

of them has even had hearings. That is a problem with the committee, not a problem on the floor. It is a problem with moving forward. As we move into this matter of internal terrorism, and so on, the U.S. attorneys are going to be very important, as are U.S. marshals. Do we have them? No. There is no reason we don't have to do one or the other. We can do both of them.

Frankly, the constant talk that we hear that we didn't do as many when you were in the majority is immaterial, whether that is right or wrong. The fact is, here is where we are, and we have 50-some judges waiting to be approved, with very few in. In the Tenth Circuit, we have 4 vacancies out of 12. There is no movement to do anything about that.

So I guess what I am saying is I feel badly about it as well. I would like to be moving forward, but they are not happening. We don't get any assurance from the chairman of the committee that he is going to do anything any differently. All they do is talk about what they did in the past. That is immaterial. What we ought to talk about is what we are faced with now and the fact that we need to do something about that.

Energy is something that is very important, of course. We have asked for a commitment to do something on energy. We have been working at it. I am on the Energy Committee. We have worked at it for a couple of years, getting things together, trying to get something on the floor. It is very important in terms of the United States and its economy. It has been very important in terms of us getting an energy policy out there. I know the Senator from Nevada agrees with that.

Now it is even more important when we get to where we have nearly 60 percent of our oil imported, much of it from the Middle East. We find ourselves with real difficulties in the Middle East, and it is even more important that we get it in there and have an energy policy. All we have asked for is a commitment to do that, to move forward. That is the reason things are not moving. We get no commitment as to changing the things that are not being done. I think that is where we are. It is too bad we are in a kind of controversy about it. I think getting a commitment from the leadership that we are going to be able to accomplish some of these pending things is very important.

Saying the priority is doing something for Pakistan instead of a judge, that is really not a choice. We can do both of those things. We can do both of those things, and we can move forward. I wonder how many hearings there have been this week on judges. More important, what has been brought to the floor?

I believe we can find a remedy, and I know there are meetings going on to secure that remedy. I certainly hope we can continue to find that remedy and get ourselves into a position to move forward not only with the pend-

ing legislation, but also do these things that are very important to the operation of Government.

Of course, now we find ourselves with more and more difficulties in terms of internal terrorism and the anthrax issue that is coming up. But I can tell you it is the belief among the Members of Congress that we are going to take every method of making sure we are safe and that our staffs are safe. On the other hand, we can do those things that are necessary and we can go forward with the job we have to do. I suspect we are here to complete our task.

I have suggested in the past that maybe we can set some priorities and have our priorities established, move forward with them and deal with those things that are not being done and say, yes, we are going to do it at a certain time. That is really the request. It is not going to take long to do some of these things. We need commitments and priorities and to be prepared to move forward. But as long as the issues that some of the Members are very anxious about are not dealt with, obviously there are going to be some efforts to make sure they are. That is not a unique situation, by the way. That has happened throughout the years, and it is part of the process here, unfortunately. But it is part of the process.

I mentioned yesterday the very process we are going through now was gone through last year, and all the evidence is in the CONGRESSIONAL RECORD. The very issues we objected to now were done then.

So I think we can find a solution. I look forward to seeing that solution so that we can commit ourselves to do the things that need to be done, to move forward with the other bills. We can do more than one thing at a time.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2002—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the motion to proceed to H.R. 2506, which the clerk will report.

The legislative clerk read as follows:

A motion to proceed to the bill (H.R. 2506) making appropriations for foreign operations, export financing, and related pro-

grams for the fiscal year ending September 30, 2002, and for other purposes.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I am not going to speak at great length about why we are in the position we are. I have already spoken. As I have said, Senator LEAHY has a hearing scheduled this week. He is going to have some hearings next week. The report I received recently is that we have not done any U.S. marshals because we do not have them. They have not been sent to the committee. We cannot do it.

We approved 14 U.S. attorneys last Thursday. We are moving these nominations along just as quickly as we can.

The Senator from Wyoming is absolutely right we need to do; an energy bill, but we cannot do an energy bill. We have had 2 weeks where we have done nothing. We still have five appropriations bills to handle, plus all the conferences, and they are not letting us move to them.

