we can come up with a finite list of amendments, as does Senator BINGAMAN. If we do that, then we are going to continue to work on this bill and do everything we can to complete it the week we get back. If we don't get a finite list of amendments today, I believe the majority leader will not go to the energy bill when we get back after the recess.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 517, which the clerk will report.

The bill clerk read as follows:

A bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

Pending:

Daschle/Bingaman further modified amendment No. 2917, in the nature of a substitute.

Feinstein modified amendment No. 2989 (to amendment No. 2917), to provide regulatory oversight over energy trading markets and metals trading markets.

Kerry/McCain amendment No. 2999 (to amendment No. 2917), to provide for increased average fuel economy standards for passenger automobiles and light trucks.

Dayton/Grassley amendment No. 3008 (to amendment No. 2917), to require that Federal agencies use ethanol-blended gasoline and biodiesel-blended diesel fuel in areas in which ethanol-blended gasoline and biodiesel-blended diesel fuel are available.

Bingaman amendment No. 3016 (to amendment No. 2917), to clarify the provisions relating to the Renewable Portfolio Standard.

Lott amendment No. 3028 (to amendment No. 2917), to provide for the fair treatment of Presidential judicial nominees.

Lott amendment No. 3033 (to amendment No. 2989), to provide for the fair treatment of Presidential judicial nominees.

Lincoln modified amendment No. 3023 (to amendment No. 2917), to expand the eligibility to receive biodiesel credits and to require the Secretary of Energy to conduct a study on alternative fueled vehicles and alternative fuels.

Kyl amendment No. 3038 (to amendment No. 3016), to provide for appropriate State regulatory authority with respect to renewable sources of electricity.

AMENDMENT NO. 3038

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 4 minutes of debate to be equally divided in the usual form on the Kyl amendment No. 3038.

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I will go ahead and use the 2 minutes in opposition to the Kyl amendment, and then the sponsor, Senator KYL, will use the final 2 minutes.

The main reason to oppose this amendment is that it totally eliminates, if adopted, any kind of provision in this bill that would move us toward more use of renewable fuels in the future.

We need to diversify our supply of energy in this country. We need to be less dependent on some certain specific sources and more dependent on new technology. That is possible. It is happening. It is not happening as quickly as it should.

Ninety-five percent of today's new power generation that is under construction is gas fired. That is fine as long as the price of gas stays low. But if the price of gas goes back up to what it was 18 months ago, then we are going to see a serious repercussion in the utility bills of all consumers.

This underlying amendment, which the Kyl amendment would eliminate, tries to, in a very modest way, move us toward more use of renewables. It provides that we have 1 percent in the year 2005. Various utilities around this country would be required to produce 1 percent of the electricity they generate from renewable sources. That is not an excessive demand. It goes up in very small amounts each year thereafter.

I believe strongly that the renewable portfolio standard we have in the bill is a good provision. The suggestions Senator KYL and others have made that this is going to drastically increase everyone's electricity bills is not borne out by the analyses that have been made. The Energy Information Administration has analyzed this. At the request of Senator MURKOWSKI, they have concluded that this does not raise energy prices.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, let me give you the 10 reasons we should support the Kyl amendment.

No. 1, the Bingaman amendment is the command-economy amendment, a 10-percent mandate, and the Kyl amendment is for State choice.

No. 2, the Bingaman amendment is very costly, at $88 billion over 15 years and then $12 billion each year after that—paid for by the electricity consumers.

If you would like to know how much your electricity consumers are going to be paying under the Bingaman amendment, I have all the information right here. You had better consult this before you vote against the Kyl amendment.

No. 3, the Bingaman amendment is discriminatory. The Bingaman amendment provides that some areas subsidize people in other parts of country.

No. 4, hydro is not included. Yet, of all the renewables, hydro is about 7 percent of the electricity production. The other renewables are only about 2 percent.

No. 5, it will benefit just a few companies. According to the Energy Information Administration, wind is the only economical way to produce this power, and it is concentrated in just a few areas.

Do you know who these few special interests are? You should find out before you vote against the Kyl amendment.

No. 6, renewables are not reliable. If the Sun doesn't shine, if the wind does not blow, and if water doesn't flow, you don't get energy. But you do out of coal, gas, and nuclear.

No. 7, we are already subsidizing the renewable fuels to the tune of $1 billion a year.

There is a big difference between encouraging, which we are doing, and compelling.

No. 8, the administration supports the Kyl amendment and opposes the Bingaman amendment.

No. 9, biomass from Federal land does not count.

No. 10, there is no principal reason to discriminate against public and private power; yet private power is included in the Bingaman amendment and public power is excluded.

I will throw in a bonus reason.

The No. 11 reason to vote for the Kyl amendment and against Bingaman is this is the opposite of deregulation, which was supposed to be the whole point of the electricity section of the pending legislation. The 10-percent mandate is regulation and not deregulation.

I urge you to support the Kyl amendment.

RENEWABLE PORTFOLIO STANDARD APPLICATION

Mr. LEVIN. Mr. President, I commend the Chairman for his fairness and diligence in setting a goal for energy suppliers to meet a renewable portfolio standard that ensures power supply from a diverse mix of fuels and technologies. I thank the Chairman and his staff for working with my staff to answer questions concerning how the renewable portfolio standard would work. We understand the definition for qualifying facilities covers existing hydro facilities including pumped storage. This is important to the State of Michigan and we appreciate the clarification.

Ms. STABENOW. Mr. President, I echo the statements of the senior Senator from Michigan, and thank the Chairman for his work on developing a strong renewable portfolio standard. My question is whether renewable power could be measured by plant generating capacity or throughout to the customer.

Mr. BINGAMAN. That is correct. Pumped hydro is included as an existing renewable. With regard to how renewable power is measured, we intend the Secretary of Energy or the Federal Energy Regulatory Commission would set a normalized level for all hydro facilities, taking into consideration capacity and generation at normal or historical average water flows. For other renewable technologies, the volume is calculated based on actual generation. There has been some misunderstanding about the Texas plan, on which my amendment if modeled. The Texas statute set an overall increase in capacity,

but in the implementation the requirement was converted to a generation measure. A generation metric is critical to ensure efficient operation of these facilities.

Mr. LEVIN. I thank my friend from New Mexico, the Chairman of the Energy Committee.

Ms. STABENOW. I thank my friend from New Mexico.

The ACTING PRESIDENT pro tempore. All time has expired.

Mr. KYL. Mr. President, I ask unanimous consent that two letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

COALITION FOR AFFORDABLE AND RELIABLE ENERGY,
March 19, 2002.

Senator JON KYL,
Hart Senate Office Building,
U.S. Senate, Washington, DC.

DEAR SENATOR KYL: The Coalition for Affordable and Reliable Energy (CARE) endorses your amendment to the Renewable Portfolio Standard (RPS) provisions of the Energy Policy Act (S. 517). While CARE strongly supports the increased use of all domestic energy resources, including renewable forms of energy, we are opposed to prescribed national mandates and timetables for the use of specific energy resources.

CARE is concerned that mandating the use of particular sources of energy will substantially increase the cost of electricity and may be difficult to achieve. Your RPS amendment will, instead, permit states to appropriately consider their individual electricity needs and their ability to meet those needs in affordable and reliable ways. Under your amendment, states will also be free to significantly enhance the use of renewables to generate electricity without the burden of Federal mandates and timetables.

Senator Kyl, on behalf of CARE's broad and diverse membership, I commend you for offering this amendment to the Renewable Portfolio Standard provisions of S. 517 and urge its adoption.

Sincerely,

PAUL OAKLEY,
Executive Director.

ELECTRIC CONSUMERS' ALLIANCE,
Indianapolis, IN, March 14, 2002.

Hon. JON KYL,
U.S. Senate,
Hart Bldg., Washington, DC.

DEAR SENATOR KYL: As the Senate debates energy legislation, Electric Consumers' Alliance commends your attention to these critical policy issues.

As your consideration moves to the finer points of legislation, we strongly urge you to take a thoughtful approach to the issue of Renewable Portfolio Standards—the amount of electric power that must come from certain renewable sources.

While our group favors a progressive approach to setting goals for the production of green power, we strongly oppose provisions that would set a hard percentage goal that must be attained in any given year. We commend the amendment proposed by Sen. Kyl as a balanced approach to this issue.

From our perspective as the spokesgroup for tens of millions of residential small business ratepayers, artificial targets are unwise for two reasons. First, they hardwire in goals that may prove to be unreasonable (or too lenient) in future years. This may have the effect of indirectly raising consumer prices or sending distorted signals to the market. In other words, good intentions could (and likely will at some point) go astray.

Second, a set percentage goal deprives states of the ability to address these issues and craft a resolution on the basis of local conditions. For instance, economically efficient renewable energy may be much more achievable in rural and sunbelt states that have the potential to develop solar and wind energy.

In conclusion, as you consider the issue of renewable portfolio standards, we urge your support of the flexible approach found in the Kyl amendment.

Sincerely,

ROBERT K. JOHNSON,
Executive Director.

Mr. KYL. Mr. President, have the yeas and nays been ordered on this amendment?

The ACTING PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. KYL. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alabama (Mr. SHELBY) is necessarily absent.

I further announce that the Senator from Virginia (Mr. WARNER) is absent on official business.

I further announce that if present and voting the Senator from Virginia (Mr. WARNER) would vote ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 40, nays 58, as follows:

[Rollcall Vote No. 55 Leg.]

YEAS—40

Allard	Enzi	Miller
Allen	Frist	Murkowski
Bennett	Gramm	Nickles
Bond	Hagel	Roberts
Bunning	Hatch	Santorum
Burns	Helms	Sessions
Byrd	Hutchinson	Smith (NH)
Campbell	Hutchison	Stevens
Cleland	Inhofe	Thomas
Cochran	Kyl	Thompson
Craig	Lott	Thurmond
Crapo	Lugar	Voinovich
DeWine	McCain	
Domenici	McConnell	

NAYS—58

Akaka	Durbin	Lieberman
Baucus	Edwards	Lincoln
Bayh	Ensign	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Fitzgerald	Nelson (NE)
Breaux	Graham	Reed
Brownback	Grassley	Reid
Cantwell	Gregg	Rockefeller
Carnahan	Harkin	Sarbanes
Carper	Hollings	Schumer
Chafee	Inouye	Smith (OR)
Clinton	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kennedy	Stabenow
Corzine	Kerry	Torricelli
Daschle	Kohl	Wellstone
Dayton	Landrieu	Wyden
Dodd	Leahy	
Dorgan	Levin	

NOT VOTING—2

Shelby	Warner

The amendment (No. 3038) was rejected.

Mr. REID. I move to reconsider the vote.

Mr. BINGAMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I ask unanimous consent that at 12 noon today, Senator LOTT's amendment No. 3033 be considered a first-degree amendment, and that it be laid aside for the amendment which is at the desk.

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

Mr. REID. I further ask unanimous consent that there be 3 hours for debate on both amendments, beginning at noon today, equally divided between the chairman and ranking member of the Judiciary Committee, or their designees; that at the conclusion of that time, the Senate vote on Senator LEAHY's amendment, and following disposition of that amendment, the Senate vote on Senator LOTT's amendment, with no intervening action or debate in order prior to the disposition of these two amendments.

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

Mr. REID. Madam President, the time from now until noon will be used as follows: Senator ROBERTS has a statement that will take less than 10 minutes; is that right?

Mr. ROBERTS. I imagine, I tell my distinguished colleague, about 12 or 15 minutes.

Mr. REID. Senator MILLER wishes to speak for 10 minutes. We also have a speech that Senator BYRD indicated several days ago he wanted to give which will take more time, approximately 22 minutes.

I say to my friend, the distinguished President pro tempore, who is in the Chamber now, I know the Senator has been involved in other matters this morning. Is it possible for the Senator to speak at a subsequent time or does the Senator wish to speak now?

Mr. BYRD. Madam President, my problem is as follows: The chairman of the Budget Committee, Mr. CONRAD, has told the members of the Budget Committee that we have a long way to go, with many amendments to vote on and to discuss. He intends to finish work on the budget today. That means I have a very limited opportunity to speak. I have two speeches, as a matter of fact, one very short, quite short, and the other one perhaps 25 minutes.

Mr. REID. I am wondering, if I can interrupt and I apologize, will the other Senators allow Senator BYRD to speak—there is no permission needed, I assume.

Mr. ROBERTS. If the distinguished Senator will yield, I have spoken with Senator BYRD, and I will always yield to his request, but I thought we had an understanding that I could precede him for 10 minutes. It will not take too long.

I thought we had an understanding. I know with this new schedule perhaps that is not the case. I leave that up to his judgment.

Mr. BYRD. The distinguished Senator did speak with me at the close of the vote, and I told the Senator I would be very happy and willing for him to precede me. I thought while I went down on the next floor to my office to get my speech that the distinguished Senator would be proceeding and hopefully finished by the time I got back to the Chamber.

Mr. REID. I say to my friend from West Virginia, what the Senator said is valid. We closed the vote after 33 minutes which, of course, if we closed the vote earlier when we should have, this would have been completed.

Mr. BYRD. I did tell the Senator he could speak, he could go ahead of me.

Mr. REID. Can Senator MILLER wait until Senator BYRD finishes his remarks?

Mr. MILLER. Madam President, certainly I will wait.

Mr. BYRD. Madam President, I thank the distinguished Senator.

Mr. REID. Madam President, I ask unanimous consent that the Senator from Kansas be recognized for 12 minutes, Senator BYRD be recognized thereafter, and the Senator from Georgia be recognized after Senator BYRD.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Kansas.

Mr. ROBERTS. Madam President, I thank Senator BYRD, the institutional protector and flame of the Senate, for allowing me to precede him.

(The remarks of Mr. ROBERTS pertaining to the introduction of S. 2040 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I begin my remarks today by quoting from George Bernard Shaw's ''Man and Superman,'' ''If history repeats itself, and the unexpected always happens, how incapable Man must be of learning from experience!''

I have been concerned about the issue of energy security for many years now. It was in 1992 that the Congress last passed major energy legislation. Now, for the first time in a decade, events have converged to make possible substantive progress on a national energy policy. But the question remains as to whether or not real progress will be made.

The energy crisis of the 1970s should have been a wake-up call. I argued then and throughout the 1980s and 1990s that it was time to get moving to address our long-term energy problems. Each episode of short supply and higher prices spurred renewed talk about our Nation's lack of an energy policy. But, each time, supplies stabilized, prices dropped, and nothing materialized from all that talk. Will we again let that opportunity slip away?

We have heard much in the previous weeks about electricity, oil and gas supplies, energy efficiency, energy tax incentives, and fuel economy standards. This is typically how we talk about energy. Yet, energy is about much more than that. Energy is about how we live our lives—today and into the future. It is about how we travel to work, how we brew our morning coffee, how the lights come on in this Chamber and permit us to read. It is about the coal-fired electricity that lights this whole Capitol, but it is also about what we can accomplish on the Senate Floor because we have this gift of light. God, in creating the world, said: Let there be light. Too often, though, we take for granted the benefits these lights bring.

