

Judge Pickering's record on the bench shows that he, in good faith, does understand the difference between the law and private views, and that he has followed the law regardless of personal beliefs.

Judge Pickering has never had an abortion case during his 11 years on the bench, but he has ruled on cases in which the issue of sexual privacy was involved.

Conveniently, opponents ignore Judge Pickering's record on gay issues. It is not surprising that Log Cabin Republicans, the largest, national gay Republican organization, recently issued a press release calling on this Committee to approve the nomination of Judge Pickering and to send it to the floor of the U.S. Senate.

Let me quote from the release. According to Rich Tafel, the executive director of Log Cabin Republicans:

Judge Pickering reiterated to me his strong belief that all Americans should be treated equally under the law, including gay and lesbian Americans, and his record as a federal judge clearly demonstrates it.

They go on to say:

Among several cases he has heard, two key cases from 1991 and 1994 demonstrated Pickering has followed the principle of equality under the law for gay Americans going back over a decade.

In 1991, Pickering sharply rebuked an attorney who tried to use a plaintiff's homosexuality in a fraud trial. "Homosexuals are as much entitled to be protected from fraud as any other human beings," Pickering instructed the jury. "The fact that the alleged victims in this case are homosexuals shall not affect your verdict in any way whatsoever."

In 1994, an anti-gay citizens group in the town of Ovett, Mississippi launched a crusade of intimidation and threats to drive out Camp Sister Spirit, a lesbian community being built by a lesbian couple. When the group took Camp Sister Spirit to court, Judge Pickering threw their case out.

They go on:

His civil rights record is long and distinguished. In 1967, Judge Pickering testified for the prosecution in a criminal hate-murder case against Ku Klux Klan Imperial Wizard Sam Bowers in the death of an African American civil rights worker. When Jones County, Mississippi schools were racially integrated in the 1970's, Judge Pickering and his wife kept their children in the public school system when other white families removed their children. He was a featured speaker at Mississippi NAACP meetings as far back as 1976, when he was chairman of the Mississippi GOP.

In 1981, he defended an African American man who was falsely accused of robbing a white girl at knife point, forcing the case to a second trial after a hung jury and an eventual acquittal. In 1988, he convened and chaired a bipartisan, biracial committee to promote better race relations in Jones County, Mississippi.

And then remarkably Tafel says:

The judge who threw out the anti-Camp Sister Spirit case and rebuked homophobia from the bench in the Deep South over ten years ago deserves a promotion, not a rebuke.

That is what Tafel said.

I fear that the Judiciary Committee was not as fair to Judge Pickering's

record. I am greatly disappointed and profoundly concerned for our country.

What is now occurring is far beyond the mere tug-of-war politics that unfortunately surrounds Senate judicial confirmation since Robert Bork. My Democrat colleagues are out to effect a fundamental change in our constitutional system. Rather than seeking to determine the judiciousness of a nominee and whether a nominee will be able to rule on the law or the Constitution without personal bias, my Democrat colleagues are out to guarantee that our judges are in fact biased. And certainly no person who holds certain religious convictions need apply.

In the America that the Senate Democrats would reshape, citizens will have to worry about the personal politics of the judge to whom they come for justice under the law.

The legitimacy of our courts, and especially the Supreme Court, comes from much more than black robes and a high bench. It comes from the people's belief that judges and justices will apply a judicial philosophy without regard to personal politics or bias.

What my Democrat colleagues are pursuing is an end to the independence of our judiciary with unforeseeable, unintended consequences to the strength of the Republic.

Today is the Ides of March. I would call on my Senate colleagues to "Beware." The fight they started with Judge Pickering is one that others may end. I hope, however, to quote Shakespeare further, that they have not crossed the Rubicon, that the die is not cast.

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

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

COMMENDING SENATOR LEAHY AND THE JUDICIARY COMMITTEE

Mr. REID. Mr. President, I have sat in the Chamber for several hours, all last night and this morning, and when I have not been right here physically in the Chamber, I have listened to some of the statements that have been made regarding what the Judiciary Committee did yesterday; that is, do their job.

The main reason I am here—and it is coincidental my friend is in the building someplace; I saw him just a few minutes ago, Senator LEAHY, the chairman of the Judiciary Committee—during all this process, when the minority has been criticizing the committee, there has not been a word said about Senator LEAHY positive in nature.

I personally believe, speaking on behalf of 50 other Democrats—and if the truth were known, many of the Repub-

licans—that there is not a Senator in this body who is held in higher regard than Senator LEAHY. But even if every Senator in the Senate had no regard for Senator LEAHY, the people of Vermont and the people of America hold him in high regard.

Here is a man who started talking about landmines and how bad they were before it became popular to do so. He was the first to speak out against landmines.