Sure, we can do two things on the floor at once; we agree. But they are not letting us do one thing on the floor. The leader has said that we will get to energy as soon as we can, and that means we have to get rid of all these other items first.

We are approaching Thanksgiving. We have already had two continuing resolutions. This is not the time to dillydally. We have very important things we need to do for this country, and we are in quicksand on judges. We are going to go forward the best we can and jump through all the procedural hoops they are making us jump through. I would think sometime in the near future the administration might get involved. The administration has more to lose than anyone else. This is the minority's side.

No one can criticize the Democratic majority in working with the President. We have worked hand in hand with him. He and the majority leader speak three times a day on issues relating to this country and the world. The minority is making a real mistake holding up this legislation. That is a decision they have made, and they are going to have to live with it. We are going to do the best we can, I repeat, jumping through all these hurdles.

In the process, we are going to use up 3 or 4 weeks of time that we could be doing other bills. We have a bioterrorism bill on which Senators KENNEDY and FRIST have worked. I do not know if they will let us go to it when the committee reports it out. We hope the committee can report it out as early as Thursday. In the meantime, all the other legislation is being held up.

People think we can waltz through the rest of these appropriations bills in a matter of a day or two. It has never happened, and it never will happen. These bills take a lot of time even though we agree on the numbers.

We need to do a bioterrorism bill. We have a bipartisan bill we should bring

up. We had airline safety. They would not let us bring that up.

I repeat, when it comes down to the end of this year and people are saying where is the energy bill and other bills, remember last week and this week: We have done nothing. Most of it has been procedural in nature.

We were fortunate last week to finally, getting through all the procedural hoops, get airline security passed, and with a lot of cooperation we were able to do the counterterrorism legislation, but it has been a struggle. We should be further through the appropriations process more than we are.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

Mr. THOMAS. Madam President, I ask unanimous consent that I be allowed to speak 10 minutes as in morning business.

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

ECONOMIC STIMULUS

Mr. THOMAS. Madam President, one of the items, of course, that is being considered and has, in fact, been considered and passed in the House is the economic stimulus—doing some things now that will encourage and get more activity in our economy.

We, of course, through the last couple of years have seen some decline in the economy, and now with the September 11 attacks, we have seen substantial change. We are faced with the challenge to do that which will have an impact—hopefully an immediate impact—on the economy.

It has been very difficult to define exactly what is best to do. We have met several times with Chairman Greenspan and Bob Rubin, the former Secretary of the Treasury, to talk about what would have the most impact on the economy in the short term. There are very many ideas out there.

Quite frankly, among professional economists there is not unanimity as to what would have the most impact. Certainly, most people agree that it needs to be a large movement. Some think it ought to be \$100 billion, which is a huge amount—however, a relatively small amount of the gross national product. It is difficult to know.

This Congress has already passed \$50 billion or more that has to do with defense and with repair in New York City. I question, of course, whether those expenditures will be made soon enough to have an impact on the economy and whether they, indeed, fit in as part of the economic package. I, frankly, am inclined to think they do.

Then we are faced with what should be the additional effort. It is my understanding the House-passed bill was

nearly \$100 billion in addition to what we spent, which is more than the President has suggested, I believe, which is \$50 billion to \$75 billion. We have that decision to make and, of course, what will most quickly and efficiently affect the economy. I believe we should have some parameters to decide in general what we want to do and then see how these individual items fit into it. One ought to be those things that we know will have an impact on the economy and do it in the short run.

Another is, since we are talking about shortrun remedies, we ought to be picking solutions that are not long term so we will have another opportunity after this economy has gathered some strength to take a look at them and see if they should be in place long term.

Obviously, when Members have tax issues and have been looking for a vehicle to put them on, they will be interested in putting them on a stimulus bill. We have to be careful this does not become a Christmas tree.

What do we do? There is the question of how much of this stimulus ought to be done in terms of the consumers' ability to purchase. What can we do about moving more money into the hands of consumers so they can do a redistribution of income?

On the other hand, how much of this package should be in the form of incentives for business, such as deferred taxes, or reducing the time for appreciation?

These are the issues we will have to decide. Many are interested in doing something with the corporate alternative minimum tax put in about 1985 as a reaction to some of the tax reductions that were made prior to that time, which have the effect, of course, of causing certain levels of income tax to have to be paid, regardless of whether there are tax breaks that can be taken advantage of otherwise.

