So I ask unanimous consent that, at 3 p.m., Monday, March 18, the Senate proceed to the consideration of Calendar No. 318, H.R. 2356, the campaign finance reform legislation, and that the cloture vote on the motion to proceed be vitiated.

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

Mr. DASCHLE. Mr. President, we will continue to take this matter one step at a time. We are encouraging Senators to express themselves on campaign finance reform tomorrow, or on energy tomorrow. My hope is that the Senator from Arizona, Mr. KYL, and other Senators who wish to be heard on their amendments, will offer them tomorrow, will debate them tomorrow, will make sure that we use the day we have available to us tomorrow to move the legislative process along. That is also true on Monday. We will come in at 3. We encourage Senators to offer amendments on the campaign finance reform bill on Monday. We will have further discussions, of course, with our colleagues with regard to the campaign finance reform bill. I will say, if there are amendments to be offered, we will have debate and further consideration of those amendments on Monday and Tuesday.

It would be my expectation to file cloture on the bill for a cloture vote on Wednesday, as we currently expect it. That would then require the vote, as I have said on many occasions, no later than Friday, which would accommodate our schedule for the balance of next week.

I have said, and will repeat, if there is a way we can resolve whatever other outstanding procedural questions between now and Monday, or between now and Wednesday, I am certainly more than ready to do so. But I appreciate at least this progress. We will have more to say beginning Monday.

I yield the floor.

Mr. MURKOWSKI. Will the majority leader yield for a question?

Mr. DASCHLE. I will be happy to yield.

Mr. MURKOWSKI. Assuming, Mr. President, the schedule of campaign finance being resolved Wednesday, is it the majority leader's intention, then, to go back to energy?

Mr. DASCHLE. Mr. President, the Senator is correct. My hope is we can finish this bill sometime soon. It would be my desire to continue to work on it until we do so, with the exception, of course, of the campaign finance reform bill.

Mr. MURKOWSKI. And, Mr. President, recognizing that may be extended, I gather the agreement is still under consideration, but if it is prolonged, do you intend to proceed and conclude campaign finance and then ultimately go back to energy?

Mr. DASCHLE. The Senator is correct.

Mr. MURKOWSKI. I thank the Chair. I thank the leader.

Mr. DASCHLE. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Continued

Mr. LOTT. Mr. President, let me inquire about the parliamentary situation. Is the energy bill still pending, and is there an amendment pending at this time?

The PRESIDING OFFICER. The energy bill is pending, and the Bingaman plan to the energy bill is pending.

NOMINATION OF CHARLES PICKERING

Mr. LOTT. Mr. President, notwithstanding that, and after a discussion with Senator DASCHLE, I will take leader time to make some remarks about the vote just taken in the Judiciary Committee. I yield myself leader time.

The PRESIDING OFFICER. The Senator has that right.

Mr. LOTT. Mr. President, this is my 14th year in the Senate. There have been a lot of high moments and low moments in that tenure. I certainly worked very hard, and in my position as majority leader, I learned a lot of lessons. As you go along, sometimes you do things that Senators agree with, and sometimes they do not—on both sides of the aisle. I understand that.

But I must say that I feel about as bad about the Senate right now as I have in the years that I have been watching the Senate and that I have been in the Senate. I think the Senate Judiciary Committee just participated in a miscarriage of justice. I am very much concerned about the effect it is going to have on the Senate, and on our relationship on both sides of the aisle.

The Senate Judiciary Committee just voted against the nomination of Judge Charles Pickering from Mississippi to move from the Southern District Court of Mississippi to the Fifth Circuit Court of Appeals. They voted against, as I understand, reporting out his nomination unfavorably, and they voted against reporting out his nomination without recommendation. That was not exactly the sequence, or exactly the motion. The fact is they have voted against the nomination of this very fine man.

I think for the Judiciary Committee to take the action as they did is very unfortunate and very unfair to a man I have known directly and personally for about 40 years.

I know him as an individual. I know his family. I have been in his home. I have been to football games with him. I have been to campground rallies with him, and I know him very well. He certainly is qualified and certainly deserves better treatment than he has received in this process. I think this is a continuation of the politics of personal destruction. I think his character has been smeared. I think a lot of incorrect information and misleading information was put out about the judge. That was wrong.

Now a number of Senators are saying: Well, yes, we realize that information is not right but voted against him anyway. As a matter of fact, this judge has been very courageous and has been a moderating force and a leader in trying to bring about reconciliation and bringing people together—not drive them apart, particularly in the area of race relations in our State.

I think one thing that strikes me so hard and has hurt me about this is because, once again, I believe this is a slap at Mississippi, my State. I think that some people thought: Oh, well. Good. This is a Federal district judge. He is a known conservative. He is a known Republican. He was selected on the recommendation of TRENT LOTT and THAD COCHRAN by President George W. Bush, and he is from Mississippi. This is one we can nail. He surely must have a bad record over his lifetime, being from that State, on race relations.

Now, people and members of the media that had earlier been critical of him said: No, no, no. We didn't mean that. We never really said that. We take it back. Maybe he has been OK in this area, but now our complaint is something about his demeanor on the bench that we don't like.

But I think, once again, there are people trying to use the ghosts of the past to keep us from rising up and looking toward the future together in a positive way.

When you have African Americans, women, and just about every Democrat in the State saying this is a good man and he ought to be confirmed, you ought to begin to ask yourself something. In fact, somebody said: Well, the national NAACP said he shouldn't be confirmed. However, the local people within the NAACP who know him best say he should be confirmed. When asked about that, and about the response of the people who know him best, one of the critic's responses was: well, they were duped. You don't dupe a lot of people when you live in Laurel, MS, on issues such as race relations. Everybody knows everybody. Everybody knows where you were in 1967, where you were in 1980, and where you have been in the 1990s.