Now when we consider energy security, we must think about fuel diversity. We need a diversity of energy resources to make our nation work. Actually, it is much like the Members of the Senate. It takes a variety of Senators, with all of their views and contributions coming from all the sections of the country, from the north, south, east, west, to make this body work. I, myself, am from coal country, C-O-A-L. One may laugh at that suggestion, but it is true. I am coal, C-O-A-L. I have been around the Congress for 50 years, which is a very long time when man's lifetime is considered. I was pulled from the hard scrabble mountains of West Virginia to serve this country. In the end, I hope that if I am pressed enough, testing my spirit and worth, the good Lord might realize that this ole piece of coal and carbon might actually be a diamond in the rough. Each Member of this body represents his or her own constituents' particular interests and energy needs. We come at this from different viewpoints, but, working together, we can mold a strong, comprehensive energy package that will provide long-term energy security.

The events of the last year demonstrate that true national security, economic growth, job protection, and environmental improvements over the long term depend upon a balanced energy plan. The United States must have a comprehensive energy policy that promotes energy conservation and efficiency and the greater use of domestic energy resources, while it ensures the development and deployment of advanced energy technologies and also improves our energy infrastructure. That is a pretty tall order. But all of those components are necessary if we are to reduce our Nation's dependence on foreign energy resources.

As energy debates have ebbed and flowed over the years, so have the public's and media's concerns. These cycles in energy markets—these momentary feasts and sporadic famines—have occurred and will continue to occur in the future. Too often, though, these crises have provoked controversial, knee-jerk solutions that do little to solve what is fundamentally a long-term problem.

For example, in response to the spike in gasoline prices not so many months ago, then-Energy Secretary Bill Richardson jetted off hat-in-hand to the Middle East pleading with Arab nations to increase crude oil production, which would supposedly lower gas prices at home. I also recall several ''snake-oil, miracle cures'' being debated on the Senate Floor, such as a federal gas tax ''holiday'' intended to temporarily reduce prices at the pump—a measure that a sensible majority in the Senate voted against.

Such short-term energy crises are brought on by many different catalysts, but they are all based on the same fundamental problem. What we see in the fluctuation of energy prices is a textbook study of how supply and demand can affect the energy markets. Unfortunately, our typical response to an energy crisis is to find a quick-fix solution—one that is designed to cut off the immediate spike, but does nothing to affect the underlying problems.

A number of challenges lie ahead. Our dependence on foreign oil increases every day. Because our domestic production peaked in the early 1970s and our consumption has not diminished since the early 1980s, we grow ever more dependent. This gap is due, in large part, to our dependence on oil for our rapidly expanding transportation sector.

On a positive note, the U.S. is less dependent on foreign oil than many other industrialized nations. However, it is also true that we are reliant on foreign producers for more than 50 percent of our oil supply today compared to less than 40 percent in the mid-1970s. Fortunately, we rely on a more diverse choice of foreign nations, and we are less dependent on Middle Eastern nations, for that growing share of our petroleum imports than twenty-five years ago.

A central question that we have to ask is what primary goal we are striving to achieve through this legislation. How do we balance our growing demand for new energy resources while increasing our need to do so in cleaner, more efficient ways? Will increased domestic oil production reduce our dependence on foreign oil? And, if that is the case, when and how should that occur? Looking to the future, I hope that our mounting dependence on foreign oil would serve as a wake-up call for other energy resources. Unless we can find a way to increase our natural gas supplies over the long term, we will also be increasingly dependent on foreign producers for our growing natural gas demands.

Further, we must understand that there are actually two major energy systems functioning in the U.S. with comparatively little influence on each other. Our transportation system is run almost entirely on oil-based resources. The second system provides power to warm our homes, light our businesses, light our Senate Chamber, run our computers, and cook our

meals. It is supplied largely by domestic industries and resources that are in the midst of an historic and difficult transition. The limited overlap between these two energy systems can be simply illustrated. The electric power industry gets 2 percent of its energy from oil—the rest comes from coal, nuclear, natural gas, hydroelectric, as well as other renewable sources. Conversely, 97 percent of the energy use in our transportation sector comes from what? Oil. We must intelligently address the needs of these two energy systems simultaneously in order to provide a comprehensive solution to our energy needs.

Furthermore, if we are to craft a workable energy policy, we must recognize the degree to which it will rely on state and local decisions. Many energy experts agree that the country will need more power plants, more refineries, new refineries, and additional pipelines, but local citizens' groups often do not want these potentially unsightly, but crucial, facilities in their communities. Therefore, a national energy policy must enable government at all levels to work with citizens' groups and private sector interests to better coordinate a cohesive roadmap for the production, transportation, and use of energy. By working to fill energy gaps and avoiding jurisdictional conflicts, while improving a diversity of energy resources, authorities at all levels can promote regulatory certainty, stabilize long-term investments, and promote environmental protection all at the same time.

Over the years, our awareness has grown about the complexity of constructing a balanced energy policy that will not undermine other competing and equally legitimate policy goals. How do we reduce gasoline consumption, when raising its price to achieve a meaningful reduction in demand could be seen as economically disruptive and politically suicidal? How do we encourage the use of alternative fuels and technologies that heighten our energy efficiency, when OPEC nations can simply adjust oil prices to keep conventional sources cheaper than their alternative substitutes? How can we boost domestic energy supplies while protecting the environment?

Furthermore, with the severe budget restrictions we now face, we must examine questions about how the government can afford to meet our nation's future energy commitments. The projected return to deficit budgeting, the recession, and the demands for increased homeland security and for supporting our military abroad, have placed enormous long-term pressures on the entire budget and appropriations process this year, and for as far as the eye can see. Will a long-term energy strategy also be a victim of budgetary constraints? That is a serious question.

I hope not, because the Energy Information Administration estimates that, by 2020, the total U.S. energy consumption is forecast to increase by 32 percent—including petroleum by 33 percent, natural gas by 62 percent, electricity by 45 percent, renewable fuels by 26 percent, and coal by 22 percent. Because our energy needs are expected to grow so quickly, we need to develop and use a diverse mix of energy resources, especially coal, in more economically and environmentally sound ways.

There are those who would like to push coal aside like stove wood and horse power as novelties from a bygone era. But we cannot ignore coal as part of the solution. Over the past several years, I have been diligently assembling a comprehensive legislative package that will promote the near- and long-term viability of coal both at home and abroad. The Senate energy bill provides the opportunity to achieve that goal. Provisions contained in the Senate energy bill extend the authorization for the research and development program for fossil fuels from $485 million in Fiscal Year 2003 to $558 million in FY 2006. Additionally, the bill contains a $2 billion, 10-year clean coal technology demonstration program.

It is undeniable that our quality of life and economic well-being are tied to energy, and, in particular, electricity. Coal is inextricably tied to our nation's electricity supply. Today, coal-fired power plants represent more than 50 percent of electric generation in the United States, and 90 percent of coal produced is used in electricity generation. Coal has become even more important in recent years as a basic necessity for high-technology industries that need this domestic resource for computers and cutting-edge equipment that require a reliable, cost-effective supply of electricity. Coal is America's most abundant, most accessible natural energy resource, but, again, we must find ways to use it in a cleaner, more efficient manner.

The importance of clean coal technologies and the development of future advanced coal combustion and emission control technologies can assure the attainment of these goals. The overall emissions from U.S. coal-fired facilities have been reduced significantly since 1970, even while the quantity of electricity produced from coal has almost tripled. At the same time, the cost of electricity from coal is less than one half the cost of electricity generated from other fossil fuels.

To ensure that coal-fired power plants will help us to meet our energy and environmental goals, the Clean Coal Technology Program and other Department of Energy—DOE—fossil energy research and development programs must develop most efficient, cleaner coal-use technologies. This, in turn, will contribute greatly to the U.S. economy and to reduction in pollution and greenhouse gas emissions.

The DOE fossil energy research and development programs have created a cleaner environment, promoted the creation of new jobs, and improved the competitive position of U.S. companies. The DOE coal-based research program is estimated to provide over $100 billion—$100 billion—in benefits to the U.S. economy through 2020. In addition, the Clean Coal Technology Program has been one of the most successful government/industry research and development partnerships ever implemented. By law, the Federal share of this very successful program cannot exceed 50 percent. But, over the past 15 years, $1.9 billion in Federal spending has been matched by more than $3.7 billion from the private sector; a 2:1 ratio that far exceeds the 1:1 ratio set by law.

The successes of a range of U.S. clean energy technologies are valuable within our own borders. But, by opening new markets and exporting these technologies, we can reap their benefits many times over. This is a tremendous opportunity that cannot be ignored because the clean energy policies and technologies adopted today will have a profound influence on the global economic and energy system for decades to come. The United States should market our clean energy technologies, especially clean coal technologies, to developing nations, like China, India, South Africa, and Mexico, to help them meet their economic and energy needs. Just over a year ago, I initiated the Clean Energy Technology Exports Program, an effort to open and expand international energy markets and increase U.S. clean energy technology exports to countries around the world. This commonsense approach can simultaneously improve economic security and provide job opportunities at home, while assisting other countries with much-needed energy technologies and infrastructure. Furthermore, such technologies can enable these countries to build their economies in more environmentally friendly ways, thus helping to advance the global effort to address climate change.

Climate change and energy policy are two sides of the same coin. Because the vast majority of manmade greenhouse gas emissions are associated with energy use, it is here, in an energy bill, that we need to deal with the long-term challenges associated with global climate change. We need a climate change strategy and we need a climate change strategy badly. We need a climate change strategy that will not just pick at this complex problem by putting in place strategies that will apply in the next 5 or 10 years. We need a comprehensive climate change strategy also that looks 20, 50, and 100 years into the future.

Look at the kind of winter we have had. Look at the kind of winter we have had here in Washington: One snow, 3 inches. Look at the drought that has come upon this area of the country during the winter season. What can we expect for the spring and

summer season? What is going to happen to our crops, our livestock, our economy? This is serious.

I have lived a long time—84 years. Something is going on out there. I don't need a scientist to tell me that. With the differences in the winters, the differences in the summers, in the temperatures, in the water level, there is something happening, and we had better be aware of it. We had better do something about it.

I sincerely hope that we will be able to work together in a bipartisan way and not put off addressing these challenging questions on another generation, but we must begin that effort now.

In June 2001, I introduced with Senator STEVENS bipartisan climate change legislation. Our bill received unanimous support in the Government Affairs Committee last year. Our proposal is based on scientifically, technically, and economically sound principles and would put into place a comprehensive, national climate change strategy, including a renewed national commitment to develop the next generation of innovative energy technologies. Senator STEVENS and I believe this is right policy framework, and I hope that my colleagues will not allow this commonsense approach to be undermined or stricken from this bill.

Senator STEVENS and I are aware that there may be an effort to strike this from the bill. But Senator STEVENS and I will stand as one man, as one individual, against any such effort.

I am glad to say that the Byrd/Stevens legislation is included in this energy package, as I have already indicated, for it will provide for the long-term viability of coal as an energy resource.

We must seize this opportunity to learn from past experiences. President Carter spoke to the nation in 1977 about the energy crisis of that era. He said that:

> Our decisions about energy will test the character of the American people and the ability of the President and the Congress to govern this nation. This difficult effort will be the 'moral equivalent of war,' except that we will be uniting our efforts to build and not to destroy.

Those are the words of former President Carter. At that time, energy was a household concern. Lines, long lines at gas stations were a common scene. Everybody remembers that—anybody who was living at that time. We were building a national resolve to craft a comprehensive national energy policy. But the gas lines went away, and so did the sense of urgency about energy.

During my tenure in the United States Senate, I have witnessed the ebb and flow in energy concerns as energy prices rise and fall. I fear that, as a nation, while our energy supplies are plentiful and prices are low, we may have sunk back into somnolence—somnolence—asleep at the wheel. If the United States is going to remain a global economic power, we have to tackle these energy issues. If there was ever a time to come together and craft an intelligent, responsible, bipartisan, long-term energy policy, it is now.

Mr. President, I thank the distinguished Senator from Georgia for his courtesy and his kindness to me and for allowing me to precede him so I could make this speech and then go back to the Budget Committee where we are having votes and where I should be attending right away. I thank him, and I join with him. I know what he is going to say and what he is going to speak about. I shall have something to say about that matter later. I thank him.

I yield the floor.

Mr. WYDEN. Mr. President, I ask unanimous consent that upon the completion of the remarks of Senator MILLER and Senator COLLINS I be allowed to speak. I will be offering a consensus amendment at that time which has been agreed to by both sides.

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

Under the previous order, the Senator from Georgia is recognized.

(The remarks of Mr. MILLER are printed in today's RECORD under ''Morning Business'')

Mr. MILLER. Thank you, Mr. President. 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. WYDEN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

AMENDMENT NO. 3041 TO AMENDMENT NO. 2917

(Purpose: To provide additional flexibility to covered fleets and persons under title V of the Energy Policy Act of 1992)

Mr. WYDEN. Mr. President, I send an amendment to the desk and ask unanimous consent for its immediate consideration.

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

The legislative clerk read as follows:

> The Senator from Oregon [Mr. WYDEN], for himself, Mr. Murkowski, Mr. BENNETT, and Mr. SMITH of Oregon, proposes an amendment numbered 3041 to amendment No. 2917.

Mr. WYDEN. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. WYDEN. Mr. President, the Energy Policy Act that the Senate has been debating contains a number of strategies to reduce America's dependence on foreign oil and to improve the environment, but it does omit a key technology that can help this country achieve these critically important goals.

That technology is the hybrid electric vehicle. The Senate has heard a lot about hybrids over the last few weeks, and, last week saw a poster of a red SUV—a hybrid vehicle that Ford is developing. Hybrids are coming of age. Anyone who has questions about their benefits can ask our colleague, Senator BENNETT from Utah, who does in fact, drive a hybrid vehicle.

These vehicles can achieve fuel efficiencies that are more than twice the current CAFE standard. Their greenhouse gas emissions are only one-third to one-half of those from conventional vehicles; and for other pollutants, such as nitrogen oxides, they can meet the country's highest emission standards, those set by the State of California.

The overall energy efficiency of hybrid vehicles is more than double of any available alternative fuel vehicle. But the result of this country's current energy policy is that vehicles rated at even 70 miles per gallon are disqualified as counting toward energy efficiency fleet requirements just because they do not use alternative fuels. But, clearly, they more than fulfill the spirit of a modern energy policy that moves this country towards the critical goal of energy independence.

When it comes to alternative fuel, the Energy Policy Act of 1992 is all windup and no pitch. It requires fleet administrators to buy alternative fuel vehicles, but it does not require them to use alternative fuels. In many States, even the best-intentioned fleet administrators have real trouble finding enough alternative fuel. That certainly has been true in my home State of Oregon.

Out of 178,000 fuel stations across the country, only 200 now provide alternative fuel. That is less than one-tenth of 1 percent of our filling stations. The result is, many alternative fuel vehicles are being operated with gasoline, which completely undermines this country's goal of reducing the use of petroleum.