So very many people in the business sector believe that could be changed. It would encourage the purchase of new equipment.

Some suggest a 5-year carryback of net operating expenses as another way to put money in the hands of business to create jobs and move forward. Accelerated appreciation is another area discussed. The House provision has a 30-percent reduction in the first year—again, to encourage businesses to invest in their equipment and in their inventory.

There are issues on foreign trade to make it more competitive for businesses. For individuals, there is talk about making tax reductions we put into place earlier this year more permanent, to not expire at a certain length of time. That has to be discussed. Capital gains reductions are quite often talked about. Some wonder if capital gains reductions will, again, have that short-term impact. Others have suggested the capital gains ought to be limited only to those purchases after September 11 to encourage pur-

chases rather than sales. Any payroll tax deduction will provide an opportunity to put money into the hands of citizens, including those who are not paying income tax.

There are recommended vacation tax credits to get people on the move: To fly, to stay in hotels. The industry is suffering a good deal.

There are lots of opportunities. I am hopeful as we draw it up in the Finance Committee we have parameters to make sure they comply with our goals and our purpose and our motives. I think we can do that. It ought to be confined to short-term activities so we can review them again in the future. These are some of the things being discussed. They are very important.

Now we find ourselves faced with three different challenges: One is the war on terrorism; another is the economy, which has been impacted; and doing the things we do in everyday life and continue to deal with government operations. These are the challenges. I believe we will meet the challenges. We need to move forward.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. REID. Would the Chair explain the parliamentary matter now before the Senate?

The PRESIDING OFFICER. The Senate is now considering the motion to proceed to H.R. 2506.

Mr. REID. Potentially, if I am not mistaken, there is as much as 30 hours available under that motion to proceed; is that right, postclosure?

The PRESIDING OFFICER. We are not on a postclosure situation. There is no time limit.

Mr. REID. I say to the Chair, cloture was not invoked yesterday, so we are not bound by the 30 hours; is that right?

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. Unless something happens, we are on this bill forever; is that right? There is no time limit.

The PRESIDING OFFICER. We are on the motion to proceed.

Mr. REID. There is no time limit?

The PRESIDING OFFICER. That is correct.

Mr. REID. Is it possible to move to some other matter?

The PRESIDING OFFICER. Not while the motion is pending.

Mr. REID. Only by unanimous consent, is that right?

The PRESIDING OFFICER. The Senator is right.

Mr. REID. Unless the minority agrees to move to an appropriations bill or move to this appropriations bill or move to bioterrorism, it cannot be

done without their consent; is that right?

The PRESIDING OFFICER. The Senator is correct.

The Senator from North Dakota.

Mr. DORGAN. Madam President, I say to my colleague from Nevada, as he knows, we had a cloture vote on this appropriations bill, and we did not invoke cloture. We have what is known as a filibuster—not on an appropriations bill but even on the motion to proceed to the appropriations bill.

There is a time and a place for everything. I certainly would never abridge the right of any Member of the Senate to use the rules in any manner they prescribe for themselves or their constituents. It is in my judgment rather unseemly at this moment, given what is happening in this country, for this Senate effectively to be at parade rest—standing, sitting, waiting, doing nothing. We have appropriations bills that need to come to the floor of the Senate. They have been through the Appropriations Committee, but we cannot get them to the floor of the Senate because we have people objecting.

The other side says they don't want the Senate to do its business at this point, so they object. This appropriations bill is foreign operations. It is a critically important piece of legislation dealing with issues such as the security of our Embassies. Does anyone wonder at this moment and at this time, given the security threats we face at virtually every Embassy around the world, staffed by American citizens, whether we ought to wait to pass legislation dealing with Embassy security? I don't think there is not great cause for me to wonder. Of course we should. We ought to move this appropriations bill to the floor of the Senate, debate it, and pass it.

Let me go back for a moment to describe why I believe this should not be business as usual and why I believe it is unseemly for some simply to plant themselves at this moment and say: We are not going to allow the Senate to do anything. September 11 changed a lot of things in our lives. The heinous act of mass murder by perverted people changed a lot in the lives of all of us. This attack against our country, but basically an attack against freedom, makes everyone feel less secure. We have resolved from that moment to do things differently.