So I take it personally. I am hurt by the attacks on this fine man. He does

feel strongly about his faith. He is a believing Christian. He is an active participant in the church. He was president of the Mississippi Baptist Association. He was president of the Mississippi Gideon Association.

Is that a problem? Is that a disqualification?

This is the second nomination I have seen this year where it has looked as though if you feel strongly about your faith—your Christian faith—that there is something suspicious about that. Whatever your faith is—I think if you are committed to your faith—it should not be a disqualification from office. One of the things I admire most about JOE LIEBERMAN is that he feels strongly about his faith, and he goes to extra lengths to abide by it, even during the campaign.

I remember during the campaign of 2000 when I came into National Airport. The campaign plane of the Vice Presidential candidate for the Democrats was sitting there at the airport on Saturday. Most of us were campaigning like crazy on Saturday. But not JOE LIEBERMAN. He was fulfilling his commitment to his faith.

So, all of this bothers me. It is an attack on my State. It is an attack on the nominee's religion. It is an attack on his positions on race, which have been inaccurately portrayed. I think this is a real tragedy I am so sorry to see.

I saw a letter in a newspaper just last night from an African American. I think maybe it was a paper in New Jersey. The caption of the letter was ''The Fruit Never Falls Very Far From the Tree''. This was an African American talking about his run for Congress. I guess he was an incumbent House Member, a Democrat, and he was running in the primary. When he got to a particular site, he didn't really have enough equipment to put up his signs. When he started working and scurrying around trying to get it done, Congressman CHARLES ''CHIP'' PICKERING showed up.

He said: We will help you. Take some of our stuff. He didn't win, but Charles ''Chip'' Pickering went on to win. It is a small thing. But it tells you a lot about a man and about a man's son.

Charles Pickering's son worked for me. Chip Pickering is one of the finest young men I have known. He was a missionary behind the Iron Curtain. He was my legislative director, and a great legislator. He not only knew the substance, but he knew the art of the possible. Senator FRITZ HOLLINGS can tell you that we got the telecommunications bill passed because of the brilliance of Congressman CHIP PICKERING, the son of this nominee. This young man has now worked day and night to try to help his dad get through this unfair crucible—now without success.

I feel like I failed him. I have tried to understand: Why is this happening? What is happening here? Is it just about this man? I don't think so. No. I think it is a lot bigger than that. I think it is really directed at future Supreme Court nominees. This is a message to the President. You send us a pro-life conservative man of faith for the Supreme Court, and we will take care that he or she does not get confirmed.

That is what it is really about. But I also think it is a shot at this man. I think it is a personal shot at me. This is a: ''We will show you; you didn't always move our nominees'' payback. But, as I recall, the Judiciary Committee under the Republicans didn't kill a single nominee during the Clinton years in the committee. We did defeat one of them, but we first reported him out of the committee and then defeated him on the floor with a recorded vote. Yes, there were some that didn't get through the process. There were some that took a long time to get through.

But again, I think this is payback. The problem with payback is, where does it ever end? You know: We paid you back. You pay us back. Now we are going to pay you back. Where does it end? Is this the way for the Senate to act? Is this the process which this body should use to confirm judges?

Senator JOE BIDEN, in 1997, said: Hey, these nominees should not be killed in the Judiciary Committee. As he put it, ''Everyone that is nominated is entitled to have a shot, to have a hearing, and to have a shot to be heard on the floor and have a vote on the floor.''

Where in the Constitution does it say that the Senate Judiciary Committee will decide on the confirmation of nominees? The Constitution says the Senate is to give its advice and consent. That's where Senator BIDEN was in 1997. I think a week or so ago he kind of hinted at the same sentiment again, particularly when you have straight party-line votes.

But I think really, under any conditions, these judicial nominees should come to the floor for a vote. It does not take a whole lot of time. But maybe we need to try to find a way to work something such as that out.

But in the meantime, it is obvious that this very fine judge has been treated very badly. I think it is beneath the Senate and its dignity when we do that to nominees.

Judge Pickering will not be the loser. He is and will be revered more than ever in my State. Former Governor William Winter came up and talked about him. The sitting attorney general came up and said: We ought to confirm him. So did the sitting Lieutenant Governor. These are all Democrats.

Again, this man's stature has gone up, not down, in the State. And this whole process probably greatly enhances his son's stature as a Congressman in the State of Mississippi. His head will be high and he will be a sitting judge. And he will handle himself with dignity and honesty, like he always has.

No, he is not the loser. We are the loser. We have lost the services of a good man. And we have demeaned the institution by what has happened in this instance.

Every newspaper in our State—every one—has editorialized and run news stories about this, saying this is wrong. And these newspapers are like the news media up here, they are not exactly your basic Republican-leaning organizations. These are Gannett newspapers, Thompson newspapers, the national newspaper chains. And they rip me regularly, as they do most Republicans and most conservatives. But every one of them, including the Clarion-Ledger in Jackson, MS, the Sun Herald on the Mississippi gulf coast and the Northeast Mississippi Journal have editorialized about how unfair, unfortunate, and really dastardly this deed has been.

I ask unanimous consent that this editorial from the Tupelo Daily Journal be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Tupelo Daily Journal, Mar. 11, 2002]

5TH CIRCUIT FIASCO

ATTACKS ON PICKERING LIKELY TO BE SUCCESSFUL

Twelve years ago, the U.S. Senate approved Charles Pickering's nomination for a federal district court judgeship unanimously. This week, it's likely that President Bush's nomination of Pickering to the U.S. 5th Circuit Court of Appeals won't even make it out of the Senate Judiciary Committee.