The energy bill before us, wisely, will close that loophole by requiring alternative fuel vehicles to actually use alternative fuels. If passed, by September of next year, 2003, only 50 percent of the fuel that fleets use in their alternative fuel vehicles could be gasoline.

Though the Nation's alternative fuel infrastructure is expanding, the question still remains: What about those States that still lack enough stations where fuel can be purchased? Are they supposed to just let those vehicles sit unused in their parking lots?

The amendment I offer today, with Senator MURKOWSKI, Senator BENNETT, and my colleague from Oregon, Senator SMITH, will provide fleet administrators with the flexibility to choose between alternative fuel vehicles and hybrid vehicles. Like the Energy Tax Incentives Act reported by the Finance Committee, it contains a sliding scale that allows partial credit for hybrid vehicles based on how good their fuel economy is and how much power they have.

For instance, if a hybrid car or light truck averages 2½ times the fuel economy of a similar vehicle in its weight class, it could earn credit worth up to 50 percent of the purchase of an alternative fuel vehicle. Then, based on how much power it has available, it could earn additional credit. So significant credit would only be given to the best performers.

To illustrate what this means, for a hybrid vehicle to get one-half the credit of a 3,500-pound alternative fuel vehicle that averages 21 miles per gallon in the city, that hybrid would have to average over 53 miles per gallon. It is clear what a huge reduction in petroleum use this proposal could mean.

The amendment is supported by a broad range of interests, including the National Association of Fleet Administrators, the National Association of State Energy Officers, Toyota Motor of North America, and the National Rural Electric Cooperatives Association.

I thank my colleagues, particularly Senator MURKOWSKI, Senator BENNETT, and Senator SMITH of Oregon, for all of their efforts in working with me to fashion this bipartisan legislation.

I also thank Chairman BINGAMAN, who has been very helpful with respect to this issue. He is a strong advocate of hybrids.

Mr. President, I ask unanimous consent that the amendment be set aside and that the Senate return to it later in the day.

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

Who seeks time?

The Senator from Oregon.

Mr. WYDEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for a few minutes.

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

Mr. MURKOWSKI. Mr. President, I gather there is some concern expressed by the majority leader about the pace at which we are proceeding on the energy bill. This often happens in the process of a complex piece of legislation, particularly a piece of legislation that has not gone through the committee process as a consequence of the decision of the majority leader. This has taken a while. We are not through by any means. We still have some contentious issues to address, such as global warming, ANWR, the tax proposal, which is going to take some time.

I want to see this bill passed. It is my intention to keep working with Senator BINGAMAN toward the passage of a comprehensive energy bill. It was with the intention that, by amendment, we would try to craft a bill that would be worthy of the Senate's deliberations. There is no question that, obviously, we were expected to deliver a bill. The reality that the House has done its job and passed H.R. 4 puts the responsibility on the Senate.

The President has outlined energy as one of his priorities, encouraging that we pass comprehensive energy legislation. So the obligation clearly is ours. This afternoon, I gather we are going to go back on judges for an undetermined timeframe. At the conclusion of that, I hope we can again go back to some of the outstanding amendments we have before us on the energy bill.

I also point out to those who suggest we are holding up this bill that we spent a good deal of time off the bill on campaign finance. I am not being critical of that. It is just a reality that the majority leader chose to take us off to complete that particular issue, which has been around for so long.

I want to make the record clear. We have an ethanol amendment, the Feinstein amendment is resolved, and there may be some more amendments coming yet this afternoon. We are working with Senator BINGAMAN and the majority whip, Senator REID, to try to conclude a list of amendments. Our list is about 2½ pages long, I would guess, with around 60 amendments listed. Realistically, there are probably not more than 10 that we are going to have to deal with on that list. I know Senator BINGAMAN and the Democrats are working toward an effort to identify their amendments as well.

I hope that as soon as we get off the judges, we can go back and proceed to move amendments yet today and on into the evening. I have no idea what the schedule is tomorrow, but perhaps the majority whip can enlighten me. I wanted to make it clear from our point of view as to what to anticipate and what we have ahead of us.

Mr. REID. If the Senator from Alaska will yield, I will respond.

Mr. MURKOWSKI. I am happy to yield.

Mr. REID. The matter with the judges will be resolved by 3 o'clock this afternoon. We will take that up in 10 minutes. After that, we will go into whatever amendments the distinguished Republican leader of this bill wants to move. We hope his number of about 10 serious amendments is more accurate than 60. We know that when there is a finite list, a lot of people file relevants and they are not really serious about offering them. Having spoken to the majority leader and Senator BINGAMAN today, we really want to get a finite list of amendments we can put our fingers on, in the hopes of completing this legislation.

If there are 10 amendments dealing with serious subjects, that is doable. If we get 25, 30 amendments, there are some who would recommend to the leader to file cloture and maybe go to something else. I hope that is not necessary. We have spent a lot of time on this bill. It is worthy of time.

There is nothing we can do that is more serious than working on the energy policy of this country. We know the Senator has the ANWR amendment, which has created so much interest, and we hope to get to that soon.

In short, we want to finish this bill as badly as the Senator from Alaska. We hope by this afternoon we can have some light at the end of the tunnel to do that.

Mr. MURKOWSKI. Will the majority whip yield? Is there any indication what we might anticipate tomorrow? Is it too early to make that decision?

Mr. REID. If we have reason to be here, the leader has not said we will have no votes. There could be votes. It is the day before the recess. If we have things we can do and it will lead to our completing this bill when we get back, I am sure the leader will want to work tomorrow.

Mr. MURKOWSKI. I do not want to misunderstand my good friend. Did he indicate there has been a decision there will be no votes tomorrow?

Mr. REID. The leader has said just the opposite; there will be votes. We want to have votes on substantive matters. We do not want to, on the day before the recess, have make-do votes. We are going to have something that is meaningful. With the subject matter that was briefly outlined by the Senator from Alaska, those are very serious matters, and I hope we can be working on some of them tonight and tomorrow.

Mr. MURKOWSKI. I thank the Senator. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Ms. COLLINS. Mr. President, I ask unanimous consent that the previous order be delayed and that I be permitted to speak for up to 15 minutes as in morning business.

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

The Senator from Maine is recognized.

Ms. COLLINS. I thank the Chair.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 2042 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

AMENDMENTS NOS. 3033 AND 3040

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Vermont.

Mr. LEAHY. Madam President, what is the parliamentary situation?

The PRESIDING OFFICER. There are 3 hours of debate to be evenly divided on two amendments dealing with judicial nominations.

Mr. LEAHY. Madam President, earlier this week when the Senate was considering confirming the 42nd judge since the shift in majority last summer, I came to tell the Senate of the progress we have made filling judicial vacancies in the past 9 months. The pace of consideration and confirmation of judicial nominees in the last 9 months exceeds what we used to see in the preceding 6½ years. During that 6½ years under Republican control, vacancies grew from 63 to 105 and were rising to 111. I lay this out so people understand what is happening.

Since July, we have made bipartisan progress. This chart shows the trend lines. During the Republican majority, the vacancies were going up to 111; in the short time the Democrats have been in the majority, those vacancies have been cut down.

The Democrats have controlled the majority in the Senate Judiciary Committee for 9 months. What did we do during that 9 months? We have confirmed more judges—42, all nominated by President Bush. In those 9 months, we confirmed more judges than the Republicans did for President Clinton in the 12 months of the year 2000. We confirmed more judges in those 9 months than the Republicans did during the 12 months of 1999. In those 9 months, we confirmed more judges for President Bush than the Republicans did for President Clinton during the 12 months of 1997. During those 9 months, we confirmed more judges for President Bush than the Republicans did for the 12 months of 1996.

We can compare our 9 months, and we have not finished a full year of being in the majority. In 9 months, we confirmed more judges for President Bush than the Republicans were willing to confirm for President Clinton in 12 months in the years 2000, 1999, 1997, and 1996.

Under Democratic leadership, the Senate has filled longstanding vacancies on the courts of appeal. We exceeded the rate of attrition. In less than 9 months, the Senate has confirmed seven judges to the courts of appeals. We have held hearings on three others. We have drastically shortened the average time, by approximately a third, for confirmation of circuit court nominees compared to the Senate under Republican control between 1995 and 2001. And we are committed to holding more hearings on those where we received blue slips and have consensus nominees. Comparing what the Republicans did during 1999 and 2000, they refused to even hold hearings or vote on more than half of President Clinton's court of appeals nominees.

I mention this because I have always said let's get these people up, have a hearing, and let the committee vote. In the last 6 years, dozens upon dozens of President Clinton's nominees were never even given a vote in the committee. I have tried to reverse that.

Between 1995 and when the Democrats took over the majority, vacancies on the courts of appeal rose to a total of almost 250 percent higher than before. When we finally took over, we were faced with 32 vacancies on the courts of appeal. In spite of this, the Democratic majority has kept up with the rate of attrition by confirming seven judges to the circuit courts in only 9 months and holding more hearings on three more. Particularly, we have been working to improve conditions in the Fifth, Tenth, and Eighth sitting.

During the last 9 months, the Judiciary Committee has restored steady progress to the judicial confirmation process. The Senate Judiciary Committee is doing what it has not done for the 6 years before. We are holding regular hearings on judicial nominees. We are giving nominees a vote in committee, in contrast to the practice of anonymous holds and other tactics employed by some during the period of Republican control. In less than 9 months, the Senate Judiciary Committee has held 15 hearings involving judicial nominations. That is more hearings on judges than the Republican majority held in any year of its control of the Senate. Already, 48 judicial nominees have participated in those hearings.

In contrast, one-sixth of President Clinton's judicial nominees, more than 50, never got a committee hearing nor a committee vote from the Republican majority. This is one of the reasons why there were so many vacancies when President Bush took office.

No hearings were held before June 29, 2001, by the Senate Judiciary Committee, even though they were in control. No judges were confirmed by the Senate from among the nominees received by the Senate on January 3, 2001, or further nominees received from President Bush in May.

This is the background for the sense-of-the-Senate amendment that will be offered by Majority Leader DASCHLE which would confirm that the committee should continue to hold confirmation hearings for judicial nominees as expeditiously as possible. That is true for all judicial nominees, including those first received on May 9 of 2001.

The language offered by Senator DASCHLE also recognizes that with barely 4 weeks in session before May 9, 2002, calling for confirmation hearings on eight controversial courts of appeals nominees is a call that is unheard of. It was certainly never approached during the past 6 years. I would suspect that my friends on the Republican side are most afraid of one thing: They hope the Democratic majority would never do to them and a Republican President what they did as a Republican majority to a Democratic President.

I can assure them as long as I am chairman we will not do to them what they did to us. I am not going to do that. It hurts the independence of the judiciary, and I am not going to do that.

I remember a whole session, in 1996, in which the Republican majority did not confirm a single judge to the courts of appeals; another in which the committee reported only three courts of appeals nominees all year. But we are not going to go back to those days. We are going to do a lot better. But you cannot call for hearings on eight courts of appeals nominees in 4 weeks. That would be asking the current committee to do in 1 month what the committee under Republican leadership did not do for months, in fact sometimes for years.

It is disingenuous to compare the last 9 months with the Senate majority and President of different parties to years when the majority party and the President were the same. A fairer comparison might be with the first 9 months of the 104th Congress, where the parties of the President and the Senate majority were different. That comparison shows we made more progress, held more hearings, confirmed more judges, including courts of appeals judges, than when the party roles were reversed in 1995.

In 1995, we had a Democratic President and a Republican majority. Take their 9 months. They had nine hearings in 9 months with a Democratic majority and Republican President. We actually had 15. I will correct this—15, because we had one Tuesday. In their 9 months, they had 36 confirmations; we have had 42. So we have made more progress, held more hearings, confirmed more judges than when the party roles were reversed in 1995. Actually, 1995 was when the Republicans had one of its most productive years on judges.

In a comparison made between the beginning of the second session of the 104th Congress when the President was a Democrat and the Senate majority was Republican, with the beginning of this, when roles were reversed, that fair comparison shows that we have already confirmed 14 judges this session, including 1 to the court of appeals, while the Republican Senate ended up confirming only 17 judges all year—none to the courts of appeals.

When we finish this first year in the majority, I can assure the Senate our record will be better than the years we saw with the Republicans, by any kind of standard at all. Look at the first 3 months of the session. We have been confirming—we confirmed 14 judges.

In March 1995, in their first 3 months, when they were in charge with a Democratic President and Republican majority, they confirmed 9; by March of 1996 when they were in charge, they confirmed zero; by March of 1997 when they were in charge they confirmed 2; by March of 1998 they hit their zenith, they confirmed 12. They made up for it the next year, March of 1999, they confirmed zero. By March of 2000, they confirmed 7; by March of 2001 they confirmed zero. By March of this year, we confirmed 14.

Madam President, I see the distinguished ranking member of the Judiciary Committee on the floor, so I will yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. For the information of the Senate, the clerk will report by number the amendments currently under consideration.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT] proposes an amendment numbered 3033.

The Senator from Nevada [Mr. REID], for Mr. DASCHLE, proposes an amendment numbered 3040.

The amendment is as follows:

AMENDMENT NO. 3040

At the appropriate place, add the following:

SEC. . FAIR TREATMENT OF PRESIDENTIAL JUDICIAL NOMINEES.

That it is the sense of the Senate that, in the interests of the administration of justice, the Senate Judiciary Committee should along with its other legislative and oversight responsibilities, continue to hold regular hearings on judicial nominees and should, in accordance with the precedents and practices of the Committee, schedule hearings on the nominees submitted by the President on May 9, 2001, and resubmitted on September 5, 2001, expeditiously.

Mr. HATCH. Madam President, here we go again: statistics judo being used on the floor of the Senate courtesy of the Judiciary Committee.

I am going to always address these statistics with the facts. The bottom line is the facts speak for themselves. We have an unprecedented and shocking 31 vacancies on the Federal circuit courts of appeals in this country. That is not progress.

Last Thursday, Senator LOTT introduced a resolution calling for the Judiciary Committee to hold hearings on each of the circuit court judges nominated by President Bush on May 9 of last year.

We are coming up on the 1-year anniversary of those nominations, and yet only 3 of the 11 nominees have had hearings and confirmation votes. All of these nominees have received well-qualified or qualified ratings from the American Bar Association, which some of my Democratic colleagues have described as the gold standard in evaluating judicial nominees.

Why is it so problematic that none of these 8 nominees have received a hearing or vote? It is no secret that there is a vacancy crisis in the Federal circuit courts, and that we are making no progress in addressing it.

Let's take a look at some numbers. A total of 22 circuit nominations are pending in the Judiciary Committee. But we have confirmed only one circuit judge this year, and only seven since President Bush took office.

When Senate Democrats took over the Judiciary Committee in June of last year, there were 31 circuit court vacancies, and there remain 31 circuit court vacancies today. This does not represent progress—it represents stagnation.

In contrast, at the end of 1995, which was Republicans' first year of control of the Judiciary Committee during the Clinton administration, there were only 13 circuit vacancies.

In fact, during President Clinton's first term, circuit court vacancies never exceeded 20 at the end of any year—including 1996, a Presidential election year, when the pace of confirmations has traditionally slowed.