One of the things that happened almost immediately following the President's speech to a joint session of Congress was a new attitude and a new spirit in the Congress. All of a sudden, those who previously had been Democrats and Republicans, conservatives and liberals, were standing during debate, proclaiming themselves so described, all of a sudden those labels were gone. There did not seem to be any longer an "our" side and a "your" side or a "your" side and "my" side. There was only in this Chamber, and only in the House of Representatives, and only between us and the President,

one side. It was our side. Just our side. We were all in on the same side, determined to try to deal with these cowardly acts of terrorism.

That, regrettably, has changed some. There is now a different attitude in recent days. Folks decided we shouldn't work together, that we shouldn't do the Senate's business, that we shouldn't pass appropriations bills, that we should essentially stall and stop. It doesn't make any sense to me. It doesn't serve anybody's interests. It doesn't serve the interests of the United States, and it certainly doesn't serve the interests of the American people.

I mentioned this appropriations bill has money for the security of our embassies all around the world. Is what we really want to do at this moment to slow down this process, to say embassy security somehow is not very important, that there is no urgency here? I don't think so.

I think our job ought to be to say these are important issues for the Senate to address—not tomorrow, not next week, but now. It is not just this bill. It is especially this bill today because that is what we are talking about, the motion to proceed to this bill, but it is so many other appropriations bills and so much additional work that we and the House must do together.

Aviation security, we did that bill. Antiterrorism, we did that bill. Neither has been done in a satisfactory way by the other body. So we need to resolve those differences, and that is critically important.

But most especially the business of the Senate is to take up important issues, including this bill from the Appropriations Subcommittee on Foreign Operations, debate it, and pass it. If someone here has heartaches about what is in it, offer amendments and have votes. God bless you; you have every opportunity in the Senate to do that. The rules allow you to do that. But it is not appropriate, in my judgment, to shut this place down because someone got cranky about something else. If you are in a bad mood, find another room, but at least here on the floor of the Senate let's try to do the Senate's business.

If there was ever an opportunity and requirement to demonstrate to the American people this is a new time and new day and we are facing threats in a new way together, this is the time to do it. Let's adopt these motions to proceed, pass these bills, and provide for the security of American embassies included in this bill.

Madam President, Senator DASCHLE, the majority leader, is present. I will yield the floor and allow him to proceed.

Mr. DASCHLE. Madam President, I compliment the Senator from North Dakota for his excellent statement. I don't think I could have said it as well. But I really appreciate the passion with which he has expressed himself.

These are important bills. We are going through international crises that

demand leadership, demand responsiveness, demand that these bills get done. He said it so well. I hope our colleagues have the opportunity to hear him as I just did.

The PRESIDING OFFICER. The Senator from Alabama.

JUDICIAL NOMINATIONS

Mr. SESSIONS. Madam President, I would like to share a few thoughts with regard to the process of nominating and confirming Federal judges. We have had a problem, as I have seen it, in recent months, leaving us with an ever-growing backlog, one of the largest backlog of judicial vacancies we have ever had. I would like to share a few thoughts about that.

One of the bases for rationalizing this apparent slowdown is the view that President Clinton's judges were not treated fairly. Many of you have heard that. I think we ought to talk about that straight up.

President Clinton nominated and got confirmed 377 Federal judges, almost exactly the number President Reagan had in his 8 years in office. They both had 8 years in office. He had one of his nominees, only one, who was voted down by this Senate. The rest we either confirmed or were pending when he left office.

When President Clinton left office, he had 41 nominees pending before this Senate, nominees who had not been acted upon. Historically, that is a low number. Under the leadership of Chairman ORRIN HATCH, the Senator from Utah, the chairman of the Judiciary Committee at that time, a Republican, he moved President Clinton's nominees effectively and gave them fair hearings, and for the most part they were promptly confirmed if they were deserving. That 41 nominees were unconfirmed is a rather low number, in my view. Really, 67 vacancies were in existence at that time in the Federal judiciary. We have over 800 Federal judges, and 60-some judges has generally been considered a normal vacancy rate. It just about takes that much time for the names to go up to the President, for him to consider them, an FBI background check to be done, to submit the nominee's name, they answer all the questionnaires we demand of them, ABA does a background check—and it just takes some time. So you seldom will be below 50 vacancies in the Federal judiciary.