Democrats on the committee, under pressure from liberal interest groups, oppose Pickering. They've either bought into or allowed the grossly distorted picture of Pickering as an unreconstructed, Old South segregationist to go unchallenged.

It doesn't matter that Mississippi Attorney General Mike Moore, a well-known figure in the national Democratic Party, led a delegation to Washington last week in support of Pickering and took him letters of support from Democratic Gov. Ronnie Musgrove, Lt. Gov. Amy Tuck and former Gov. William Winter, himself a respected leader in national party circles.

It doesn't matter that black political and civil rights leaders in south Mississippi who have worked with Pickering for decades almost uniformly support his nomination, a fact confirmed when the New York Times—which editorially opposes Pickering's confirmation—sent a reporter to Laurel to look into his relationships with those leaders.

It doesn't matter that the American Bar Association, hardly a conservative bastion, has given Pickering its top rating of ''highly qualified.''

What matters is that Pickering is a political and judicial conservative whose nomination happens to come along at a time when the left is looking to send a message to the president that they'll fight him—and win—on appellate court nominees, including Supreme Court choices.

No one who has been before him in the 12 years he has been on the federal bench has stepped forward to say that Pickering was anything but fair and unbiased. Those who know Pickering know a man whose deep religious faith—an attribute looked upon with suspicion by some of his opponents—has been the impetus for his active role in racial reconciliation efforts in Mississippi. They also know a man whose personal character and

integrity has never been questioned—until now, when the political ends apparently justify the means in some people's minds.

When confronted with his support in Mississippi among the people—Democrat and Republican, black and white—who have known him longest and best, opponents have simply said that those opinions don't matter, or even that Pickering has duped the home folks. They know the real Pickering, they say, and he's a right-wing extremist who'll turn back the clock on civil rights by decades.

This is sheer demagoguery, made all the more deplorable because it exploits Mississippi's easy-mark image to smear a man who doesn't deserve it. The only bright side of all this is the way so many politically and racially diverse Mississippians have rallied to Pickering's defense.

Barring a political miracle, Pickering's nomination appears doomed. This political mugging will say a lot more about the perpetrators than about their victim.

Mr. LOTT. Mr. President, I am going to read it because it sort of sums up what a lot of the editorials are saying in these newspapers.

It is entitled: ''5th Circuit Fiasco.''

Twelve years ago, the U.S. Senate approved Charles Pickering's nomination for a federal district court judgeship unanimously. This week, it's likely that President Bush's nomination of [Judge] Pickering to the U.S. 5th Circuit Court of Appeals won't even make it out of the Senate Judiciary Committee.

Democrats on the committee, under pressure from liberal interest groups, oppose Pickering. They've either brought into or allowed the grossly distorted picture of Pickering as an unreconstructed, Old South segregationist to go unchallenged.

It doesn't matter that Mississippi Attorney General Mike Moore, a well-known figure in the national Democratic party, led a delegation to Washington last week in support of Pickering and took him letters of support from Democratic Gov. Ronnie Musgrove, Lt. Gov. Amy Tuck and former Gov. William Winter, himself a respected leader in national party circles.

Madam President, All those people have been leaders in trying to help move our State forward in many ways, including in race relations. Let me continue from the editorial.

It doesn't matter that black political and civil rights leaders in south Mississippi who have worked with Pickering for decades almost uniformly support his nomination, a fact confirmed when the New York Times—which editorially opposes Pickering's confirmation—sent a reporter to Laurel to look into his relationships with those leaders.

It doesn't matter that the American Bar Association, hardly a conservative bastion, has given Pickering its top rating of ''highly qualified.''

Madam President, this is not in the article, but I will say from my standpoint, that I am always concerned that the American Bar Association looks particularly hard to find some improper demeanor on the bench, or some hint of some misunderstanding of the Constitution, or some slight in a racial area regarding Republican nominees. But no, not in this instance, they found Judge Pickering highly qualified, the highest rating they can give a judge.

Now reading on from the editorial:

What matters is that Pickering is a political and judicial conservative whose nomination happens to come along at a time when the left is looking to send a message to the president that they'll fight him—and win—on appellate court nominees, including Supreme Court choices.

No one who has been before him in the 12 years he has been on the federal bench has stepped forward to say that Pickering was anything but fair and unbiased. Those who know Pickering know a man whose deep religious faith—an attribute looked upon with suspicion by some of his opponents—has been the impetus for his active role in racial reconciliation efforts in Mississippi. They also know a man whose personal character and integrity have never been questioned—until now, when the political ends apparently justify the means in some people's minds.

When confronted with his support in Mississippi among the people—Democrat and Republican, black and white—who have known him longest and best, opponents have simply said that those opinions don't matter, or even that Pickering has duped the home folks. They know the real Pickering, they say, and he's a right-wing extremist who'll turn back the clock on civil rights by decades.

This is sheer political demagoguery, made all the more deplorable because it exploits Mississippi's easy-mark image to smear a man who doesn't deserve it. The only bright side of all this is the way so many politically and racially diverse Mississippians have rallied to Pickering's defense.

Barring a political miracle, Pickering's nomination appears doomed. This political mugging will say a lot more about the perpetrators than about their victim.

Madam President, this is an editorial from a newspaper that certainly isn't known for endorsements, on a regular basis, of Republicans or conservatives. So I think it sums up very well what has happened here.

Now, the larger question is what does it mean for the committee and the Senate? I am not going to let go of this. This is going to stick in my mind for a long time, but I am going to try to look at from a broader perspective.

There are still eight nominees pending before the Judiciary Committee that were sent there last May—I think May 8 or 9——

Mr. MCCONNELL. Ninth.

Mr. LOTT. May 9th for the circuit court: men, women, and minorities who have not even had a hearing to date.