Moreover, there were only two circuit nominees left pending in committee at the end of President Clinton's first year in office. In contrast, 23 of President Bush's circuit nominees were left hanging in committee at the end of last year.

In light of the vacancy crisis, we cannot afford to let only 10 Senators defeat a circuit nominee. This is a question of process, not of seeking favorable treatment.

For all these reasons, it is imperative to support Senator LOTT's resolution to get hearings and votes for our longest pending circuit nominees. Given the vacancy crisis in our circuit courts, I can't imagine anyone voting against it. I must respond to some of the comments that my colleagues across the aisle have made about the pace of judicial confirmations. These comments have included a gross distortion of my record as chairman of the Judiciary Committee during six years of the Clinton administration. Although we have all heard enough of the numbers, I will not hesitate to defend my record when it is unjustly attacked, as it has been over the past week and I think here today.

I believe that the source of many, if not all, of these attacks stems from the defensive posture that many of Democratic colleagues have taken since 10 members of the Judiciary Committee refused to send the nomination of Judge Charles Pickering to the floor for a vote by the full Senate. Some of these colleagues have defended what they call the Senate's fair treatment of judicial nominees in general and Judge Pickering in specific. But the fact of the matter is that the Senate never got the opportunity to vote on Judge Pickering's nomination. The reality is that the 10 Democratic members of the Judiciary Committee determined for the rest of the Senate the fate of Judge Pickering's nomination.

We all know that had it been brought to the Senate he would have gone through with flying colors.

This is despite the fact—or perhaps because of the fact—that had Judge Pickering's nomination been considered by the full Senate, he very likely would have been confirmed, and I think with flying colors.

The committee's treatment of Judge Pickering is problematic for several reasons.

First, during the 6 years that Republicans controlled the Senate during the Clinton administration, not once was one of his judicial nominations killed by a committee vote. The sole Clinton nominee who was defeated nevertheless received a floor vote by the full Senate. Judge Pickering was denied that opportunity. Some of my Democratic colleagues have said that their treatment of Judge Pickering was not payback. In one sense, they are right. If they were interested in treating President Bush's nominees as well as the Republicans treated President Clinton's nominees, the they would have sent Judge Pickering's nomination to the floor for a vote by the full Senate.

Second, the actions of the Democratic members of the committee were clearly orchestrated by liberal special interest groups that have been doing it for years whenever there is a Republican President. It is no coincidence that these groups asked the committee to demand Judge Pickering's unpublished opinions, then—surprise!—the committee announces that it will compel Judge Pickering to produce all of his unpublished opinions.

For judges to go back and go through all their unpublished opinions, if they have been on the bench for very long, is extraordinary.

I do not recall another nominee who has been subjected to a production demand of such scope—except, of course, for Judge D. Brooks Smith, another Bush nominee whom the groups have targeted.

Let me read the text of the letter to Judge Smith. It simply say,

Copies of your unpublished opinions, not previously produced to the committee, have been requested by Members. Please contact our nominations clerk . . . to arrange transmission of the materials. Thank you for your assistance in this matter.

That is it. There is no explanation for why the committee is demanding these unpublished opinions, and there was no consultation with the Republicans about taking the drastic step of demanding these opinions. This letter, incidentally, was sent to Judge Smith after his confirmation hearing, just as with Judge Pickering. There is nothing fair about subjecting nominees to fishing expeditions simply because the liberal special interest groups do not like them. The committee's treatment of Judge Pickering's nomination was not an example of the committee doing its job, as one of my colleagues described it last week. Instead, it is an example of special interest groups pulling strings. I am deeply concerned about what this means for the fairness with which future judicial nominees will be treated—especially any Supreme Court justice that President Bush may have the opportunity to nominate.

Some of my Democratic colleagues have tried to minimize the effect of their party-line committee vote to defeat Judge Pickering's nomination by declaring that, last year, they held the first confirmation hearing on a fifth circuit judge since 1994. While this is technically true, there is an important fact they leave out: From 1994 to 1997 during the Clinton administration—get this—no fifth circuit nominees were

pending for the committee to act on. President Clinton did not nominate another fifth circuit judge until 1997, and that nominee did not have home State support due to lack of consultation from the White House.

And that was the problem. He was not renominated after the end of the 105th Congress. The next fifth circuit judge was not nominated until 1999.

So to say from 1999 they haven't had any work on that fifth circuit just shows the type of sophistry that is used. This one fifth circuit judge who was nominated in 1999, too, lacked home State support due to lack of consultation from the White House.

Finally a third Fifth Circuit nominee was nominated in 1999. So, in reality, only one of President Clinton's Fifth Circuit nominees after 1999 could have possibly moved, and I should say that nominee was not nominated until the seventh year of the Clinton presidency.

Now, let's compare this record to the present Bush administration. The Democrats have already killed one of President Bush's Fifth Circuit nominees, Judge Pickering, who enjoys the strong support of both of his home State senators. If they are being guided by precedent, then my Democratic colleagues have no excuses for refusing to move every other Fifth Circuit Bush nominee who has home State support. One such nominee, Justice Priscilla Owen of Texas, has been pending in committee for over 300 days now without so much as a hearing which brings me to another point.

My Democratic colleagues have argued at length about how fairly they are treating President Bush's judicial nominees, especially his circuit nominees. In fact, last week one of my colleagues said on the floor, ''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.'' This colleague must have forgotten about the eight circuit judges whom President Bush nominated on May 9 of last year and who have been languishing in committee without so much as a hearing for over 300 days. With one exception, the paperwork on all of these nominees has been complete for months. Each of these nominees has received a rating of well-qualified—the highest rating the ABA can give—or qualified from the ABA, which my Democratic colleagues have referred to as the gold standard in evaluating judicial nominees.

The rest of President Bush's circuit nominees have fared just as poorly.

As this chart shows, only 9 percent of his circuit nominees awaiting a committee vote have had a hearing thus far. Nine percent are languishing in the committee—for over 300 days. This means that 91 percent of his circuit nominees, including 8 of his first 11 circuit judges nominated on May 9, have been languishing in committee for no reason, but that the liberal interest groups don't want them to move. These are outside groups.

The failure of the committee to act on these circuit nominees is particularly disturbing in light of the vacancy crisis in the circuit courts.

As this chart illustrates, the number of vacancies in the circuit courts is dramatically higher than it has been during the first 2 years of the most recent Presidential administrations. At the end of the first 2 years of the Herbert Walker Bush administration, there were only 7 circuit court vacancies. At the end of the first 2 years of the first term of the Clinton administration, there were only 15 circuit vacancies. At the end of the first 2 years of the second term of the Clinton administration, there were only 14 vacancies.

Incidentally, I chaired the Judiciary Committee during this time, and there were fewer vacancies than there were when Democrats controlled the Senate during the first 2 years of the first time of the Clinton administration when the Democrats controlled the committee.

Now, let's look at the present administration. There are currently 31 vacancies in the circuit court of appeals. Is is a disaster. This is the same exact number of vacancies in the circuit courts that existed when the Democrats took control of the Senate on June 5 of last year.

This does not represent progress. This does not represent fairness. This does not show a good job being done by the Judiciary Committee. It represents stagnation. It is for this reason that I find it more than a little hard to swallow my colleagues' arguments that their pace of judicial confirmations is keeping up with the vacancy rate. The numbers simply tell another story.

We are making absolutely no progress in addressing the vacancy crisis in the Federal judiciary. Even if you look beyond the circuit courts to the full judiciary—and we will just put these numbers up here as shown on the chart—these numbers are not much better.

The end-of-session vacancies during the first 2 years of Republican control of the Senate during the Clinton administration never exceeded the vacancies we now face. At the end of 1995—my first year of chairing the committee—there were 50 vacancies in the Federal judiciary. Only 13 of these vacancies were in the circuit courts—only 13.

At the end of 1996—my second year of chairing the committee—there were 63 vacancies in the Federal judiciary.

I might mention, when Senator BIDEN led the Democrats and chaired the committee—and I thought he did a great job—when he chaired the committee, in the same period, at the end of 1992, there were 97 vacancies. But there were only 63 vacancies at the end of my second year. Only 18 of those were in the circuit courts. Now, that was too many, I admit, but it is certainly not 31 as we have today.

But at the end of last session, there were 94 vacancies in the Federal judiciary. Now, admittedly, the Democrats did not have a full year to take care of it, but, still, 94 vacancies is a high vacancy total at the end of the session.

Now we have 95 vacancies after almost a year, which is a dramatic increase from the 67 vacancies that existed at the end of the 106th Congress. As we have seen, 31 of these vacancies are in the circuit courts.

What does this mean? It means the Senate's pace under Democratic control in confirming President Bush's judicial nominees is simply not keeping up with the increasing vacancy rate, not even in accordance with the precedence and practices of the committee.

I have heard a lot of comments about how they are going to treat Republicans like we treated them, that they are going to treat Republicans just as fairly as we treated them. My gosh, the record shows we are not being treated fairly at all. You might be able to find some things to criticize in any Judiciary Committee chairman's tenure because of the difficulties in working with the other 99 people, but the fact is, this isn't fair.

For anyone who doubts that the vacancy crisis represents a problem, let me point out that the Sixth Circuit Court is presently functioning at 50-percent capacity—50 percent. That is a disaster. Eight of that court's 16 seats are vacant. President Bush nominated seven well-qualified individuals to fill the vacancies on that court.

Two of these nominees, Deborah Cook—a wonderful woman lawyer—and Jeffrey Sutton—one of the finest appellate lawyers in the country—have been pending since May 9 of last year. They were among the first 11 judges that President Bush nominated. Yet they have languished in committee without so much as a hearing, while the Sixth Circuit functions at 50-percent capacity.

Although the Michigan Senators have blocked hearings for the three Bush nominees from Michigan by refusing to return blue slips, the paperwork on the remaining four nominees is complete. Again, nothing stands between them and a confirmation hearing except my Democratic colleagues.

Let me also say that I find it highly unusual that blue slips withheld in one State should be used to denigrate or to hold up judges from another State. I do not think Senators should be given that kind of authority, but that is what is being done here.

Another appellate court that is in trouble is in the DC Circuit, the Circuit Court of Appeals for the District of Columbia, which is missing one-third of its judges. It has only 8 of its 12 seats filled. That is one of the most important courts in our country. It hears cases that other circuits do not hear. It hears an awful lot of administrative law cases. It is a busy court. Yet we only have 8 of the 12 seats filled.

President Bush nominated two exceedingly well-qualified individuals to fill seats on the DC Circuit on May 9 of last year, better than 300 days ago.

Miguel Estrada, a Hispanic, who has a remarkable record, and has argued 15 cases in front of the Supreme Court of the United States, could not even speak English when he came to this country, and is one of the most articulate, impressive, intelligent advocates in our country today—not even given a hearing. Well-qualified by the American Bar Association.

John Roberts: I talked to one of the Supreme Court Justices just a short while ago. He said he is one of the two top appellate lawyers in this country today. He is not particularly an ideologue. This man is a great lawyer. He has Democrat and Republican support. So does Miguel Estrada, by the way.

They are among the most well-respected appellate lawyers in the country. And I should say that Miguel Estrada would be the first Hispanic to ever serve on the Circuit Court of Appeals for the District of Columbia, to sit on this important court.

My friends on the other side talk a lot about diversity, but apparently it is diversity only if the candidates agree with the extreme liberal views of the special interest groups in this town. And they are in this town. They really do not represent the people at large—narrow interest groups. This troubles me. The Judiciary Committee has not granted them a hearing, much less a vote.

If the DC Circuit and the Sixth Circuit are any indication, it appears the committee is doing what it can to avoid filling seats on the courts that need judges the most.

Part of the problem is a reluctance by the committee to move more than one circuit judge per hearing. In fact, I do not believe the Democrats have moved more than one circuit judge per hearing during the entire time they have had control of the Senate.

When I was chairman, I had 10 hearings with more than one circuit nominee on the agenda. In fact, I had hearings with more than one circuit nominee on the agenda in every session in which I was chairman except for the Presidential election years. That is the precedent and the practice of the committee.

Let's stop making excuses. Let's confirm these judges. If we are going to get serious about filling circuit vacancies, then I encourage my Democratic colleagues to move more than one circuit judge per hearing.

One of the more ludicrous charges I have heard is that the Republicans did not confirm any judges while they held the majority in the Senate last year. Let me set the record straight on this. President Bush announced his first 11 judicial nominations on May 9. I scheduled a confirmation hearing on 3 of those judicial nominees—all circuit court nominees—for May 23.

However, some Democratic members of the committee claimed to need more time to assess the nominees. Out of an abundance of caution, a recognition of their feelings, and in the interest of fairness, I agreed to cancel the hearing despite widespread speculation that the Republicans' loss of the majority in the Senate was imminent. As we all know, control of the Senate shifted to the Democrats shortly thereafter on June 5.

So while the Republicans were ready to hold a hearing on 3 circuit judges within 2 weeks of their nomination in May, it took the Democrats until the end of August to hold confirmation hearings on 3 circuit judges. By the way, 2 of them were Democrats, so it is not hard to understand why they would want to get them through. And I wanted to get them through, too. And I want to get them through before, at least one of them, now Judge Gregory.

I have to admit, when these special interest groups on our side came to me, some of the far right groups, I told them: Get lost. And I made some real enemies in the process. But, by gosh, I wanted to do my job as Judiciary Committee chairman.

I know it is a difficult job. And I know my colleague has a very difficult time with colleagues, with outside groups, with all kinds of problems. I had the same problems. But sooner or later, we have to do something about these problems. I have also heard my Democratic colleagues complain that I was unfair because almost 60 Clinton nominees never received a hearing or vote. I have two responses to this charge.

Let me just go to this chart.

First, as the following chart shows, the Democrat who controlled the Senate during the first Bush administration left 59 judicial nominees total, circuit and district nominees, without a hearing or vote at the end of 4 years—59. And they are complaining? In contrast, only 53 Clinton nominees were not confirmed over my 6 years as chairman. But that was in 4 years that they left 59. Now, mine was 53. Yet my Democratic colleagues claim that I was unfair to the Clinton nominees despite the fact they left more Bush 1 nominees unconfirmed in an actual shorter period of time.

Second, many of the Clinton nominees who were not confirmed had good reasons for not moving. As I have mentioned, not including withdrawn nominees, there were only 53 Article III judicial nominees who were nominated by President Clinton during my 6 years as chairman who did not get confirmed. Of those, nine were nominated too late in a Congress for the committee to feasibly act on them or were lacking paperwork. That leaves 44. Seventeen 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 those, no matter how much I would have liked to, without completely ignoring the Senatorial courtesy that we afford to home State Senators in the nominations process, as has always been the case. That leaves 27. of the original 53. One nominee was defeated on the Senate floor, which leaves only 26 remaining nominees. Of those 26, some may have had other reasons for not moving that I simply cannot comment on. So in all 6 years that I chaired the committee while President Clinton was in office, we are really only talking about 26 nominees who were left.