However, we begin to see the numbers increase dramatically. Just a few days ago we had 110 vacancies in the Federal judiciary. Now I think it is 108 after the confirmation of the 2.

To me, this is too large a vacancy. Let me tell you why I am concerned about it. I will be frank with you about it. The reason I am concerned is that there is a sense in which this slowdown in confirmations is a part of a plan to block President Bush's nominees in an unusual and special way. Unlike anything we have seen before.

There was a report in the New York Times on April 30 of this year reporting

about the private retreat the Democratic Members of this body had. The Republicans have those retreats, too. At that retreat, Professor Laurence Tribe, who is well known, Cass Sunstein, and Marcia Greenberger discussed with the Democratic Senators their idea to develop a "unified party strategy to combat the White House on judicial nominees." That was the New York Times reporting on that conference.

Professor Tribe and the others apparently advocated scrutinizing nominees more closely than ever in order to slow down the nomination process, stating that it was:

... important for the Senate to change the ground rules and there was no obligation to confirm someone just because they are scholarly and erudite.

This is the same Laurence Tribe who was very active in the Bork nomination and Thomas nomination fight and actually wrote a book in 1985 titled "God Save This Honorable Court" in which he talked about the strategy of blocking judicial nominations.

Before we had gotten started in this process, those of us on this side had cause for concern because there was a stated policy of changing the ground rules or to block President Bush's constitutional ability to have his nominees treated fairly and confirmed, if fit and qualified.

Subsequent to that, we began to have a number of hearings in the courts subcommittee, of which I am the ranking Republican member. The first hearing dealt with a suggested change in how we ought to do nominations. The change and question was whether or not ideology should be considered in the judicial process. That has been generally rejected consistently.

Invited to testify on that panel were Cass Sunstein, Laurence Tribe, and Marcia Greenberger—surprise, surprise. Also invited to testify was Lloyd Cutler, former White House counsel to a Democratic President, and a man of great respect in the community.

In his remarks, he differed with those other professors, however, and made clear that he opposed—and quoted a commission of which he was a member—making politics and ideology a factor in the confirmation process.

If someone has an obsessive political or personal or ideological view that would keep them from being objective in analyzing facts and law, they ought not to be confirmed. But just to say that you are a liberal Democrat—as overwhelmingly the 377 judges confirmed by President Clinton were—that you are, therefore, not qualified, or if you are a conservative Republican you are not qualified to serve on the bench would be a historic change in the ground rules all right—not a change they suggested ought to be done before President Bush took office but a change they suggest only after their President left office. We have a new President. So we are concerned about this.

The first hearing was suggesting that we ought to have a higher role of politics in the judiciary. Lloyd Cutler, to his credit, and other professors who were members of that panel, also to their credit, were firmly opposed to politicizing the judiciary. It is a dangerous thing.

I was a U.S. attorney for 12 years and assistant U.S. attorney for 2. Almost 15 years of my life was spent practicing law and trying cases full time before Federal judges. I didn't always agree with them, but I will say with great conviction that they were wonderful judges—men and women of integrity and ability who did things right. If you had the law on your side, you could be expected to prevail. If you went to court and said: I have cases that say this evidence is admissible, Your Honor; I have evidence that says their document is not required to be produced in this hearing, Your Honor, and if you could show the judge that, you could almost always count on them to rule correctly according to the law, whether they were Republicans or Democrats.

This idea that somehow, if you are a liberal or a conservative, you are therefore going to allow that to affect your ability to control a courtroom and do justice to people is wrong and dangerous. And I am nervous that we would suggest to the American people that this is so. I do not believe it is.

At one of our hearings recently, when I asked Senator FRED THOMPSON from Tennessee, a skilled lawyer, if he believed in his experience as a litigator that he could expect unfairness or a difference of views on issues simply because of who appointed the judge to the bench, he said he did not. His experience as a judge was normally expected to rule correctly on the law and the facts. Certainly that has been my experience over the years.