Now, I realize that the majority changed hands in June, but these were the first nominees sent up. They are some of the best intellectually qualified nominees to come before the Senate in a long time.

Judge Pickering who was nominated later on May 25th has endured not one, but two hostile hearings. However, the remaining eight nominees from May 9th have not even their first hearings. Why not?

It is true that district judges have moved along a little better. I think there are over 50 court nominees now pending before the Senate. This cannot continue.

I went through the same thing when I was majority leader. And there were complaints on the other side. A lot of things were done by the other side to tie up the Senate and make it difficult to get our work done. And that is unfortunate. But I think that we are fixing to see the same thing occur from our side this time.

We cannot let stand a plan to deny President Bush his nominees to the federal courts. If they are not qualified by education, by experience, if there are some ethical problems, opposition to them is understandable. Don't move them, don't vote on them, don't confirm them. But if we don't see marked progress in general, and if we don't see an end to the orchestrated character assassinations, the Senate will not be the same for a long time. I don't mean it as a threat. I mean it as a requirement, and, therefore something we should find a way to avoid if possible.

It is hard for me to really express the disappointment and the passion I feel about this because I am so disappointed in how this unfair and unfounded episode has turned out. But I could not let this vote go unnoted or without a response this very night.

So I wish to begin the process by offering a Sense-of-the-Senate resolution. It is a simple one. It basically cites the statistics of the nominations that are pending, the vacancies. There are 96 current judicial vacancies. It does talk about what has happened in previous administrations. And all it says is:

It is the Sense of the Senate that, in the interests of the administration of justice, the Senate Judiciary Committee shall hold hearings on the nominees submitted by the President on May 9, 2001, by May 9, 2002.

Isn't a year long enough to at least have a hearing? That is all it says, just a hearing.

I do want to take a minute to thank President Bush for nominating a fine jurist in Charles Pickering and for sticking by him. I really appreciated the fact he had a press conference yesterday and commenting how fine a man he is and that he should be confirmed. The President also said it is not about this one man; it is about a quality system of justice in our Federal judiciary. That is what has suffered here.

AMENDMENT NO. 3028

Mr. LOTT. I ask unanimous consent that the pending amendment be set aside, and I send an amendment to the desk.

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Nevada.

Mr. REID. Madam President, I was present in a conversation that the majority leader and minority leader had just a short time ago. It is my understanding that the distinguished Senator from Mississippi will allow, if Senator DASCHLE chooses, to offer a second-degree amendment at some subsequent time. The majority leader has not yet decided.

Mr. LOTT. Madam President, I certainly would have no objection to that. That was my understanding. I think we ought to have a full debate. I assume the Democrats are going to vote for the resolution I have offered. If they have

something else they want to offer, fine. Let's have a full debate on it. Maybe that will begin a process that will lead to some changes in the way we are doing things. I hope for the best.

Mr. REID. Continuing my reservation, the majority leader has indicated to me and to the minority leader that he has not decided whether he wants to offer a second-degree amendment. The courtesy of the Senator from Mississippi is appreciated.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT] proposes an amendment numbered 3028:

At the appropriate place, add the following:

"SEC. . FAIR TREATMENT OF PRESIDENTIAL JUDICIAL NOMINEES.

(a) FINDINGS.—The Senate finds that—

(1) the Senate Judiciary Committee's pace in acting on judicial nominees thus far in this Congress has caused the number of judges confirmed by the Senate to fall below the number of judges who have retired during the same period, such that the 67 judicial vacancies that existed when Congress adjourned under President Clinton's last term in office in 2000 have now grown to 96 judicial vacancies, which represents an increase from 7.9 percent to 11 percent in the total number of Federal judgeships that are currently vacant;

(2) thirty one of the 96 current judicial vacancies are on the United States Courts of Appeals, representing a 17.3 percent vacancy rate for such seats;

(3) seventeen of the 31 vacancies on the Courts of Appeals have been declared ''judicial emergencies'' by the Administrative Office of the U.S. Courts;

(4) during the first 2 years of President Reagan's first term, 19 of the 20 circuit court nominations that he submitted to the Senate were confirmed; and during the first 2 years of President George H. W. Bush's term, 22 of the 23 circuit court nominations that he submitted to the Senate were confirmed; and during the first 2 years of President Clinton's first term, 19 of the 22 circuit court nominations that he submitted to the Senate were confirmed; and

(5) only 7 of President George W. Bush's 29 circuit court nominees have been confirmed to date, representing just 24 percent of such nominations submitted to the Senate.

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that, in the interests of the administration of justice, the Senate Judiciary Committee shall hold hearings on the nominees submitted by the President on May 9, 2001, by May 9, 2002.

Mr. LOTT. Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I would like to respond very briefly to the minority leader's comments.

I am a member of the Senate Judiciary Committee. Let me say at the outset that one of the most painful assignments I have found serving in Congress, particularly in the Senate, is to stand in judgment of another person. We are called on to do that regularly in the advice and consent process. It is never easy, particularly when there is controversy and particularly when you end up voting against that person for whatever reason.

I cannot appreciate the pain that the minority leader feels at this moment. A good and close friend of his has not been successful before the Senate Judiciary Committee, and his words, I am sure, were heartfelt about his love for Judge Pickering and his close friendship. Whatever I am about to say I hope will in no way reflect negatively on what is clearly a strong personal friendship between the minority leader and Judge Pickering. But there are two or three points which I would like to make so that they are clear on the record.

I have served on the Senate Judiciary Committee for 4 of the 6 years now that I have been in the Senate. I have witnessed the Senate Judiciary Committee under the control of Republicans, and I have seen it for the 8 months that the Democrats have been in control. I can tell you that the courtesies that were extended to Judge Pickering in terms of a timely hearing were extraordinary.

