.m.?

Mr. REID. I have spoken to Senator LEAHY. He would agree to give up 15 minutes of his time.

Would Senator McCONNELL be willing to give up 15 minutes of his time?

Mr. KYL. I say to the Senator from Nevada, Senator McCONNELL has asked me to represent him during this period of time. I would be happy to do that if that would be the preference of the Senator from Nevada and the Senator from Vermont.

#### EXTENSION OF MORNING BUSINESS

Mr. REID. Mr. President, I say that I do not see anyone in the Chamber wishing to speak on the Democrat side; I am sure there will be somebody shortly. Why not have until 5 o'clock set aside equally between the majority and minority for morning business, and at 5 o'clock Senator LEAHY and Senator McCONNELL will use their time as appropriate. I ask unanimous consent that be the order.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). Without objection, it is so ordered.

Mr. KYL. I thank the Senator from Nevada.

#### JUDICIAL VACANCIES

Mr. KYL. Let me summarize where I was, Mr. President.

The point is, we are a country that relies upon our courts to administer the rule of law. At the Federal level that means we need to have a fully staffed Federal judiciary. We always know there are a certain number of vacancies at any given time. But we need to complete action on as many of the nominations pending before us as possible, certainly before we leave perhaps some time next month.

In the past, it has been the case that Members of both parties have expressed concern about the fact that we have vacancies and that we need to fill those vacancies. I will make note of that in just a moment because some of my colleagues on the other side have been eloquent about their commitment to try to get the process done.

My point is, with over 40 vacancies designated as emergencies by the Administrative Office of the Courts that characterizes vacancies as "emergency" or "nonemergency," with over 100 vacancies now, over 40 of which are emergencies, it is not business as usual. We cannot continue to have maybe one hearing a week, with maybe one or two judges being considered. We have only confirmed eight judges this entire year; most of them quite recently—only eight.

At that pace, we are clearly not going to be able to act even on the President's nominees that existed at the time we began the August recess. These are nominations made in May, in June, I believe, mostly—maybe a couple in July. Clearly, we ought to at least act on those nominations before we terminate our business this session.

But if we do not get about that task very soon, there will not be enough in

the pipeline coming from the Judiciary Committee to get that work done. That is why I have said we are going to have to have a timeout. If the argument is we just don't have time, we are too busy doing other things, then I am willing to say: Then let's call a timeout. Let's get to the nominations. And when there is a sufficient number of nominations completed, then we will go back to our other priorities.

We will continue to pass continuing resolutions to fund all of the various operations that are the subject of the appropriations bills. There will be nothing lost from that process.

We will pass the appropriations bills. No one suggests otherwise. But in terms of priorities, if we do not act soon on these judges, two things will happen: No. 1, we are not going to have enough time to complete the work on those before we quit; second, we will not fill these vacancies that have been declared emergency vacancies by the Administrative Office of the Courts.

So that is my reason for calling this timeout. It is my reason for urging people to vote against the motion to proceed to the foreign operations bill, which I very strongly support, incidentally.

I will represent to my colleagues that Senator McCONNELL, who is the ranking member of that subcommittee, did, indeed, ask me to represent him until he arrives this afternoon. He may be in the Chamber by 5 o'clock. He may not. But it is his view that this is an appropriate objection at this time to moving forward with action on that bill.

Since I see a couple of my colleagues are in the Chamber to speak, let me simply say, when I resume my comments, I will speak statistically to where we are in this current situation vis-a-vis past administrations and make the point that it pretty much does not matter how you cut it. By any statistical measure, we are far behind.

In the Reagan administration of 8 years, in the Clinton administration of 8 years, in the previous Bush administration of 4 years—in every case, with one exception, every single Presidential nominee for the courts that was made prior to the August recess was acted upon before Congress adjourned for the year.

There are 30-some vacancies for the courts now. I do not see, at the current pace at which we are operating, how we can come close to completing action on those nominations. Actually, if you were to compare the numbers through October 31, it would be a better measure, and that would make it virtually impossible for us to get all these nominations done when we are so far behind at this point.

I think an even more conservative proposal of just acting on those nominees the President sent to the Senate prior to August would be perfectly appropriate. I see no reason for us not to do it. That is why I am willing to say until we do that, we need to defer action on our other business so we can indeed get about this job.

With that, Mr. President, I reserve the time until we take up the motion to proceed to the bill.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I want to follow up a bit on what my friend from Arizona has talked about. Certainly, each of us recognizes that things have changed substantially since September 11.

I spent the weekend in Cheyenne, WY, and much of it with the National Guard. These great men and women are continuing to carry out their duties in protecting the country, as well as now doing the special things, such as airport security, and other requirements they have. Some have just returned from Bosnia, as a matter of fact.

I guess my point is, things changed for all of us; and special things come up at times such as we are in now. But it is also necessary for us, after we have done the things we have to do for those special times, to go ahead and do the things that we ordinarily have to do. Life goes on, and we have to continue to pursue that.

I think very much that is the case now with issues we have before us, special things such as airport security, special things such as the declaration, really, of war on terrorism, which we have done. Those things needed to be done.

Now, of course, we need to do appropriations. But we also have to do the mundane things such as the confirmation of judges, the seating of U.S. attorneys, many of whom have a very real role in this matter of domestic terrorism.

I, too, believe we have to work these two things out together. I understand the frustration of the leadership in the majority when they are seeking to move things, but I have to remind us, for example, that on July 21, 2000, while objecting to Majority Leader LOTT's attempt to proceed with the intelligence authorization bill, the minority leader—now majority leader—said this:

I hope we can accommodate this unanimous consent request for intelligence authorization. As does Senator Lott, I recognize that it's important. I hope we can address it. We must address additional appropriations bills. There is no reason that we can't. We will find a compromise if there is a will, and I am sure there is. But we also want to see the list of what we expect will probably be the final list of judicial nominees to be considered in hearings before the Judiciary Committee.

This is what he said as he held up that appropriations bill.

Our friend from Nevada, on July 24, while objecting to Senator LOTT's repeated attempt to move forward, said:

We believe there should be certain rights protected. Under this Constitution, we have a situation that was developed by our Founding Fathers in which Senators would give the executive branch, the President, recommendations for people to serve in the Judiciary. Once these recommendations are made, the President would send the names to the Senate and we would confirm them and