It is hard for me to get out of my mind a trip I took to Africa, Angola. Every place you go there, people are missing arms and legs. The No. 1 business is fixing people with prostheses, mainly women and children, because they are the ones who go out in the fields.

Senator LEAHY has spoken about landmines and our need to do something about them. And we have done things about them.

As to nutrition programs for children—principally children but also people less fortunate than everyone in this Chamber today—Senator LEAHY led the charge with Senators DOLE and LUGAR to do something about nutrition programs so that this land of plenty should not have hungry children and people.

In talking about constitutional rights, there is no one—no one—who has been more protective of our Constitution than Senator LEAHY. The first amendment is something he is known for protecting.

Who was the one who slowed down the antiterrorism bill? It was done by Senator LEAHY. And after the bill was written, people gave him accolades for doing that. It was a good bill, and it was as good a bill as it was because Senator LEAHY had the guts—for lack of a better word—after September 11, to say: Whoa. This is the United States. We have a Constitution.

Probably the leading exponent of the Internet, other than Senator LEAHY, is the Presiding Officer, but Senator LEAHY was using his computer before I even knew what one was. He really was one of the first to use, in a modern way, the computer.

Now, the two of you—I am referring to Senator LEAHY and the Presiding Officer, Senator WYDEN—have done wonderful things as the co-leaders of a task force, assigned by Senator DASCHLE, to bring the Senate Democrats up to snuff on the new technology around the country. And a good job has been done there.

One of the really thankless jobs in the Senate is to be a chairman of the Foreign Operations Subcommittee of Appropriations. Senator LEAHY is a person who has a lot of seniority and would have his pick of many different subcommittees. There are 13 of them on Appropriations in the Senate. But he has taken the Foreign Operations Subcommittee because he believes it renders a service to this body, to the country, and the world. It is difficult, but he has been judicious in his leadership of that subcommittee.

I could go on and describe what Senator LEAHY has done that has made a difference in this country. But for people to criticize his chairmanship of the Judiciary Committee is something I will not allow to happen without speaking out.

I am not only proud of Senator LEAHY, but I am proud of the Judiciary Committee—not for what they did yesterday or did not do yesterday—because I am proud of the fact that they have tremendous responsibility.

When I served in the State legislature, I served on the Judiciary Committee. It seemed then, and it seems now in this body, that every difficult issue comes to the Judiciary Committee. Whether it is antiterrorism legislation, abortion matters, or judicial nominations, all the tough stuff comes to the Judiciary Committee. Those 19 people who serve on the Judiciary Committee have a very tough task, led by the senior Senator from Vermont.

(Mr. LEAHY assumed the chair.)

Mr. REID. I rise to defend the Senate Judiciary Committee, not for what they did or didn't do yesterday but because I believe they have a tremendously difficult job. I also wish to defend individually the members of the Judiciary Committee—the Democratic members specifically—on unfounded attacks against these men and women who voted their conscience on the nomination of a judge. This judge was being asked to be elevated to the second highest court we have. The only one above it is the Supreme Court. Reasonable people can disagree about whether this man deserved a promotion, given his record as a judge. I am terribly concerned, however, that some people, even some colleagues, are making this committee vote over one person into an unfortunately acrimonious fight.

It is not the vote of people of goodwill on the confirmation of a judge but the voices of anger and disappointment that will hurt our institution.

I hope we are not entering the era in which any disagreement is vilified and harsh, inappropriate rhetoric is employed to make points with the fringes. We have to have disagreements here. That is what this institution is all about. We have an aisle here that separates Democrats from Republicans. We have different philosophies about a lot of issues. The fact that there was a person who was not approved by a committee doesn't mean the institution is falling apart. It shows the strength of the institution. The American people should be glad we don't agree on everything.

I have heard a lot of talk, as I have listened since yesterday evening, about religion. I have had three Democratic Senators come to me and say they had no idea what Judge Pickering's religion was. I have since learned he is a Baptist. I don't think it had anything to do with what happened. I know it had nothing to do with what his religion is. I never heard it mentioned in

the hearings I watched. It was not anything I read about in the newspaper. This is just a red herring people have thrown out to try to make this into a much more difficult situation than it should be.

Whether a nominee goes to a church, a temple, a mosque, or not, has not been used by Congress in the consideration of any judicial nomination, and it should not be. Article VI of the Constitution requires that no religious test shall ever be required as a qualification for any office or public trust under the United States. But the responsibility to advise and consent on the President's nominees is one that the Senators take very seriously.

I have attended meetings where individual Senators have been very concerned about what they do on any particular issue, whether it deals with antiterrorism, a specific part of that legislation, whether it deals with a specific matter dealing with abortion, or a judicial nomination. Some of our Democratic Senators have been receiving calls and criticism based on their religious affiliations.

The Judiciary Committee is made up of Catholics, Jews, Protestants. People who are Democratic members of that committee have been receiving phone calls since last night saying: You did this because you are a Jew; you don't like Baptists; you are Catholic; you don't like Baptists. This is really a big stretch.