They were extraordinary because his first hearing was in October of last year, when this Capitol complex was virtually closed down for security reasons. Exceptional efforts were made to keep our word to Judge Pickering that he would have a full hearing. It was impossible to use the ordinary buildings we use, so the hearing was held in the Capitol Building. Many of us stayed over to give him his opportunity for testimony.

At that hearing, it was established that he had some 1,000 or 1,200 unpublished opinions as a Federal district court judge, and we made it clear we wanted to review those before making a final decision. So a second hearing was scheduled. And as soon as those had been reviewed, that hearing was held in February. The hearing went on for the better part of a day under the chairmanship at the time of Senator FEINSTEIN of California.

Judge Pickering was given complete opportunity to explain his point of view and to answer all questions—another timely hearing. That led to the decision today on Judge Pickering's nomination to the Fifth Circuit Court of Appeals.

I could go into detail, but I will not, about why I voted against Judge Pickering. There was one point that was raised by Senator LOTT as minority leader which I must address. It is a point that, frankly, should not be left unresolved on the floor of the Senate. Until Senator LOTT came to the floor and announced the religious affiliation of Judge Pickering, I had no idea what it was. No question was ever asked of Judge Pickering about his religious affiliation—none whatsoever. Nor in any private conversation with any member of the committee was that subject ever raised. To suggest that anyone on this committee voted against Judge Pickering because of his religious belief is just wrong.

I will say this: If anyone ever raises that issue concerning any nominee, I hope they will join me in protesting questioning a person's religious belief, which should have nothing whatsoever to do with the qualifications to serve this country.

That issue never came up. To suggest he was rejected for that reason is just wrong. There were many questions that were raised. Those can be addressed tomorrow, and I am certain they will be by Senator PATRICK LEAHY, chairman of the Senate Judiciary Committee, and others who will comment on the activities of the committee. I will leave that to them entirely.

I do want to make clear for the record one last point. The Fifth Circuit has been a controversial circuit—it is a circuit that includes the States of Texas, Louisiana, and Mississippi—controversial in that since 1994, no vacancy had been filled in the Fifth Circuit until last year when President Clinton submitted the names of three judges to fill vacancies to that Fifth Circuit. Not a single one of his nominees was even given the courtesy of a hearing. Those judges were pending before the Judiciary Committee under the control of the Republican Party for an extraordinarily long period of time. Let me be specific.

Jorge Rangel, nominated in July of 1997, was returned in October of 1998. It sat before the Senate Judiciary Committee under the direction of the Republican Party for 15 months with no action taken. An effort to fill this vacancy in the Fifth Circuit and the nominee was never even given the courtesy of a hearing.

Enrique Mareno, nominated by President Clinton in September of 1999, renominated in January of 2001, was finally withdrawn in March of 2001; 17 months pending before the Senate Judiciary Committee; never given the courtesy of a hearing.

Alston Johnson, nominated April of 1999, finally, his name was withdrawn 23 months later—never even given the courtesy of a hearing in the same Fifth Circuit. Now, the minority leader comes before us and says all of the nominees of President Bush as of last year have to receive immediate hearings before this committee.

Well, let the record reflect that the action taken today on Judge Pickering was the 43rd Federal judge who has been considered by the Senate Judiciary Committee since control of the Senate passed to the Democrats. More Federal judges have been reported out of the Senate Judiciary Committee under Chairman PAT LEAHY, a Democrat, with a Republican President in the White House, than in 4 of the years that the Republicans controlled the Senate Judiciary Committee and President Clinton, a Democrat, was in the White House.

To suggest we are blocking and stopping the efforts of the President to fill judicial vacancies is just wrong and not supported by the facts.

Let me add one last thing. To suggest this is some discriminatory action against people who live in the Fifth Circuit is wrong as well. The fact that Judge Pickering was from Mississippi, frankly, had no relevance as far as I was concerned. Just last year, Judge Edith Clement of Louisiana, nominated by President Bush to fill a spot on the Fifth Circuit, was approved in record time by a unanimous vote on the Senate Judiciary Committee and a unanimous vote on the floor of the Senate.

For the record, so there is no doubt about it, Judge Edith Clement was conservative, a Republican, and a member of the Federalist Society, and none of those things slowed down the consideration of her nomination by the Judiciary Committee. We gave Judge Clement her opportunity to serve, and we gave President Bush his nominee in record time. We extended courtesies to Judge Clement which were denied consistently by the same Committee under Republican leadership when President Clinton was in the White House.

So I think the record has to be clear in terms of where we stand and where we are going. I am troubled that we have reached this impasse, and I hope we can find our way through it. But I hope the record will be clear as we go through this consideration. For those who have argued that someone called Judge Pickering a racist, I have not heard that word used in reference to Judge Pickering, and repeatedly, on both sides of the table, Democrat and Republican, today in the Senate Judiciary Committee, that conclusion was rejected. I personally reject it. I don't believe Judge Pickering is a racist. I believe if you look at his personal history, you will find he did things in the fifties and sixties in Mississippi which he personally regrets, and said as much to the committee.

Let me be honest. We have all done things in our lives that we regret. It should not be held against him, and it wasn't.

He has also done exceptionally good things in the area of civil rights, and that was made a part of the record as well. Judge Pickering was judged on the basis of his service on the Federal district court bench. Good people can reach different conclusions about whether or not his service merited a promotion to the appellate court. A majority of the Judiciary Committee today adjudged that it did not.

I am not going to take any more time, other than to say it is an unfortunate outcome for a close friend of the minority leader, but I think the committee treated him with courtesy, treated his nomination with dispatch, and gave him every opportunity to present his point of view. He was given better treatment by this committee than many of the nominees submitted by the Clinton White House. I think that shows we are going to start a new day when it comes to the Judiciary Committee. We want to work with the White House so that people who have excellent legal and academic credentials, of the highest integrity and with moderate political views, have a chance to serve.