Now I heard one of my Democratic colleagues on the floor last week comparing their pace to mine in increments of months—9 months to 12 months, 9 months to 9 months, 3 months to 3 months, and so on. I must admit that I had a tough time following his argument in light of the astronomical vacancy rate that we now face in the Federal judiciary. but in terms of fairness, let me set forth what I consider to be the bottom line. President Clinton enjoyed an 85 percent confirmation rate on the individuals he nominated. A total of 377 Clinton nominees sit on the Federal bench today. That was with my help in every case.

This number is only 5 short of the all-time confirmation champion, President Reagan, who had 382 judges confirmed by the Senate. I believe President Clinton would actually have had more, had it not been for Democratic holds in the Senate that I knew about at the end of that last session. Keep in mind, President Clinton had 6 years of a Republican Senate, the opposition party, yet had virtually the same number of people confirmed as the all-time champion, President Reagan, who had 6 years of his own party in control of the Judiciary Committee in the Senate. It is astounding to hear some of these arguments against what we did.

Go over it again. President Clinton, with a 6-year opposition party, and me as chairman, had 377 judges confirmed in his 8 years, during 6 of which Republicans controlled the Senate. President Reagan, the all-time champion, got 5 more, 382, and he had 6 years of a favorable party Senate.

I don't think there is much room to be complaining about what happened during the Clinton years.

When President Bush's judicial confirmations start approaching these numbers, then I may be ready to agree that the Democrats are treating President Bush's nominees fairly.

Let me add something more. If you look at this chart, it is pretty important because it shows that the total vacancies at the end of the 102nd Congress were 95. But if you go to the pending nominees not confirmed at the end of Bush 1, there were 11 circuit court nominees and 48 district court nominees, for a total of 59 circuit and district court nominees.

If we go to the end of President Clinton, it really tells the story.

In President Clinton's first 4 years, we had a total of 202 judges confirmed. When the Democrats controlled the committee in 1993, there were 112 vacancies at the end of the session. Mine was 54—53, actually. At the end of 1994, when they controlled the committee, there were 63 vacancies. I remember

President Clinton saying that was a full judiciary. Senator BIDEN was the chairman, and I agreed. Somewhere around 60 judges is basically a full judiciary. There may be problems in certain areas, but basically that is a full judiciary.

In 1995, the first year after we took over, there were 50 total vacancies left and only 13 circuit court nominees left. Keep in mind, when the Democrats controlled, on circuit court nominees, there were 20 at the end of 1993 and in 1994 there were 15. That is what you have to do at the end of session—not just choose any 3 months you want to in any year. Let's talk in terms of fairness here and statistics.

Let's go down it again. President Clinton in 1993 nominated five to the circuit court. President Bush has nominated 31—actually more than that. He had 3 nominees confirmed, but there were 20 circuit court nominees at the end of that session. In 1994, he nominated 17, submitted 17; there were 16 who were confirmed. There were 15 left over at the end of 1994. The Democrats controlled the committee. In 1995, he nominated 16; there were 11 confirmed of the 16. That is a far better record than we are hearing about the complaints from the Democrats on what happened under my leadership. There were only 13 left, a 7.3-percent vacancy rate.

In 1996, I was chairman again. We only had four nominations. That is why none was confirmed. It was an election year. Eighteen were left over. If you stop and think about it, that is still 13 fewer than the vacancy rate right now, or the vacancy rate that existed last May 9, 31 vacancies.

In the district courts, if you want to go through it, in 1993 there were 42 nominations submitted; 24 were confirmed. That is when the Democrats controlled the committee. There were 92 vacancies at the end of the session.

In 1994, there were 77 nominations in the district court; 84 were confirmed. And there were only 48 left at the end of that session. In 1995, when I took over, there were 68 nominations; 45 were confirmed. And there were 37 vacancies. In 1996, there were 17 nominations submitted; 17 were confirmed. In that year, 45 at the end of that session.

But if we go to circuit and district courts combined, in 1993, when the Democrats controlled the Senate, there were 47 total nominations submitted. There were 27 that were confirmed when the Democrats controlled the committee and their own President was there. And there were 112 vacancies at the end of that session. In 1994, there were 94 total nominations submitted; there were 100 nominations confirmed. And there were only 63, which is still 10 higher than it was at the end of my tenure, at the end of the session when President Clinton left office.

In 1995, there were 84 nominations submitted; 56 were confirmed. And there were 50 left over at that time. Then in 1996, there were 21 total nominations submitted; 17 confirmed. There were 63 left over.

As you can see, if we compare the statistics, the Democrats were not mistreated. They were treated fairly. Admittedly, it is a tough job being chairman of the Judiciary Committee. These are hot issues. There are always some people in the Senate, whether liberals or conservatives, who don't like certain judges. Let's face it. It is not easy to handle some of those problems. But I have to admit, the Democrats have been treated very fairly. I would like to see us treated just as fairly as they were. With 95 vacancies existing today, it is apparent that the job is not getting done.

I reserve the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. EDWARDS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HATCH. Mr. President, I ask unanimous consent that the time during the quorum call be charged equally to both sides.

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

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

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

Mr. SPECTER. Mr. President, I have sought recognition to support the amendment offered by the Senator from Mississippi, Mr. LOTT, our distinguished Republican leader, that the Senate Judiciary Committee shall hold hearings on the nominees submitted by the President on May 9, 2001, by May 9, 2002.

It is my view that this resolution is preeminently reasonable. Senator DASCHLE, the majority leader, has submitted a resolution in the nature of a first-degree amendment saying that the hearings should be conducted expeditiously.

It is my hope there will be a truce on the confirmation battles that have been raging for a very long time—during most of the 22-year tenure I have had in the Senate, all of which has been on the Judiciary Committee. We have seen that when there is a Democrat in the White House—for example, President Clinton—and Republicans controlled the Senate in 1995 through the balance of President Clinton's term—that the same controversy arose. I have said publicly, and I repeat today, that I believe my party was wrong in delaying the nominations of Judge Paez for the Ninth Circuit and Judge Berzon for the Ninth Circuit and Judge Gregory for the Fourth Circuit and the battle along party lines that arose over the nomination of Bill Lann Lee to be Assistant Attorney General for the Civil Rights Division.

Just as I thought Republicans were wrong in the confirmation process during much of President Clinton's tenure, I think the Democrats are wrong on what is happening now with the slowness of the confirmation process.

It may be that, in the final year of a Presidential term, some motivation would exist to delay the process so that if a President of the other party is elected, there might be a different attitude on the nominations.

Certainly those considerations do not apply in a first year or in a second year. The individuals who were nominated by the President on May 9 were very well qualified, I think extraordinarily well qualified, being the first batch submitted by the President.

It would be my hope that we could establish a protocol. I have prepared a resolution which would go beyond what Senator LOTT has called for and would call for a timetable established by the chairman of the committee, in collaboration with the ranking member, to set a sequence for when a nominee for the district court, circuit court, or Supreme Court would have a hearing. Let that be established and let it be followed regardless of who controls the White House and regardless of who controls the Senate.

Then a timetable ought to be established for a markup for action by the committee in executive session, and a timetable should be established for reporting the nomination out to the floor.

There ought to be latitude and flexibility for that timetable to be changed for cause where there is a need for a second hearing or where an additional investigation has to be undertaken. But there ought to be a set schedule which would apply regardless of a Democrat making appointments to a Judiciary Committee controlled by Republicans or a President who is a Republican submitting nominations to the committee controlled by the Democrats. It seems to me that just makes fundamental good sense.

If we established that protocol, it would stay in effect and we would end the political division which is not good for the reputation of the Senate, it is not good for the reputations of the Senators, and most importantly, it is not good for the country.

The resolution I have prepared would further provide that where a vote occurs for a district court judge or court of appeals judge along party lines, that nomination be submitted for action by the full Senate. The rationale behind that, simply stated, is if it is partisan politics, then let the full Senate decide it.

We just went through a bloody battle, and I think a very unfortunate battle, on Judge Pickering. I believe the

real issue of Judge Pickering was notice to President Bush about the judicial philosophy of a nominee for the Supreme Court of the United States, if and when a vacancy occurs.

I do not intend to reargue the Pickering matter, and I know the distinguished Senator who is presiding, the Senator from North Carolina, has a different view of the matter, but Judge Pickering is a very different man in 2002 than he was in the early 1970s when he was a State senator from Mississippi, when segregation was the norm. Judge Pickering had a lot of support from people in his hometown of Laurel, MS, who are African Americans, who came in and urged his confirmation.

Judge Pickering is behind us. We ought to learn a lesson from Judge Pickering.

There are six precedents which Senator HATCH has put into the RECORD where nominees turned down for district court or circuit court were considered by the full Senate. That was the practice when Judge Bork was turned down by the Judiciary Committee on a 9-to-5 vote. He was then considered by the full Senate and ultimately defeated 58 to 42, but he was considered by the full Senate.

Justice Thomas had a tie vote in the Senate. We have not had any nominee in my tenure—perhaps no nominee in the history of the Court—more controversial than Justice Thomas. But when the motion was made to submit Justice Thomas for consideration by the full Senate, it was approved 13 to 1.

My resolution further calls for Supreme Court nominees to be considered by the full Senate regardless of the committee vote, and I believe there has been an acknowledgment on all sides—more than a consensus, a unanimous view—perhaps just a consensus, but the general view that a Supreme Court nominee ought to be submitted to the full Senate.

My resolution will also provide that the matter will be taken up by the full Senate on a schedule to be established by the majority leader, in consultation with the minority leader.

We ought to get on with the business of confirmations. Senator LOTT's proposal of a 1-year period I think is preeminently reasonable. One might call it a statute of limitations in reverse. We lawyers believe in statutes of limitations.

Beyond Senator LOTT's amendment, I believe there ought to be a protocol which would establish timetables and a procedure for ending this political gridlock, taking partisanship out of the judicial selection process so that the courts can take care of the business of the country. There are many courts in a state of emergency with too few judges to handle the important litigation of America. I know that is something in which the Presiding Officer has a deep and abiding interest, having spent so much of his life in the trial courts, and I spent a fair part of mine in the trial courts as well. In a sense, the Senate is something of a trial court as well. I hope we get the right verdict here.

I thank the Chair and yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I say to my friend from New York, my remarks are very brief and if he would not mind my going ahead, this is the only opportunity I will have to make these remarks prior to the vote.

Mr. SCHUMER. Mr. President, I never mind deferring to the Senator from Kentucky, especially when he is brief.

Mr. MCCONNELL. That is a very good habit, and I hope the Senator from New York will continue it.

Mr. President, I commend the former chairman of our committee, Senator HATCH, and Senator SPECTER for their observations about the dilemma in which we find ourselves. Senator SPECTER and Senator HATCH both received a good deal of criticism from a number of Members on this side of the aisle for moving too many Democratic judges during the period when President Clinton was in the White House and the Republicans were in the majority in the Senate. We should listen to them when they engage in this debate.

Senator SPECTER, in particular, was very sympathetic to moving Democratic nominees out of committee and has offered today to discuss a resolution he is going to submit that I think provides a solid bipartisan way to begin to resolve this dilemma in which we find ourselves.

I say to Senator LEAHY, the chairman of the committee, he has been totally fair with us in Kentucky in dealing with our district judges. We had three vacancies in the Eastern District, all of which have been filled. So we certainly have no complaint on that score.

I do want to say something about the Sixth Circuit. The Sixth Circuit is made up of Michigan, Ohio, Kentucky, and Tennessee. It is currently 50 percent vacant. It basically cannot function. It is not because President Bush has failed to act. He has nominated seven individuals for those eight positions, and they have been nominated for quite some time: John Rogers from my State was nominated 93 days ago; Henry Saad, Susan Neilsen, and David McKeague were nominated 134 days ago; Julia Gibbons was nominated 164 days ago; and Jeffrey Sutton and Deborah Cook were nominated an incredible 317 days ago with no hearings on any of these nominees.

Finally, in terms of the Senate as an institution, we cannot function this way. This is simply not acceptable. I think the voters have a right to expect us to do our work. If we are going to come anywhere close to treating President Bush as President Clinton and President Reagan were treated, we are going to have to start having hearings and votes on nominees for these circuit court vacancies.

I know this is a difficult matter. I know it has become increasingly politically charged in the years I have been in the Senate and that both sides have contributed to it. If we are not going to stop that now, then when? This is a good time to sit down in a bipartisan fashion and figure out how we can do what is in the best interest of the country because whether people on the other side like it or not, President Bush is there. He is going to be there for another 3 years for sure. We need to deal with these vacancies at the circuit court level.

I am in strong support of the Lott resolution to ensure the fair treatment of President Bush's judicial nominees.

As the resolution lays out, the situation with judicial vacancies has gotten remarkably worse since President Clinton left office. There were 67 vacancies when President Clinton left office. This vacancy situation has now jumped to 95 vacancies. Thus the percentage of vacancies has climbed from 7.9 percent to 11 percent.

It is a sorry state indeed, when Federal judges are retiring at a faster rate than we can replace them. This vacancy situation is particularly acute on the circuit courts, where, as the resolution notes, 31 of the 96 vacancies exist. This is an astounding 17.3 percent vacancy rates for the courts of appeals—almost one seat out of every five being empty.

As the ranking member of the Judiciary Committee said, my own circuit—the sixth—covering Michigan, Ohio, Kentucky, and Tennessee, is the worse off of all the circuits. Fully one-half of the appellate judgeships on the sixth circuit are vacant. Think of that. Every other seat on the Federal circuit that hears appeals from my constituents is empty. That is alarming.

Now, my friend the chairman—and he is my friend—knows how warmly I feel about him for his handling of the district court vacancies in my home State.

But I must confess, I am at a loss, and am becoming increasingly exasperated, at the inability or outright refusal—at this point, I don't know which—to confirm some judges to my home circuit.

Let me be clear. This is not the President's fault. He has nominated individuals to fill seven of the eight seats on the sixth circuit. Yet none—I repeat none—has even gotten so much as a hearing, even though all of the paperwork of these nominees is complete.

As I said, these individuals have been before the Senate for quite some time:

John Rogers was nominated 93 days ago;

Henry Saad, Susan Neilson, and David McKeague were nominated 134 days ago;

Julia Gibbons was nominated 164 days ago; and

Jeffrey Sutton and Deborah Cook were nominated an incredible 317 days ago.

Back home in Kentucky, if you don't do your job for 10 months, you are probably out looking for work. I think the American people ought to remember that come election time, when they are thinking about who should run the Senate.

On behalf of my constituents, I urge the chairman to take at least some action—some action—and try to get at least a few of these judges confirmed before the end of the year.

To do that, we are going to have to pick up the pace considerably. We hear about how poorly President Clinton was treated—even though he got close to 400 judges and finished in second place all time, only 5 behind President Reagan.

But to equal the number of judges President Clinton got confirmed in his first term, we're going to have to confirm 87 or so judges before the end of the 107th Congress. And to reach that parity, we're going to have to have hearings, markups, and votes on over four judges per week.

We can't just have a nomination hearing for a single circuit court nominee every other week. We can't have a confirmation hearing one week—with maybe one circuit court nominee at best—and a markup the next week. We need to get on a regular pace of having hearings, markups, and floor votes every week for a reasonable number of judges, including circuit judges.