There are strong views on both sides regarding this matter of yesterday. But so what? There is nothing wrong with that.

One of the subjects I want to touch on briefly today is to express some concern about statements from the administration, including from the President, that the Senate's treatment of judicial nominees "hurts our democracy." His statement is unsettling, unfounded, and it is a misunderstanding of the fundamental separation of powers in the Constitution, the checks and balances in the Founders' design.

In our democracy, the President is not given unchecked powers to pack the courts and give lifetime appointments to anyone who shares his view. Instead, the Constitution provides a democratic check on the power of appointment by requiring the advice and consent of the Senate.

This little document was given to me by Senator ROBERT BYRD. He signed this little worn document. It means a lot to me personally. I carry it with me almost every day. Sometimes I forget it, but not often. It gets in the way of a lot of things we try to do around here. The Constitution gets in our way because the Constitution prevents us from doing certain things.

We have three separate but equal branches of government. That is the way it is. This little document established three separate but equal branches of government. The legislative branch of government has all the power that the executive branch of

government has and all the power the judicial branch of government has. We have responsibilities also given to us by the Constitution. For someone to say that the Senate's treatment of judicial nominees hurts our democracy is a terrible disappointment.

George W. Bush is President of the United States, not King of the United States. He is President Bush. He is President George, not King George.

I also want to take a minute and respond to the criticism that circuit court nominees are being treated unfairly. I believe nothing could be further from the truth. By having fair hearings and voting on nominees, up or down, the Judiciary Committee is proceeding as it should. Unlike the many judicial nominees who did not get hearings or were accorded a hearing but were never allowed to be considered for a vote by the committee, we are trying to accord nominees whose paperwork is complete and whose blue slips are returned both a hearing and a fair up-or-down vote.

Senator DASCHLE on this floor and in press conferences has said that we are not going to be in a payback mode. We are not going to treat them like they treated us. If we did, Judge Pickering would not have had two hearings. I said last night in closing, after I listened to all the speeches, as we were going out: Isn't it interesting the item of business today, Friday, that what we are going to do is a judicial approval. We voted on a judge. We approved an Arizona judge. Arizona has two Republican Senators. This is not payback time.

Until Judge Edith Clement received a hearing on her nomination to the Fifth Circuit court last year, there had been no hearings on Fifth Circuit nominees since 1994 and no confirmations since 1995. If Senator LEAHY wanted to get even, he had a lot of even to get because he was not very well treated as a ranking member of that committee. In 1999 the Fifth Circuit declared an emergency because it had three vacancies that had not been filled. Last year, in 2001, we were able to confirm the first new judge in the Fifth Circuit in 6 years.

Jorge Rangel was nominated to the Fifth Circuit in 1997 by Bill Clinton and never received a hearing on his nomination or a vote by the committee—never. His nomination to a Texas seat on the Fifth Circuit languished without action for 15 months.

Enrique Moreno was first nominated to the Fifth Circuit in 1999 and never received a hearing on his nomination or a vote by the committee. His nomination to a Texas seat on the Fifth Circuit languished without action for 17 months.

H. Alston Johnson was first nominated to the Fifth Circuit in 1999 and never received a hearing on his nomination or a vote by the committee in 1999, 2000, or the beginning of 2001. His nomination to a Louisiana seat on the Fifth Circuit languished without action for about 2 years.

In contrast, under the Leahy-led Judiciary Committee, President Bush's nominees to the Fifth Circuit: Edith Brown Clement and Judge Pickering, were treated fairly. Both received hearings less than 6 months after their nominations. In fact, Judge Clement was the first Fifth Circuit nominee to receive a hearing since Judge James Dennis had a hearing when Senator BIDEN chaired the Judiciary Committee in 1994. She is the first person confirmed to that circuit since Judge Dennis's confirmation almost 7 years ago.

Those who assert that the Democrats have caused a vacancy crisis in the Federal courts are, regrettably, ignoring recent history. At the end of the 106th Congress, December 15, 2000, there were 76 vacancies on the Federal courts. There were 80 when President Bush took office. There were an unusual number of retirements taken by Federal judges during the first 6 months of this Republican President. By the time the Senate was permitted to reorganize after change in minority, the number reached 111. Since then, 41 judicial nominees have been confirmed, and another one was confirmed this morning. There will be another one on Monday. There are currently nine vacancies due to retirements and deaths, but our rate of confirmation is greater than the rate of attrition. We have made more progress than was made in 4 of 6 years of Republican leadership.

On January 3 of last year, there were 26 vacancies on the Federal appellate courts, some of these seats had been vacant for years, since 1994, 1995, 1996, 1997, 1998, 1999, and 2000. Because of these long standing vacancies, President Clinton renominated nine court of appeals nominees who had either not been given a hearing or a vote by the Senate Judiciary Committee under Republican leadership. None of those nominees received hearings or votes last spring before the change in majority, and in fact no nominees were confirmed by the time the Democrats became the majority.