Mr. HATCH. Mr. President, if that is treating a person good, I would hate to see one who is treated badly, is all I can say. I am going to talk a little about Judge Pickering before I am through.

I have been hearing comments about how badly the Clinton nominees were treated. Lately, I have heard Democrats suggesting that their treatment for Bush nominees is payback for how I treated Clinton nominees when I was chairman.

I want to take a moment to defend my record on Clinton nominees. I first want to state that President Clinton got 377 Federal judges confirmed during the time I was either ranking member or chairman of the Judiciary Committee. That is a number which is only 5 short of the all-time record that Ronald Reagan had of 382. President Clinton would have had 3 more than Reagan—385—had it not been for Democrat holds and objections on this floor. Keep in mind President Reagan had 6 years of a favorable Republican Senate. President Clinton had 6 years of the opposition party Senate, where I was chairman, and he still got that many judges through.

By the way, to talk in terms of the 2 or 3 people I have been hearing about all day who did not get hearings, think of the 54 who were left hanging when Bush I left office—54 Republicans. Terry Boyle, who has been renominated by President George W. Bush, has been sitting in committee since May 9. John Roberts, about whom I had a conversation with one of the Justices—and he said John Roberts is one of the two greatest appellate lawyers appearing before the Supreme Court today—has been sitting there since May 9. Both were first nominated by President George H.W. Bush, and were 2 of the 54 nominees that the Democrats left hanging at the end of his Administration.

I admit 6 nominees were put up so late that, literally, nobody could have gotten them through. So say 48 were left hanging. Compare that to when President Clinton left office. By the way, when Bush I left office, there were 97 vacancies, and 54 were left hanging—but we can reduce it to 48 because of the 6 who were probably nominated too late. When President Clinton left office, there were 67 vacancies—30 less than when the Democrats held the committee, when George Bush the first was President. There were 41 nominees left hanging when Clinton left office. Of the 41, there were 9 put up so late that it was a wash; in other words, it was just to make it look good. They could not have gotten through no matter who tried.

In essence, there were 32 nominees left hanging at the end of the Clinton Administration versus 48 who were left hanging at the end of the first Bush Administration. Of those 48 left hanging, I can match the Senator from Illinois and every other Democrat person for person, and much more, with decent, honorable, wonderful people who just didn't make it through. But you haven't heard us come to the floor every day, or in the Judiciary Committee every day, talking about how badly they were treated, even though they were treated badly. People like John Roberts, one of the greatest appellate lawyers in the history of the country.

Think of that—382 for Reagan, the all-time champion, with the opposition party in the minority for 6 of those years, and 377 for Clinton, with the opposition party in the majority for 6 of those years. Comparing the number confirmed to the number nominated, President Clinton enjoyed an 85 percent confirmation rate on the individuals he nominated.

There were only 68 article III Judicial nominees who were nominated by President Clinton, in all of his 8 years, who did not get confirmed. Of those, 3 were left at the end of the 103rd Congress, when the Democrats controlled the Senate. That leaves 65. Of those, 12 were withdrawn by the President, leaving 53. Nine were nominated too late for the Congress and committee to act on them or they were lacking paperwork. That leaves 44. Now, 17 of those lacked home State support, which was often the result of a lack of consultation with home State Senators. There was no way to confirm them without ignoring the senatorial courtesy that we afford to home State Senators in the nomination process. That left 27. One nominee was defeated on the floor, which leaves only 26 remaining nominees.

Of these, some had other reasons for not moving that I simply cannot comment on because of the security of the committee. So in all 6 years I chaired the committee, while President Clinton was in office, we are really only talking about 26 nominees who were left hanging.

During the first Bush administration, when the Democrats controlled the committee, 59 nominees were not confirmed. I don't know the reasons for all of those. There probably were some. But if you look at those 59 nominees and subtract the 1 who was withdrawn, that leaves 58 Bush I nominees who weren't confirmed over the course of 4 years. If you take the 65 Clinton nominees who were not confirmed over my 6 years, and take away the 12 who were withdrawn, that leaves 53.

So at the end of the day, even subtracting only the withdrawn nominees, there were only 53 Clinton nominees the Senate didn't act on in the 6 years I was chairman, while the Democrats allowed 58 nominations to perish in the committee in only 4 year's time. Do not tell me they were abused. That is part of the process. Some of these people we do not have time to get through. There are reasons why they cannot get

through—for a number of them, for instance, there is not support of home State Senators.

Of those 41 nominees left at the end of the 106th Congress, 1 was eventually confirmed in the 107th Congress. Twelve lacked home State support or had incomplete paperwork. That leaves only 20 nominees who did not go forward at the end of the Clinton administration.

There were 41 Clinton nominees left in committee at the end of the 106th Congress when Clinton left office. When Bush left office, there were 54 nominees left in committee, as I said. So the argument that this all began because the Republicans were unfair to Clinton nominees is simply untrue. We were not. I was more fair to Clinton in confirming nominees than the Democrats were to President George H.W. Bush.

I also heard the allegation that Republican inaction during the Clinton Presidency is to blame for the current vacancy crisis. This is untrue. There were only 67 vacancies at the end of the 106th Congress. Today there are nearly 30 more vacancies; 96 after almost a year. Madam President, 11.2 percent of the Federal judiciary is vacant. At the end of my tenure as chairman during the Clinton Presidency, that rate was only 7.9 percent.

We are in the middle of a circuit court vacancy crisis, and the Senate is doing virtually nothing whatsoever to address it.