In sum, because the vacancy situation is deteriorating by the day, I am compelled to urge the adoption of the Lott resolution.

I thank the Senator from New York for his indulgence in allowing me to go ahead of him.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I wish to say a few words about judicial nominations and the pending amendment. Our friends on the other side of the aisle made a lot of hay about our record of judicial nominations, but the facts do not support the allegations.

First, under Chairman LEAHY'S leadership in the 9 months since the Senate's reorganization, and despite the disruptions caused by the attacks of September 11 and the anthrax in our offices, we have sent 42 nominees to be voted on. Yet our friends continue to argue we are not holding enough hearings. Forty-two nominees is a huge number.

I remember the hearing we had the day we were evacuated from the Hart Building and all of the office buildings. We had a hearing—that happened to be the first one with Judge Pickering —in a cramped, little room in the Capitol. Senator LEAHY came back once during recess to hold a hearing, I am told. This is clearly not the action of a group trying to hold up judges.

In 1999 and 2000, by contrast, the Republican-controlled committee held only seven hearings all year, and those were entire years, not the few months we have had.

Second, our friends claim we are confirming too few judges. We have put 42 on the bench. That is more than were confirmed in the entire first year of the Clinton administration when the Democrats controlled the Judiciary Committee.

They argue we are stalling. But when one looks at comparable years, Chairman LEAHY'S Judiciary Committee is well ahead of pace. So the claims of stalling ring hollow when one looks at the facts.

Third, when we point to raw numbers, our colleagues change the argument and point to the percentage of seats that remain vacant. Well, a problem cannot be created and then the complaint made that someone else is not solving it fast enough. That is the height of unfairness. That is the height of sophistry.

Our Republican friends controlled the Judiciary Committee during the last 6 years of the Clinton administration, and during that time vacancies on the bench increased some 60 percent. All of a sudden we are concerned about vacancies. What happened in 1998 and 1999 and 2000? We were not concerned with vacancies then—only now.

We are not going to play games and say what is good for the goose is good for the gander. We are not suggesting two wrongs make a right by holding up judges the way it was done previously. Instead, we are going to decrease that, and we have gotten off to a good start.

Addressing the point my good friend from Kentucky made about the Sixth Circuit, yes, there are many vacancies there, and that is because nominees who were put in by President Clinton, Helene White in particular, were held up for very long periods of time.

Now, what is fair if you want to fill the vacancies? What is fair is not for the President to just pick names and say, endorse these, but what is fair is for the President to sit down with all the Senators from the Sixth Circuit, not only the Senators from one party, and come to an agreement about who should be nominated. Maybe Helene White should be nominated now, and then one of the President's selections. Maybe it should be people on whom both sides can agree.

So if there is real concern about filling the Sixth Circuit, I say to my colleague from Kentucky—I wish he were still present—then consult all the Senators of that circuit and we can get judges done like that.

To say, after the other side held up judges whom President Clinton nominated, now we should just, without even aforethought, approve all the judges President Bush nominates, when he does not consult with anyone from this party—and I say that as somebody who greatly respects the President and gets along with him—does not make any sense at all. Do not make the argument about vacancies that you have created unless you are prepared to make this a partnership to fill those vacancies.

That leads to my fourth point. Because so many Clinton nominees never got hearings and never got voted on by the Republican-controlled Senate, the courts now more than ever hang in the balance. Some of the nominees have records that suggest extreme viewpoints. It is our obligation to examine the records closely before we act. The Senate is the last stop before a lifetime appointment on the Federal bench, and so we cannot blindly confirm judges who are a threat of rolling back rights and protections through the courts not over the last 25 years but over the last 70. Some of these judges want to go back to pre-New Deal: Reproductive freedoms, civil rights, the right to privacy, the right to organize, environmental protection, worker and consumer safety.

In my State of New York, the administration has so far worked with us in good faith to select nominees who meet three requirements for judges, at least the three I have told them I care about: Excellence, moderation, and diversity. Nominees who meet these criteria will win my swift support. For those nominees who raise a red flag, whose record suggests a commitment to an extreme ideological agenda, we have to look at them closely.

These days, the Supreme Court is taking fewer than 100 cases a year. That means these appellate court nominees particularly will have, for most Americans, the last word on cases that are the most important matters in their lives. We need to be sure the people to whom we give this power for life are fair minded, moderate—I never like judges too far left or too far right; they both become activists and try to change the law way beyond what the legislature wants—and they have to be worthy of the privilege.

We have worked together with our Republican colleagues on several matters since September 11, and by and large we have done well to keep things bipartisan. Campaign finance reform yesterday was a huge hurdle for us to clear. On election reform, I am optimistic we are very close to a bipartisan solution. The energy bill has a lot of amendments to work through.

Again, in this body, whether you have 51 or 49, much cannot be accomplished unless we work in a bipartisan manner. On judicial nominees, why can we not do the same thing? Both sides ought to be working together to correct imbalances in the court and keep the judiciary within the mainstream. We need nominees who are fair and open minded, not candidates who stick to an ideological agenda. The Constitution mandates this. It is not just the Senate consent; it is the Senate gives advice and consent. As far as the advice part of that phrase goes, there has been very little advice sought of this body. That is the reason we have such a deadlock.

I prefer judges who do not stick to an ideological agenda. I prefer our judges share views with mainstream America.

However, I have no problem in voting in favor of some very conservative nominees when there is some balance on the court; there is Scalia on one side, maybe, and a Black or a Douglas on the other side. That would make a great Supreme Court. The issues would be debated.

That is what President Clinton did, by and large. He nominated moderates. We forget that. If you look at an unobjective scale and look at middle America, the nominees of President Bush are much further to the right than President Clinton nominees to the left. Most of the people he nominated were prosecutors, law firm members. It was not a phalanx of legal aide lawyers and people who would tend to be more liberal. Even the moderates toward the end of Clinton's terms did not get a hearing on the Fifth Circuit.

Mr. KENNEDY. Will the Senator yield?

Mr. SCHUMER. I am happy to yield.

Mr. KENNEDY. I thank the good Senator for his presentation today, reviewing the historical background of the record of the committee, as the Senator from Vermont, our chairman, Mr. LEAHY has done—and he has been assaulted and attacked. Senator SCHUMER has also reviewed the unfairness of the treatment of individuals as a result of the Republican activities.

I agree with the Senator from New York. We ought to understand what the Constitution asks of us; that is, have shared power with the Executive. We know this President has the primary responsibility, but it is a shared power. We ought to exercise it in a responsible way. I hope that will be the way in the future.

If there is any benefit that will come from this debate and discussion, perhaps it is that we will have a better understanding, as will the American people, and we will move ahead in trying to get well-qualified people who deserve to be there.

I have a number of echoes that still ring in my mind about how people were treated. Numbers do not always define how people were treated. I was in the Senate when Ronnie White, who had been reported out of our committee, and on a Tuesday afternoon was going to be voted on at 2:15, the Republican caucused on Ronnie White, and without any information to any of the members of the Judiciary Committee, came here, after distorting and misrepresenting his position, and voted unanimously—every single Republican—against him, without any notification, serious distorting, and misrepresentation of his outstanding record as a judge.

Talk about fairness. This was after Senator BOND from Missouri had introduced him to the Judiciary Committee recommending the Judiciary Committee support him, and the Judiciary Committee did support him. But not behind closed doors, with distortion and misrepresentation, in an attempt to humiliate him. Fairness goes there, too, does it not?

Also, I remember the case of Bill Lann Lee very clearly. There are many Horatio Alger stories about the struggle of parents who have sacrificed in order to give the opportunity for education to their children. But they have a hard time mentioning the extraordinary sacrifice of the parents of Bill Lann Lee.

I remember the hearings on Bill Lann Lee. He had been an outstanding civil rights leader. Individuals on the opposite side of his cases came in and testified about his fairness and how he committed to the Judiciary Committee that he was prepared to uphold the law. But not according to the Judiciary Committee and to the majority of the Judiciary Committee. They refused to let him go ahead and get confirmed and let the President of the United States have his own person, his own man in this case, to be the head of the Civil Rights Division.

It is not just numbers; it is how people are treated. I would hope we could get about the business in trying to find a way to work together. I was surprised—I don't know whether the Senator was surprised—to read in the newspaper, and I don't know if it is accurate, about how a principal Presidential adviser indicated they were prepared to take up what they consider a challenge by the Judiciary Committee and continue to nominate individuals who were going to be representative of a particular philosophy.

If we are trying to talk about fairness, trying to talk about balance, trying to talk about quality in the Federal judiciary, I don't know if the Senator finds it perplexing we have representatives of the party talking about fairness, and at the same time principal advisers of the President of the United States are evidently giving reassurances to, in this case the Washington Post, saying to individuals: Not to worry; the administration will continue to support very conservative nominees.

I ask unanimous consent to have this article from the Washington Post printed in the RECORD.

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

[From the Washington Post, Mar. 20, 2002]

ROVE TO GROUP: BUSH TO PRESS FOR CONSERVATIVE JUDICIARY

(By Alan Cooperman and Amy Goldstein)

As the Senate Judiciary Committee was voting Thursday evening to reject U.S. District Judge Charles W. Pickering for an appellate court position, presidential adviser Karl Rove was telling an influential Christian political action group that President Bush would continue to nominate conservatives as federal judges.

''We're not going to have a pleasant day today [in the Senate],'' Rove told the Family Research Council at the Willard Hotel, according to a tape recording given to The Washington Post by an attendee. ''. . . This is not about a good man, Charles Pickering. This is about the future. This is about the U.S. Supreme Court. And this is about sending George W. Bush a message that 'You send us somebody that is a strong conservative, you're not going to get him.'

''Guess what?'' Rove added. ''They sent the wrong message to the wrong guy.''

In addition to sounding a defiant note on judicial nominations, Rove's speech set out a broad agenda for cooperation between the administration and the Christian right.

''There'll be some times you in this room and we over at the White House will find ourselves in agreement, and there'll be the occasion when we don't. But we will share a heck of a lot more in common than we don't. And we'll win if we work together far more often than the other side wants us to,'' Rove told the group of about 250 Christian political activists from around the country.

During the speech and subsequent question-and-answer session, Rove promised that the white House would push welfare reforms that encourage families and marriage.

He also said the administration would try to find ways to support crisis pregnancy centers that counsel women against abortion. And he predicted a battle in the Senate over administration-backed proposals to ban human cloning. ''The other side is winning the P.R. war'' to permit laboratory cloning for medical research, he said.

Rove referred to the Senate's action on Pickering's nomination as a ''judicial lynching'' and said the blocking of such nominees ''needs to be the issue in every race around the country for the United States Senate.''

Senator Patrick J. Leahy (D–Vt.), chairman of the Judiciary Committee, has denied that the panel is out to block Bush's judicial selections, noting that it approved 42 nominees to federal courts before it rejected Pickering.

Leahy also said the panel had conducted more hearings and votes on federal judgeships since Democrats assumed a majority in the Senate last year than the GOP-led Senate did during the entire Clinton administration.

Mr. KENNEDY. I am interested in any reaction of the Senator.

Mr. SCHUMER. I thank the Senator from Massachusetts for, as always, being right on target. The Senator makes two very good points that I share.

No. 1, it seems we are supposed to remember history. The other side would like us to forget about everything that happened in 1998, 1999, and 2000 and say: Forget all that; just go forward.

Unfortunately, we are left with the burden of going forward based on what happened in the past, based on the fact the bench was empty because there were certain people who did not meet certain criteria; based on the fact, as the Senator from Massachusetts mentions, there was not a process in certain instances—no fault of our good friend from Utah.

The case of Ronnie White was one of the more appalling cases I have witnessed in my 22 years in the Congress, in the House and the Senate. It seems there is a whole new standard. What is so ironic, the second point the Senator from Massachusetts made, we could easily come to agreement if we work in a bipartisan way. Let's not fool anybody. We have not been consulted. We have not been asked for advice. We have not been talked to about where judges should be. It is, instead: Here is the group and you must rubberstamp them. That is not what the Founding Fathers intended.

Most Americans would agree the President and our colleagues from the other side would nominate judges to the right of the mainstream, and we might like judges somewhat to the left of the mainstream. Doesn't it make sense if we consulted we would come together in the middle? It seems to be the view of the other side, all of a sudden—not a consistent view, not a view held for the last decade or two, but all of a sudden—unless you find a judge who has engaged in some kind of egregious conduct, you must approve them. I object to that and I thank the Senator from Massachusetts for bringing this up.

It is perfectly fair to ask people about their judicial philosophy. This is the third position of our government. It is as important as any of the others. We do not just rubberstamp people. The only time in our history when there has not been this kind of debate is when both sides were intent on nominating moderate judges, such as in the Eisenhower administration. But otherwise, in the late 1960s, early 1970s, there were judges way to the left and people on the other side said bring it to the middle. That was fair. We are saying the same thing now.

I just ask my good friend from Massachusetts who has so much experience, doesn't it seem logical that if we were consulted, we would not get everything we wanted; if there was advice as well as consent, that we would come up with moderate, mainstream judges—to the middle, that we would move them quickly, that the process would be truly bipartisan, instead of the hard right talking to the far hard right and deciding that is a compromise?

Mr. KENNEDY. The Senator is absolutely correct. We have seen examples where we have worked together. I can think of the area in which I have been most involved, working with the administration on education reform. We have seen other actions out here—the bioterrorism effort, and just recently working together in our committee—the Senator is a Member—on the whole reform of the immigration system. We have a strong bipartisan effort. We have lines of communication. We do not get everything we need, but that is the way it works.

I daresay our judiciary ought to be the No. 1 area where we are working together because of the key aspect, the protection of the basic and fundamental liberties that are enshrined in the Constitution, ultimately rests with the judiciary. That ought to be the prime example of working together. History has given us those examples.

What we find distressing is, now, the report of Mr. Rove to a group:

Bush to press for conservative judiciary.

It isn't we are going to be pressing for the best qualified members of the judiciary. It isn't going to be the ones who can serve the public best. This is the kind of view that is evident within the administration.

I regret that. I think the Senator has outlined, really, the way we should proceed. I want to give him the assurance—I know the Senator from New York feels this way, and we see the Presiding Officer, the Senator from North Carolina, a member of the Judiciary Committee—we all want to try to get in the courts well-qualified individuals who have a fundamental and core commitment to constitutional rights and liberties.

I thank the Senator and appreciate his comments.

Mr. SCHUMER. I thank the Senator from Massachusetts.

We really hope, on our side, we can work together. We do want to be bipartisan. I think every time the President has reached out his hand, we have tried to move in the direction that brings us to the middle.

Somehow on judicial nominations it is different. I don't know why it is different. Maybe my good friend from Utah would recognize why it is different. I don't know. But he must know that on the Judiciary it is.

I, for one, have no litmus test at all. As I mentioned, I am willing to see balance on the Court. That means some judges to the right and some judges to the left and many in the middle; it is not all over to one side.