Actually, I would add parenthetically that is one of the great reasons for our strength and health and economic prosperity as a nation. We have a rule of law. Whether you are a British corporation or a corporation from any nation in the world or a domestic corporation or an individual or a poor person or a rich person, we believe in the ideal and in the reality that person would receive equal justice under law. Indeed, those are the words chiseled and engraved into the front of the Supreme Court building across the street—"Equal Justice Under Law." That is the American-British—Anglo-American—legal ideal that we have adhered to effectively. Nations where that rule of law has been commonplace and followed have prospered. I have come to believe in recent years as I have gotten older that if you examine nations that are not doing well economically, that do not have freedom and the things we have, it is fundamentally because they lack a rule of law. You can't invest, you can't plan, and you can't develop a long-term goal for the future and save money today in

order to expand your business tomorrow if everything is unstable, and if you have to pay off politicians and never know what the law is going to be.

We are blessed with a rich heritage of law that is so valuable that we should never see it undermined. We must protect it. The last line of the great hymn is our liberty and respect of the law. The American people respect law. We must do that. We must further that, and not create this image by a bunch of politicians in a committee room suggesting that what goes on in courtrooms throughout America is political and not based on law and fact. That would undermine public respect for law. I believe that very deeply.

I was sorry that we went off on that tack. It was a good hearing. The chairman was very fair and everybody got their say. It was probably a good thing to talk about it and get it out in the open. I don't dispute that. But I think it is important that we in this body do not suggest to the American people that politics affects the law out in the field in the courtrooms all over America because it, in my view, does not.

The second hearing we had was on the burden of proof. It was suggested in these hearings that the burden of proof is on the nominees to prove somehow that they ought to be confirmed. That would be a big change in policy. I do not know what you are supposed to do. Are you supposed to come to a judiciary hearing with 100 of your best friends? What are you supposed to do?

What we do know is that the process has served us pretty well over the years. The President of the United States gets to nominate Federal judges under the Constitution. He solicits information back from the district involved or the circuit that is involved. Names come up to the President. He evaluates them and decides whom he is going to nominate.

They do a pretty good job, frankly, of asking around, finding out if there is any trouble in the person's background, would they make a good nominee. In my view, as the years have gone by, the President has been even more intent on getting people who will be good judges than people who might be political friends or things of that nature. So that goes up.

The President tentatively selects a nominee. This is the person they would like to submit. They do their own checking around. Then they give it to the FBI, and they do an intensive, full field investigation. The agents interview anybody with whom that person has worked. They interview people who have litigated against them. They interview judges before whom they have practiced. Then they come back with an FBI report. They find out whether or not they have been arrested, whether or not they have had drug abuse problems, or any other problem they might have in their background. They will interview an ex-wife, people who may have a basis to complain, and they put that in the report.

So the President has that report. Then he decides whether or not to submit the name. And that report is available to all of us in the Senate—only the Senators—in confidential form. We can go and examine that report. If we see something we do not like, even though the President has approved that person, we can oppose a nominee on that basis. So that is the way the system works.

After the nominee hits the Senate, the Senate sends a big questionnaire to the nominee. First the President submits a big questionnaire to the nominee, and depending on the investments and the career of the nominee, the questionnaire can have hundreds of pages of responses to all these questions. Then we have another one from the Senate. That one is done. Then the ABA, the American Bar Association, goes out and does their background check. They talk to judges. They talk to lawyers. They talk to the president of the local bar association, the president of the ABA, the members of the ABA from that community. They talk to people who have litigated in intense situations with the nominee. That is an important factor. In the pit, in the depth, in the intensity of a big-time lawsuit, if the person has character flaws, they will usually show up. Most lawyers are pretty objective. They will fairly evaluate a person they have litigated against, and they will tell the ABA and the FBI what they think about them.

So then the ABA makes their recommendations as to whether or not this nominee is “qualified” or “exceptionally well qualified.”

I think that is a pretty good process. So I suggest it is not wise at that point to say: Mr. Nominee, after you have done all these things, it is your burden, as we sit up here as Senators, to convince us, after the tremendous career you may have had in the practice of law—maybe you have a well-qualified rating—you have to convince us to vote for you. I do not know how you do that.