There were 31 vacancies in the Federal courts of appeals when President Bush sent us his first 11 circuit nominees on May 9 last year, and there are 31—the exact same number—today. We are making no real progress.

Eight of President Bush's first 11 nominees have not even been scheduled for hearings, including John Roberts and Terry Boyle (both of whom were on the nomination schedule of the first President Bush but who did not get a hearing back then). This time around, they have been pending for 309 days as of today. All of these nominees received qualified or well-qualified ratings from the American Bar Association.

A total of 22 circuit court nominations are now pending for those 31 vacancies, but we have confirmed only 1 circuit judge this year and only 7 since President Bush took office.

The Sixth Circuit is half-staffed, with 8 of its 16 seats vacant. That is a crisis. They cannot function appropriately. This crisis exists despite the fact we have seven Sixth Circuit nominees pending motionless before the Judiciary Committee right now.

Although the Michigan Senators are blocking 3 of those nominees by not returning blue slips, the other 4 are completely ready to go. All have complete paperwork, good ratings by the ABA, and most importantly, the support of both home State Senators.

The DC Circuit is two-thirds staffed with 4 of its 12 seats sitting vacant. This is despite the fact that President Bush nominated Miquel Estrada and John Roberts, who have not yet been given a hearing and whose nominations have not seen the light of day since they were nominated better than 300 days ago. There is simply no explanation for this situation other than stall tactics.

The Senate Democrats are trying to create an illusion of movement by creating great media attention concerning a small handful of nominees in order to make it look like progress.

Some try to blame the Republicans for the circuit court vacancy crisis. That is complete bunk. Look at the record.

Some have suggested that 45 percent of President Clinton's circuit court nominees were not confirmed during his Presidency. That number is a bit of Enron-ization. It is inflated by double counting individuals who were nominated more than once.

For example, by their numbers, Marsha Berzon, who was nominated in the 105th Congress and confirmed in the 106th Congress, would count as 2 nominations and only 1 confirmation. If you remove the double counting and count by individuals, without counting withdrawn nominees, President Clinton nominated 86 individuals for the circuit courts and only 21 were not confirmed. That is 24 percent as opposed to 45 percent.

Of those 21 nominees who were not confirmed, 9 lacked home State support, one had incomplete paperwork, and another was nominated after the August recess in 2000. That leaves 10 circuit court nominees who did not receive action, some of which had issues I cannot discuss publicly.

As I said, there are currently 31 circuit court vacancies. During President Clinton's first term, when Republicans controlled the Judiciary Committee, circuit court vacancies never exceeded 21 at the end of any year.

There were only 2 circuit court nominees left pending in committee at the end of President Clinton's first year in office. In contrast, 23 of President Bush's circuit court nominees were pending in committee at the end of last year.

At the end of President Clinton's second year in office, the Senate had confirmed 19 circuit judges, and there were only 15 circuit court vacancies.

In contrast, today, in President Bush's second year, the Senate has confirmed only one circuit court nominee, and there are 22 pending, and 17 of those are considered emergency positions.

At the end of 1995, my first year as chairman, there were only 13 circuit court vacancies left at the end of the year. At the end of 1996, the end of President Clinton's first term and in a Presidential election year, there were 21 vacancies, only 1 higher than the number the Democrats left at the end of 1993 when they controlled the Senate and Clinton was President.

Taking numbers by the end of each Congress, a Republican-controlled Senate has never—never—left as many circuit court vacancies as currently exist today. At the end of the 104th Congress, the number was 18. At the end of the 105th Congress, that number was 14, and even at the end of the 106th Congress, a Presidential election year, that number was only 25. Today there are 31 vacancies in the circuit courts.

Despite all the talk, and lack of action, the unmistakable fact is that there is a circuit court vacancy crisis of 31 vacancies, which is far higher than the Republicans ever let reach, and the current Senate leadership is doing nothing about it. Actually, I should correct myself. They are doing something about it. They are making it grow even larger. They have acted with a deliberate lack of speed, and that is something the American people do not deserve.

Having said this to set the record straight, there are always a few nominations that have a difficult time whether the Republicans or Democrats are in control. I have to admit, I wish I could have gotten a few more through when I was the committee chairman, but everybody who knows, who really watched the process, knew that I pushed people through, against the wishes of a significant number of outside people. I told a number of the conservative groups to get lost because they were basically distorting the judicial process.

Having said all that, let me talk about Charles Pickering because I am disappointed in what happened today. The real problem that many of the interest groups have with Charles Pickering is he does not think as they do. These groups want to impose an ideological litmus test on judicial nominees. They will mount a campaign against any nominee who does not agree with their position on abortion, civil rights, and a host of other issues, and they will try to label anyone who disagrees with them as an extremist who is out of the mainstream. But the key here is that a nominees's personal or political opinion on such issues is irrelevant when it comes to the confirmation process.

The real question is whether the nominee can follow the law, and Judge Pickering has certainly proved that he can. Judge Pickering has demonstrated an ability to follow the law. This is reflected in his low reversal rate of a half percent during his decade-plus tenure as a district court judge.

Although I have heard some of my colleagues complain about his 26 reversals, let's put this in context. Judge Pickering in his nearly 12 years on the Federal bench handled 4,000 to 4,500 cases.

In all of those cases, he has been reversed only 26 times. This is a record to be proud of, not a reason to vote against him.

I suspect many of my colleagues' misperceptions about Judge

Pickering's record as a district judge stem from the gross distortion of that record by the liberal special interest groups. For example, one often-cited area of concern is Judge Pickering's record on Voting Rights Act cases, but the bottom line is that Judge Pickering has decided a total of three of those cases on the merits: Fairley, Bryant, and Morgan. None of these cases was appealed, a step that one can reasonably expect a party to take if it is dissatisfied with the court's ruling.