President Bush told us he picked judges in the mold of Scalia and Thomas. If you look at the nine members of the Supreme Court, those are the two furthest to the right. One or two Scalias or Thomases, that is one thing. A bench of nine of them, that is not what Americans wanted in the election of 2000. The electorate was moderate and voted towards the middle. A bench filled with conservative judges is not what is in the mainstream of this country. It is unacceptable.

I worry that the administration is willing to take casualties in this fight. They will send up waves of Scalias and Thomases. If one of them gets shot down, there will be another one. It is a small price to pay. They still win and stack the courts. I, for one, don't believe that is the way we should proceed.

Our country is divided ideologically. The mainstream is right in the middle, as it almost always is. There are periods when it is further to the right or left—it is not right now. The Presidential election showed that.

We had two presidential nominees, neither of whom was at the far end of their party—both probably in the middle of their parties—and the election was as close as could be. The American people were not saying give us people on the bench way over to the right—in the 10 percent most conservative; they were saying move to the middle.

Again, there has been no consultation with us, no desire to meet us part of the way—as there is on education, and has to be on budget. Rather, the Administration sends us wave after wave of people way over to the right.

It is not going to create harmony. It is not going to create comity. It is not going to create a full bench. And it is not going to create a fair bench. It is going to give many of us no choice than to vote ''no'' more often than we would like.

I was at the Supreme Court last week addressing the Judicial Conference of the United States. I spoke to Justice Rehnquist. He was sitting next to me and to other Judges there. I stated my message, and I think it must be repeated.

Our courts are in danger of slipping out of balance. We are seeing conservative judicial activism erode Congress' power to enact laws that protect the environment and women's rights and workers' rights, just to name a few. Like at almost no other time in our past, we are seeing a finger on the scale that is subtly but surely altering this balance of power between Congress and the courts. It is not good for our Government, it is not good for the country, and it should stop.

Moderate nominees, who are among the best lawyers to the bar—the best nominees the bar has to offer—are being confirmed rapidly. The committee has voted in favor of 42 of them in just 8 months. I can tell you for me, as chairman of the Subcommittee on Courts, it is a heck of a lot easier to rapidly confirm nominees when almost everyone agrees that a nominee is legally excellent and ideologically moderate. When issues of diversity are properly accounted for, we move forward hand in hand together.

The debate in the Chamber doesn't do anything to solve the problem we all agree is facing our courts. I agree we have to do better. But doing better doesn't mean an administration that nominates without consultation and thinks that our job should be just to rubberstamp them, pass them through, or give them some kind of ethical check and nothing else. That is not how it is. That is not how it was. That is not how it is going to be.

That leads to my final and fifth point. I think the rhetoric here sometimes gets out of hand. Each side has views that are firmly held. That is why compromise in coming to the middle is important. But anytime that we on this side vote against a nominee the President has put forward, we are accused of playing politics, or even that we are not voting for what we believe is right, but because some evil, malicious groups out there are exerting too much pressure. Groups that support the nominees, the Christian Coalition, for instance, they are great. They are exercising their constitutional right. But a group like the NAACP, that is against a nominee, is exerting too much pressure.

Come on, that is not where this debate ought to be.

How about this idea that we are holding up nominees because we have asked for unpublished opinions? For Judge Pickering, the vast majority of his

opinions, huge numbers, were unpublished.

Let's take it the other way. Let's say we would not have asked for his opinions. Let's say we had not spent weeks reviewing them, as we should do with a lifetime appointment to the court of appeals. Everyone in this Chamber knows what would have happened. We would have been accused of voting against the nominee without even reviewing his record.

To suggest there is something wrong with doing a thorough review of a nominee's record is to suggest that either we just rubberstamp confirmations or simply make up our minds on the basis of politics and party and not the record.

The irony is, of course, that some of my friends who are leveling these complaints are the same folks who requested that Clinton nominees not just go over their records, their judicial and legal records, but how they voted as private citizens in statewide referenda. These are my same colleagues who criticize us for saying ideology is relevant. I do not get that.

They want us not to review all the opinions of a nominee, but when the nominees were nominated before, they wanted even to know their private voting records.

Last summer, getting to my conclusion here, I called for us to be more open and honest about how we handle judges. I said we should take judicial philosophy and ideology out from under the rug. I said we should stop playing ''gotcha'' politics and start saying what we are really thinking, so if one side is opposed to a judge but they don't want to say they are opposed to his record, they don't go look and see what he did 30 years ago and look for some minor, certainly forgivable transgression.

If ideology didn't matter, how come most of the votes on most of the controversial judges, where supposedly it was something somebody did 30 years ago—sometimes it is all the Republicans who think that transgression was terrible and that judge should be voted down, and the Democrats think, oh, no, it is fine. Then the opposite occurs, and then the Democrats say: Oh, that transgression is horrible.

If the votes were evenly scattered throughout our philosophical views and in our party, then fine. But they aren't. We know what is going on here. We ought to do it out in the open.

I am proud to say that judicial philosophy and ideology will influence my vote. It is not a litmus test, but it certainly is part of nominating and considering a judge.

To do that, we have to investigate records and hold hearings where tough questions but fair questions are asked and where nominees have the chance to tell their side of the story.

I chaired the first hearing on Judge Pickering. I was there for the second hearing. Every Senator had a chance to ask every question he or she wanted. Judge Pickering was given every opportunity to answer those questions. The process was fair, and the process worked.

I understand there is a lot of tension around here about that vote. I understand that some feelings were hurt. That doesn't make me happy. I would like to be able to vote for every single judicial nominee who comes before us. But we have an awesome responsibility here. We do the Nation's work.

I couldn't be more proud to be a Member of this august body. I look at my friends, such as the senior Senator from West Virginia, Mr. BYRD, and the senior Senator from Utah, Mr. HATCH, and the majority leader and minority leader. And I see the best the Nation has to offer—fine Senators, all of them. I see Senators who want to bring honor to this institution. As we go forward with these confirmation hearings, we need to do better ourselves to respect the traditions of this body.

It is my profound hope that we will continue to hold hearings, that we will continue to be careful, that we will continue to fully review nominees' records, that we will continue being honest about why we are voting the way we are voting, and also that we can dampen the rhetoric and respect the way each of us approaches these votes.

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

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I have been listening to my colleague. It has been very interesting to me. Of course, they brought up Ronnie White. Ronnie White was voted out of the committee. His nomination was at least brought to the floor where he had a vote. Both of his home-State Senators voted against him. Under those circumstances, it is pretty hard to say that other Senators were acting improperly in supporting the home-State Senators. I can tell you right now that when two Senators from any State fail to return a blue slip for a district court nominee, that is basically the end of that district court nominee. If they were split, that nominee might come to the floor. I do not know if that is the position the current Judiciary Committee is taking. But at least White had a vote.

Judge Pickering didn't even get that. I think the reason was that Judge Pickering would have been confirmed on the floor because he is a fine man. Everybody knows it.

To bring up Bill Lann Lee, who was not a lifetime appointment, seems to me goes a little bit far here. I like him. He is a good man. I would have supported him for any other position. But he was a recess appointment. I predicted that one reason we couldn't support him was that he said he was against race-based quotas. Yet his whole experience in California had been built upon bringing actions against municipalities and other bodies on behalf of the organization he represented. The municipality either had to spend millions of dollars in defending itself, even though they probably would have won in the end, or they would have to settle the case. And guess what? Race-based quotas would be imposed upon them.

So some of the defendants just settled the case to get rid of the extra expenses they did not want to go through. That is the way it is done.

I predicted he would use the Civil Rights Division to do exactly that. I think, of course, there was more than a better case that he would do exactly what he did. That doesn't negate the fact that he is a terrific human being and somebody for whom I personally care. But we are talking about a volume of law.

Again, I come back to all the screaming and shouting about how badly Clinton judges were treated. Reagan, the all-time champion with 382 confirmed judges, had 6 years of a Republican Senate. Clinton had 5 fewer, 377 judges, and with 6 years of a Republican Senate, the opposition party.

Where is the argument? I have to say this: We never had 112 vacancies at the end of a session. We never had 95 vacancies at the end of the session, which is where we are today—95 vacancies.

Let me go a little bit further. I truly do love the Senator from New York. We all laughed in committee because he said he loved me and I said I loved him. He is a fine man, and he is a very good advocate. I respect him. His argument is that we should go right to the middle and we should just appoint moderates.

I have to tell you that if that had been the rule when President Clinton was President, we wouldn't have many Clinton judges on the bench today. They weren't exactly moderates. Some were. Some in the Bush administration—in fact, probably a majority will be moderate nominees.

To say that you can't have a liberal on the bench, or you can't have a conservative on the bench, or someone in the mainstream just because one side or the other doesn't want him or her, I think is wrong. Admittedly, we have right-wing groups come in here and start demanding that I stop all these judges. I told them to get lost. I would like to see the Democrat side tell those liberal, left-wing groups to get lost—not that they cannot speak out in this country; of course, they can. But when they start character assassinations as they did with Judge Pickering, I think they ought to be told to get lost. Whenever conservative groups did it, I told them to get lost.

The Senator from New York said the White House has not consulted with Democrats about judicial nominees. But I can count on the fingers of one hand the number of circuit court nominees of President Bush who do not have blue slips supporting their nominee. This goes for numerous States with Democrat and Republican Senators alike. Of course, Judge Pickering had

the support of his home-State Senators. There were no blue slips withheld in that case. Both Senators wanted Judge Pickering. I think a majority of the Senate wanted Judge Pickering.

I am not sure what kind of White House consultation my colleagues have in mind. Surely they are not talking about veto power over all of President Bush's nominees regardless of whether they are from their own State. This would fly in the face of the committee blue slip process and precedents we have always had. But that seems to be what they are asking for.

If the White House doesn't come up and consult with Senators who are not from the State that the nominees are coming from—are they are using that as an excuse? The White House does have an obligation to consult. I have told them they have to consult, and I expect them to. I know Judge Gonzales and his team consult with Senators who have people from their States.

Are we going to go as far as Abner Mikva went? The former distinguished judge on the Circuit Court of Appeals for the District of Columbia recently wrote an article stating that he thought President Bush should not nominate anyone to the Supreme Court because he really doesn't have a mandate; he is not really the President of the United States. That is like saying the Defense Department shouldn't really operate; that we should leave it to up to the Senate Committee on Armed Services to solve these problems. That is how ridiculous these arguments get.

The fact of the matter is that liberal Presidents generally appoint more liberal judges; conservative Presidents generally appoint more conservative judges.

I don't think you can categorize George Bush's judicial nominees as purely conservative. They have been in the middle of the mainstream. That doesn't mean because some are conservative that they are outside of the mainstream. The mainstream includes from the left to the right—reasonable people who want to do what is right, who literally are willing to abide by the law, and who deserve these positions.

The Republicans didn't take the position that we just have moderates in the Federal judiciary when President Clinton was President. Frankly, if we had taken that position, we would have been excoriated like you couldn't believe here in the Chamber, or, in fact, anywhere.

The fact of the matter is that all we are asking is fairness. We have 95 vacancies. Last May 9, we had 31 Federal Circuit Court of Appeals vacancies.

Today, we have 31 Federal circuit courts of appeals vacancies—a year later. And we have 8 of the original 11 nominees still sitting in committee without a hearing, some of the finest nominees I have ever seen, none of whom would be categorized as far right, in my opinion, all of whom are in the mainstream, and all of whom have been approved by the ABA either with a ''qualified'' or a ''well qualified'' rating, and some of the most important nominees in history.

I am also compelled to respond to a severe mischaracterization that some of my Democratic colleagues have perpetrated about judges. They have repeated that they noticed their first confirmation hearing within minutes of reaching a reorganization resolution in July. While technically true, this declaration leaves out an important fact:

The Democrats took charge of the Senate on June 5 of last year, but failed to hold any confirmation hearings during the entire month of June.

There is simply no basis for asserting that the lack of an organizational resolution prevented the Judiciary Committee from holding confirmation hearings in June, which is precisely what my colleagues have implied.

The lack of an organizational resolution did not stop other Senate committees from holding confirmation hearings in June. In fact, by my count, 9 different Senate committees under Democratic control held 16 confirmation hearings for 44 nominees during the month of June. One of these committees—Veterans' Affairs—even held a markup on a pending nomination.

But in the same period of time, the Judiciary Committee did not hold a single confirmation hearing for any judicial and executive branch nominees pending before us—despite the fact that some of those nominees had been waiting nearly 2 months.

What's more, the lack of an organizational resolution did not prevent the Judiciary Committee from holding five hearings in 3 weeks on a variety of other issues besides pending nominations. Between June 6 and June 27, the committee held hearings on the Federal Bureau of Investigation, charitable choice, and death penalty cases. There were also subcommittee hearings on capital punishment and on injecting political ideology into the committee's process of reviewing judicial nominations.

Although several members were not technically on the committee until the Senate reorganization was completed, there was no reason why Senators who were slated to become official members of the committee upon reorganization could not have been permitted to participate in any nomination hearings. This was successfully accomplished in the case of the confirmation hearing of Attorney General Ashcroft, which was held when the Senate was similarly situated in January.

Instead, we lost the chance to move nominees in June, not because of nominations over reorganization, but because of the failure of the Democratic leadership to schedule hearings.

So, I would hope we can get to confirming judges, rather than offering excuses for why they are not—and having 31 vacancies on the circuits.

Mr. President, I would like to take just a few minutes to address some of the comments that my democratic colleagues have made about Judge Pickering's nomination.

It is no secret that two very different pictures of Judge Pickering emerged from his confirmation battle. One picture was that of a man who took courageous stands against racism at times when doing so was not merely unpopular, but also when it put him and his family at great personal risk. This man endured political and professional sacrifice to stand up for what he believed was right. And, in his more than a decade on the federal bench, this man demonstrated an ability and willingness to follow the law even when he personally disagrees with it. This is the picture of Charles Pickering that I know and the picture I am convinced is accurate.

The other picture of Charles Pickering that emerged was far less flattering. But I am just as convinced that this picture was groundless. It was the product of engineering by extreme left Washington special interest groups who are out of touch with the main stream and have a political axe to grind. Make no mistake about it—these groups have their own political agenda, which is to paint President Bush's nominees as extremists and block them from the federal bench. These are the same groups who came out against General Ashcroft, Justice Rehnquist and even Justice David Souter, when he was nominated to the Supreme Court. They were all then, as they are now singing the parade of horribles.

The groups are committed to changing the ground rules for the confirmation process. There is a new war over circuit nominees, and they demand that the Democrats do whatever possible to stop or slow the confirmation of these fine nominees. For them, the means justify the ends at whatever the cost—including the gross distortion of a man's record and character.

The overwhelming bipartisan support we received for Judge Pickering's nomination from his home state of Mississippi speaks volumes about him. It is very telling that those who know Judge Pickering best, including prominent members of the African-American community in Mississippi, came out in droves to urge his confirmation. In contrast, those who most vociferously opposed his confirmation do not know him, but rather spent the past 7 months combing through his record for reasons to oppose him. They developed chain letters, mass faxes, and Washington position papers. Why? In the words of the leader of one liberal interest group, ''We think he (Judge Pickering) is an ideologue.''