I think the record speaks for itself. Historically we have not had that as a standard. In fact, in the first 125 years of this country's existence we never even had hearings on the nominees. If something came up on a nominee that the Senate did not like, they could object, but they did not even have hearings on the nominee. I do not mind an objection to hearings; it is probably a healthy thing. The Senate should not be a rubber stamp. But also we should not put that burden on the nominee, after they have done all that, before they are confirmed.

So, Madam President, we will also have another series of hearings that are designed to intensify a basis for opposition to President Bush's nominees, all of which I think is a dangerous direction. So I say all that as a matter of background. That is not myth. That is not an unfair characterization of where we are.

There is a move, apparently, by some, to change the ground rules of confirmation. It has, apparently, already begun to infect our process.

I have some charts in the Chamber I would like to show that depict where we are in terms of vacancies in the Federal courts today.

In the 103rd Congress, there were 63 vacancies at this same time period. This was during a time when Senator BIDEN, a Democrat, chaired the Judiciary Committee.

In the 104th Congress, there were 65 vacancies during this same time period. Senator HATCH was chairman of the Judiciary Committee. There were 65 vacancies. This was during President Clinton's administration.

Then, with a Republican chairman, a Republican majority in the Senate, and a Democratic President, Chairman HATCH got the number down to 50 vacancies.

Then in the 106th Congress, the last year of President Clinton's administration, there were 67 vacancies—just about the traditional average. In fact, historically they tend to be a little higher in the last year of an administration.

But now, just a few months later, the vacancy rate has surged from 67 to 110. Perhaps it is 108 today after those confirmations, but that is an unhealthy trend. I believe President Bush and those who want to see him have a fair day for his judges have a right to be concerned in light of particularly the statements that they want to change our ground rules.

One of the things we have found, as we have looked at the process, is that the Senate, regardless of who is in the majority party, has done a good job of confirming judges who were nominated prior to August in that first year. In other words, from January through July, the President submits his nominees, as he can. It is a little difficult for him at first because he has a lot of people to appoint—he has a Cabinet to select, and new things are happening for the President in those first months—but, fundamentally, we have seen that the President has done very well with the nominees he has submitted.

President Reagan, in his first year in office, was able to get every judge he nominated, prior to August, confirmed before the Senate recessed for the year in November or December. He had 100 percent confirmed.

Former President Bush got 100 percent of his nominees confirmed during that time.

President Clinton got 93 percent confirmed. I think there was one judge who did not get confirmed who was nominated before August. This was under President Clinton and a Republican Senate—well, maybe it was a Democrat Senate at that time. They did not confirm one, but all the rest were confirmed.

But under this President, President Bush—and we are coming along to the

end of this session; there are people saying we ought to be out of here in a month or less—has only gotten 18 percent of those judges confirmed.

I know there have been some things that have happened that make it a little difficult, but, frankly, I think we ought to work a little harder. We have had a change of party, and we have had an attack on America that has disrupted us in many ways. But many of these nominees, you have to understand, are highly rated by the ABA. They are highly respected by their local men and women in the bar association, and no one objects to them. They have no objections against them. Republicans and Democrats back home support them.

There is one from my district. She worked for me. She was hired as an assistant U.S. attorney under President Carter. She worked 12 years for me. Absolutely wonderful. She recently received a unanimous “well qualified” rating. She has no political agenda. A lot of these nominees are like that, just good lawyers, men and women of integrity and ability. They need to be moved forward. We could be a lot further along than we are today.

One of the reasons we are behind is that we are not bringing enough of these noncontroversial judges, or any of the judges, forward at hearings on nominations.

Under the heading “judicial nominees per hearing,” in 1998, they had 4.2 judges as the average number per hearing to be confirmed.

We have a hearing in which the judge appears and answers any questions Senators might have. Later there is a vote within the committee whether or not to confirm.

You can't have a vote in the committee until there has been a hearing to take information and question the nominee about anything anybody would like to ask. So the hearing is a critical step in getting confirmations. In 1999, it was 4.2. In 2000, it was 4.2.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate now stands in recess until the hour of 2:15 p.m.

There being no objection, the Senate, at 12:30 p.m., recessed until 2:14 p.m. and reassembled when called to order by the Presiding Officer (Mr. CLELAND).

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2002—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. What is the matter now before the Senate?

The PRESIDING OFFICER. A motion to proceed to H.R. 2506.

The Senator from Alabama is recognized.