By the time the Senate was permitted to reorganize last summer there were 32 vacancies on the circuit courts. Since that time, an additional six vacancies have arisen on the circuit courts. In spite of the extraordinary rate of attrition since the presidential election, combined with the number of long-standing vacancies that were not acted upon during years of Republican control, we have kept up with the rate of attrition and exceeded it. We are doing what the Republican majority did not do: keep up with the rate of attrition and move in the right direction. While there are now 31 seats open on the appellate courts—most of which were left vacant by Republican tactics in the previous six years—seven nominees to the court of appeals have already been confirmed, and next week we will have a hearing on another circuit nominee who I hope will turn out to be uncontroversial and well regarded

by people from both sides of the aisle. Our task is made easier when the President works with members of both parties to nominate consensus nominees who are not outside of the mainstream and whose record demonstrates that they will follow precedent—not try to find a way around it.

The one thing I have not mentioned, Mr. President, is not only have we had a change in leadership, but keep in mind what happened since the change in leadership: September 11. We didn't have places to hold hearings. I attended a hearing down here in the Capitol. People were jammed into this room. I don't think most people would have had the hearing. Senator LEAHY decided to have the hearing. If that wasn't enough, we had an anthrax scare that closed down our building, and 50 Senators in the Hart Building were told they couldn't come in and their staffs couldn't come in. That anthrax threat was directed toward Senator DASCHLE. Then we had one directed toward Senator LEAHY.

As I said as I began my remarks today, there should be accolades given to the chairman of the Judiciary Committee for what he has done to allow the process to proceed as fast as it has. Our friends on the other side of the aisle didn't even have excuses for holding up action. This Judiciary Committee has had lots of reasons for holding it up, but they pushed it ahead anyway. September 11, anthrax—they go ahead anyway.

Through the efforts of the Democratic Senators on the Senate Judiciary Committee 14 hearings have been held on judicial nominees. In only nine months of Democratic leadership, seven circuit court nominees have been confirmed. Only seven circuit court nominees were confirmed on average in each year of Republican leadership. During the Republican majority in the past six years, there was even one year in which no, zero, court of appeals nominees were voted out of Committee.

At the beginning of the year, Senate Judiciary Committee Chairman LEAHY outlined his plan to reform the process and practices used in the past, under Republican leadership, to deny Committee consideration of judicial nominees. Almost 60 judicial nominees never received a hearing by the Senate Judiciary Committee or received a hearing but were never voted on by the Committee. We are holding more hearings for more nominees than in the recent past. We have moved away from the anonymous holds that so dominated the process from 1996 through 2000. We have made home State Senators' blue slips public for the first time.

Mr. President, I repeat, as a Senator, there is no more difficult committee on which to serve than the Judiciary Committee. The issues are complex, difficult, hard. But this Judiciary Committee is one that has done extremely well. And if there were a Super Bowl,

this committee would be placed in it. If there were a coach of the year, it would be the chairman of the Committee, Senator PAT LEAHY.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. SMITH of Oregon. I thank the Chair.

(The remarks of Mr. SMITH are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SMITH of Oregon. I thank the Chair, and I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

STATES WITH MORE GUNS HAVE MORE GUN DEATHS AMONG CHILDREN

Mr. LEVIN. Mr. President, a few weeks ago the Harvard School of Public Health released a study that shows children are dying from gun violence at higher rates in States with higher levels of gun ownership. The study, "Firearm Availability and Unintentional Firearm Deaths, Suicide, and Homicide among 5 to 14 Year Olds," appears in the February 2002 issue of The Journal of Trauma.

According to Center for Disease Control and Prevention statistics cited in the study, only motor vehicles and cancer claim more lives than do firearms among children 5 to 14 years old. The Harvard study presents evidence of a correlation between the level of gun ownership in a State and the number of gun related deaths on the State level. The study asserts that children living in the five States with the highest levels of gun ownership were more than 16 times more likely to die from unintentional firearm injury, almost seven times more likely to die from firearm suicide and more than three times more likely to die from firearm homicide than children in the five States with the lowest levels of gun ownership.

Most fatal firearm accidents and suicides occur when children and teens discover firearms at home that have been left loaded or unsecured. The Child Access Prevention Act is a common sense approach that attempts to address one part of this problem. This legislation would hold adults who fail to lock up a loaded firearm or an unloaded firearm with ammunition accountable. Adults who fail to lock up their firearm and ammunition would be held liable if the weapon was taken by a child and used to kill or injure another person or him or herself. The bill would also increase the penalties for selling a gun to a juvenile and create a gun safety education program that includes parent-teacher organizations