Moreover, the plaintiffs in the Fairley case, including Ken Fairley, former head of the Forrest County NAACP, have written letters in support of Judge Pickering's nomination. Judge Pickering's qualifications are also reflected in his ABA rating, which some members of the committee have referred to as the ''gold standard'' in evaluating judicial nominees. The ABA, of course, rated Judge Pickering well qualified for the Fifth Circuit.

I also find it ironic that many of the complaints Judge Pickering's opponents have lodged against him pertain to events that occurred before he became a Federal district court judge, a position for which he was unanimously confirmed by both this committee and the full Senate.

The way liberal special interest groups are working and have worked to change the ground rules on judicial confirmations is evident in the nomination of Charles Pickering for the Fifth Circuit Court of Appeals. This is a gentleman who had overwhelming support in his home State of Mississippi from Democrats and Republicans alike, from the Democrat attorney general of the State, and from prominent members of the African-American community.

Those who know Judge Pickering well know he has worked to improve race relations in Mississippi. For example, he testified against the Imperial Wizard of the KKK for firebombing a civil rights activist in Mississippi in 1967, at great risk to both himself and his family. He hired the first African-American Republican political worker in Mississippi in 1976; represented a black man falsely accused of robbing a 16-year-old white girl in 1981 and won the case for him; chaired a race relations committee for Jones County, Mississippi, in 1988; served on the board of the Institute of Racial Reconciliation at the University of Mississippi since 1999; and worked with at-risk African-American youth in Laurel, Mississippi, in 2000.

I have to say I was pleased that my colleagues on the other side said they do not believe he is a racist and they do not believe that such a case can be made, and they were disappointed that some tried to make it.

I say, in addition, Judge Pickering has compiled an impressive record as a Federal district court judge. During his more than 11 years on the bench, he has disposed of an estimated 4,000 to 4,500 cases, but he has been reversed only 26 times. This means his reversal rate is roughly one-half of 1 percentage point and is lower than the average reversal rate for Federal district court judges in this country.

Despite this impressive career, Judge Pickering had become the target of a smear campaign instigated and perpetrated by liberal Washington interest groups and lobbyists with their own political agenda, some of whom called him, in essence, a racist. These groups painted a caricature of a man that bears little resemblance to reality, all in the name of attempting to change the ground rules for the judicial confirmation process and impose their political litmus test for all of President Bush's judicial nominees.

We are now seeing the same thing starting with another circuit court of appeals nominee, D. Brooks Smith, with the same type of approaches they have used against Judge Pickering.

We had a number of Senators say they voted against Judge Pickering because of his 26 reversals, some of which they considered questionable in the areas of voting rights, in the area of civil rights, in the area of prisoners' rights, and in the area of employment rights. We blew those arguments away today because we cited nearly every case about which they are complaining. They claim Judge Pickering did not follow settled law, and we showed that there was not settled law in many of those cases.

We did not hear those cases really argued today from the principal people who argued them before. They could not. So what did we hear an argument on? The Swan case. Now what was the Swan case? The Swan case the case of a cross burning on the lawn of an African-American family.

I might mention that is a vicious, rotten, lousy thing for anybody to do.

Of the three boys who did it, one of them was a vicious racist who had shot into the house with a gun. Because two of them cooperated, the Justice Department prosecutors gave them basically a giveaway, easy sentence. The third was absolutely drunk at the time. He had not shot into the home, he had not issued any racist comments, but he was with them. He did not think he did anything wrong. He contested the case, lost, and under the mandatory minimum he had to be sentenced to 7 years.

The judge did not think that was right, that the other two really were as or more culpable, and when he looked and found out that this young man had never made a racist comment and he was drunk at the time, he thought it was a tremendous injustice. So what he did was he complained to one of his friends, Frank Hunger, who was with the Justice Department at the time, but not at the Civil Rights Division at the Civil Division. Swan still got a sentence of 27 months, a fairly long time when his two co-defendants got only home confinement and probation.

Because he talked to Frank Hunger, who was with the Civil Division, not the Civil Rights Division, we had efforts to paint that as a tremendous violation of ethics. Hardly. Hunger does not even remember the conversation and is one of the strongest supporters of Judge Pickering, a Democrat from the Clinton Administration Justice Department. He is very disappointed with what happened to Judge Pickering's nomination.

There are other things I would like to say, but I know my colleague would like to speak. I will close with this: I am sorely disappointed with the vote on Judge Pickering's nomination. I am sorely disappointed with the way these outside groups tried to paint Mississippi as the old South, prejudiced, rotten, acting in ways that fly in the face of civil rights, when there have been so many strides made, part of them made because of the efforts of Judge Charles Pickering.

I do not understand this type of thing. In each case in which a nominee was stopped in Committee, I have wondered why they were stopped.

I do not live in Mississippi, but I feel for the people of Mississippi because this action today, it seems to me, is a condemnation of a State that does not deserve it, and a condemnation of a Federal judge who went through the Senate the first time unanimously, who has served well for nearly 12 solid years, and who now has a reputation besmirched because of what I consider to be phony allegations which should never have been accepted.

I am disappointed. But unfortunately, that is the way it is around here. I hope we do not have to put up with much more of this in the future.

I notice my colleagues want to speak, so I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, it is my understanding the Senate is still on S. 517; is that right?

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. The Senator from Arizona is still present. It is my understanding he is not going to offer his amendment tonight. Is that right?

Mr. KYL. Yes.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that the Senate now proceed to a period for morning business with Senators allowed to speak therein for a period not to exceed 10 minutes.

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

NOMINATION OF CHARLES PICKERING

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, one of our colleagues earlier, in talking about the Pickering nomination, talked about the difficulty of making judgments. Of course, that is what they