It doesn't matter to these groups that Judge Pickering had the qualifications, the capacity, the integrity, and the temperament to serve on the federal circuit court bench. He is a judge that would have followed the law and left the politics to the people on the circuit court, just as he has on the district court. But I know that is not

what the groups want. They want activists on the bench that support their political views regardless of the law. That is wrong. What matters to them is that Judge Pickering did not meet their litmus test of supporting the right causes, regardless of his demonstrated commitment to following the law.

Although I am deeply troubled by the smear campaign that was waged against Judge Pickering, I am convinced that the accurate picture of Judge Pickering was the one of a man who was committed to upholding the law and who would have been a sterling addition to the Fifth Circuit. I regret that the inaccurate and unfair portrait painted by people whose purpose is to obscure the truth rather than to reveal it persuaded my Democratic colleagues to oppose his nomination.

Of course, the defeat of Judge Pickering's nomination is significant for other reasons as well. He represents the first judicial nominee defeated in committee in over a decade—in fact, since the Democrats last controlled the committee.

When the Republicans were in charge of the Judiciary Committee during 6 years of the Clinton administration, we did not defeat a single nominee in committee. In fact, the only Clinton nominee who was defeated—and who, incidentally, lacked the support of his home state senators—was nevertheless granted a floor vote.

I find it ironic that a number of my Democratic colleagues actively lobbied to get floor votes for Clinton nominees, yet they now have denied a floor vote for Judge Pickering, who has the support of both of his home state Senators and who would very likely be confirmed if his nomination received a floor vote.

And let me talk about Judge Pickering's record. We have talked about ideology. The key here is that a nominee's personal or political opinion on social issues is irrelevant when it comes to the confirmation process. The real question is whether the nominee can follow the law.

Last Thursday, we demonstrated that Judge Pickering has shown in his nearly 12 years on the federal district court bench his ability and willingness to follow the law.

He has handled an estimated 4,000 to 4,500 cases, but he has been reversed only 26 times. This is a reversal rate of less than 1 percent. His reversal rate is better than the average for district court judges both nationwide and in the Fifth Circuit. This is a record to be proud of—not a reason to vote against him.

Some of my Democratic colleagues have complained that Judge Pickering was reversed on well-settled principles of law in 15 cases where he was reversed by the Fifth Circuit in unpublished opinions. This argument is nonsense. Circuit courts reserve publication for the most significant opinions. Reversal by unpublished opinion means that the district judge made a run-of-the-mill mistake. In other words, nobody's perfect—not even federal judges. They do get reversed on occasion. The bottom line is that there is simply nothing remarkable about Judge Pickering's 26 reversals.

I suspect that 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 here is that Judge Pickering has decided a total of four such cases. The only one that was appealed involved issues pertaining solely to attorney's fees. None of the other three cases—Fairley, Bryant, and Morgan—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 a letter to the committee in support of Judge Pickering's nomination.

Another case my colleagues have complained about is the Swan case. But there, Judge Pickering was rightly concerned that Swan's co-defendants—one of whom had a history of racial animus and had fired a gun into the victims' home—got off with a relative slap on the wrist while Swan faced seven years' incarceration. As one legal ethics expert noted, ''Judge Pickering was clearly concerned that no rational basis had been demonstrated for the widely disparate sentencing recommendations in Swan. Without such a basis, justice does not appear to be unbiased and non-prejudiced.''

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 that 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.

In any event, I fear that the smear campaign we saw waged against Judge Pickering was only a warm-up battle for the ideological war the liberal interest groups are prepared to wage against any Supreme Court nominee that President Bush has the opportunity to appoint.

I stood up to conservative special interest groups who tried to influence the committee while I was chairman, and I will continue to stand up to liberal special interest groups who seek to defeat President Bush's judicial nominees now. I urge my Democratic colleagues to join me in this effort.

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

The PRESIDING OFFICER (Mr. CARPER). The Senator from Arizona.

Mr. KYL. Mr. President, I thank the distinguished ranking member of the Judiciary Committee for yielding some time to me. I think the points he makes are well taken.

I would like to get back to the basic resolution that is before us. It is a very simple resolution that says that we should at least have hearings in the Judiciary Committee on the nominees for the circuit courts that have been pending the longest, since May 9 of last year, that we should at least have a hearing on those nominees before the 1-year anniversary of their nomination.

That is eminently reasonable. I suspect that all 100 of us will vote for that sense-of-the-Senate resolution.

That is going to, then, require us to do some things to ensure that those hearings, in fact, can be held. I can think of no reason why anyone would oppose the scheduling of hearings on these eight distinguished nominees a year after their nomination.

But I think the comments, primarily of the Senator from New York, have really put into perspective what this debate is all about. He has made three basic points, all of which are departures from past precedent. The reason this is important is because it provides the reasons why many Members on the other side of the aisle have supported the chairman of the Judiciary Committee in not holding hearings, in not voting on nominees, and in not allowing the full Senate, as a result, to vote on nominees to the circuit courts of appeals.

One cannot argue about the qualifications of these nominees.

So there have been three reasons posited by the Senator from New York as to why it is fair not to hold hearings and not to have votes on these nominees of the President for the circuit courts.

The first reason is, as Senator HATCH pointed out, totally unprecedented. It is the notion that somehow or other the President has to consult with all of the Senators from the circuit before nominating someone to that circuit court of appeals.

It has been traditional for the President to consult with the Senators from the State from which the nominee comes but not all of the other States. There are 13 States in the Ninth Circuit Court of Appeals where Arizona is. I was never consulted by President Clinton on any of the nominees from California or Oregon or Washington or Nevada. And I would not have felt the right to be consulted.

The only one I asked to be consulted on was the nominee from Arizona. President Clinton did consult with me on that individual, and we reached an agreement on a nominee he nominated. I supported that person, a Democrat, appointed by President Clinton, whom I think is one of the finest members of the Ninth Circuit Court of Appeals. But I would have been shocked if he called

me and said: JON, what do you think about this candidate from Washington State? That has never been the case.

So for one of the Senators from New York to stand here and say that we are not going to move forward on these nominees until the President begins consulting with all of the Senators from the circuit is wrong. It is an abuse of power. It is not the way it has been done in the past, and it should not provide an excuse for us to withhold action on these nominees.

Second, the Senator from New York has suggested that this is really about politics, that the President's nominees are too ideologically conservative. The Senator from New York said President Clinton nominated all moderates. Well, that will be news to some of my conservative friends who did not view all of President Clinton's nominees as all that moderate. Some were; some were not. I supported some; I did not support others.

I guess I will not read the names here, but I look at the Ninth Circuit nominees and all of the ones who were confirmed since I have been in the Senate—1, 2, 3, 4, 5, 6, 7,8, 9, 10, 11, 12, 13—13 circuit court judges confirmed. Some of those were liberals. And I supported some of those liberals, others I did not. That is all right. President Clinton got elected President; I did not.

Well, President Bush got elected President. And I don't think the definition of ''mainstream'' by the Senator from New York is a better definition than the definition of the President of the United States, George Bush, in terms of the qualifications of judges to represent this country.

I know my view of the political spectrum and that of the Senator from New York are very different. What he would call moderate I would probably call something else, and vice versa. So we are on a slippery slope if Senators begin to define the terms of a President's nominees with respect to their politics on an ideological spectrum and maintain that they have the right to withhold action on those nominees if they do not fall within what a particular Senator characterizes as ''mainstream.''

The Senator from New York said many of President Bush's nominees ''suggest extreme ideological agendas.'' All right, here is my challenge to that Senator or any other Senator:

What is it about John G. Roberts of Maryland, who was nominated on May 9, 2001, by President Bush, to the DC Circuit Court of Appeals, that suggests an extreme ideological agenda?

What is it about Miguel A. Estrada of Virginia, who was nominated on May 9, 2001, by President Bush, to serve on the DC Circuit Court of Appeals, that suggests an extreme ideological agenda?

What is it about Michael W. McConnell of Utah, who was nominated to the Tenth Circuit on May 9, 2001, by President Bush that suggests an extreme ideological agenda?

What is it about Jeffrey S. Sutton of Ohio, who was nominated to the Sixth Circuit on May 9, 2001, by President Bush that suggests an extreme ideological agenda?

What is it about Deborah Cook of Ohio, nominated to the Sixth Circuit on May 9, 2001, by President Bush that suggests an extreme ideological agenda?

Or what is it about Priscilla Richman Owen of Texas, nominated to the Fifth Circuit on May 9, 2001, or Dennis Shedd of South Carolina or Terrence Boyle of North Carolina—both nominated to the Fourth Circuit Court of Appeals on May 9, 2001—that suggests an extreme ideological agenda such that they are so disqualified that we should not even hold a hearing on their nominations?

There is an element of comity that this body owes to the President of the United States when he nominates people to the circuit courts of appeals to represent the people of this country. Comity at least requires that we have a hearing on these nominees within a decent period of time. Certainly, no one can argue that letting them sit for over a year is not plenty long enough to analyze everything there is to analyze about them, and then to begin the process for their confirmation.

So I suggest that when the Senator from New York or my other colleagues on the other side say that a nominee has to pass an ideological test in their eyes or they are not even going to give them a hearing, it is time for the people of this country, and it is time for the news media of this country to rise up and say: That is wrong, and you cannot fulfill your responsibilities of providing advice and consent under the Constitution to the President if you are not willing to even consider the nominees of the President by holding a hearing a year after they have been nominated.

I think when those on the other side say this isn't about retribution, and then immediately begin citing all of the statistics about how they believe some of President Clinton's nominees were treated unfairly, it is about retribution. In effect, they have made it about retribution and politics. You have to either be a moderate in their eyes or they have to finally feel good about getting even to such an extent that somehow or other the scales are balanced now, they have gotten their pound of flesh, they have withheld action on a sufficient number of nominees that now they are willing to move forward.

I can't ascribe that motive to any of my colleagues on the other side of the aisle. It would be so outrageous to contemplate. But that appears to at least have crept into the rhetoric of some when their primary point about not holding hearings on President Bush's nominees is that they think some of Clinton's nominees were treated unfairly.

Just how many circuit court nominees of President Clinton were treated unfairly in this manner? How many do we have to withhold from President Bush before the scales are balanced? And in any event, are any of them willing to stand up and say that is a justification for not even holding a hearing on President Bush's nominees? If so, I would like for them to come forward and do that.

Let me conclude by making this point as clearly as I can: We will have before us this afternoon a resolution that simply says we should hold a hearing in the Judiciary Committee on the eight circuit court nominees of President Bush by May 9, 2002, before the 1-year anniversary of their nomination. In other words, wait a year and then at least have a hearing on these eight nominees. Is that too much to ask? I hope my colleagues will recognize that some of them have gone too far in attacking the President's nominees on ideological grounds and attacking his nominees on the basis that President Clinton was treated unfairly and, as a result, there is a justification for treating President Bush's nominees unfairly as well.

I hope that is not the basis for inaction, and I hope the circuit court nominees will be treated just as fairly as the district court nominees have been treated and that we can get a hearing on them and then eventually bring them to the floor for a vote.

The American people deserve no less. President Bush deserves no less. And frankly, justice in the United States requires that much.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank my colleague from Arizona for his comments. I echo those remarks, particularly in regard to the litmus test our colleague from New York was talking about. That is not the way we have confirmed judges in the last 20 years I have been here. I hope we are not going to come up with ideological litmus tests. If that is the case, we are changing the entire confirmation process.

I hope my colleagues will step back and think: We may have a change in leadership in the Senate. Are we going to change the policies of confirmation of judges as dramatically as proposed by the Senator from New York? I hope not. It would be a serious mistake.

We need to change and improve the way we handle judicial nominations, particularly circuit court nominations. I compliment Senator LEAHY, who has moved through several district court nominations. President Bush has nominated 62 for the district court. We have confirmed 35. That is 56 percent of President Bush's district court nominations. We have been moving through on those fairly quickly. I extend my compliments. We have made good progress.

The real problem has been on circuit court nominations. For whatever reason, the Senate has not worked there. The Judiciary Committee has not worked. We have confirmed 7 out of 29.

Unfortunately, Judge Pickering was defeated last week. So we have now dealt with 8 out of 29. Twenty-four percent of President Bush's circuit court nominees have been confirmed. That means three-fourths have not been confirmed. In fact, most of those individuals have not even had a hearing.

Eight individuals who were nominated in May of last year have not even had a hearing. They are outstanding individuals, as you may see while I talk about some of their qualifications. My point is, we should treat judges fairly, whether Democrats are in control of the Senate or Republicans are in control and whether a Democrat or Republican is in the White House.

I looked back at the last three Presidents. On circuit court nominees, Ronald Reagan had 95 percent of his circuit court nominees confirmed in his first 2 years, 19 out of 20. President Bush had 22 out of 23 confirmed; again, 95 percent. President Clinton, 19 out of 22 circuit court nominees were confirmed in his first 2 years. But yet President Bush to date only has 7 out of 29. A majority of the remaining, 20 in fact, have not even had a hearing. That is not right. Many of those individuals were nominated almost a year ago. There is no good reason they have not had a hearing.

We need to move forward. Some of these individuals are as well-qualified as anybody you will find anywhere in the country. To think they were nominated in May of last year and haven't even scheduled a hearing makes you wonder what is going on. It is not like we haven't tried. I know every Republican Senator has written a letter to Senator DASCHLE and Senator LEAHY saying: We want hearings on some of these individuals. But we haven't been successful. I think we need to treat these nominees fairly, regardless of who is in power, Democrats or Republicans, regardless of who is in the White House. I am embarrassed for the Senate when we have something such as this, only 7 out of 29, and 20 of 29 haven't even had a hearing. That is not right.

You have individuals such as John Roberts who is nominated for the circuit court of appeals for the District of Columbia. He graduated from Harvard College, summa cum laude, in 1976; received his law degree magna cum laude in 1979 from Harvard Law School. He is managing editor of the Harvard Law Review. He has presented arguments before the U.S. Supreme Court 35 times. An individual in the private sector has argued before the Supreme Court 35 times. He is nominated to be on the district court for the DC Circuit Court of Appeals. I think he is entitled to a hearing. He is a well-qualified attorney. We have Democrats and Republicans alike testifying he would be an outstanding circuit court judge.

Miguel Estrada, also nominated to be on the DC Circuit Court of Appeals. He is a partner in the DC law office of Gibson, Dunn. He has argued 15 cases before the U.S. Supreme Court. It just so happens he has a very interesting personal history. He emigrated from Honduras. He got his JD degree magna cum laude from Harvard Law School, and he is also editor of the Harvard Law Review. He has a bachelor's degree magna cum laude, Phi Beta Kappa from Columbia College in New York.

These two individuals, two of the most accomplished nominees anywhere in the country, have yet to have a hearing. Yet they were nominated in May.

The chairman of the Judiciary Committee has told me on a couple of occasions we will have a hearing for Miguel Estrada. We are still waiting. I think we have waited long enough.

I could go through each of these individuals. Terrence Boyle, I remember him when he worked in the Senate. He presently is chief judge of the U.S. District Court for the Eastern District of North Carolina. He has achieved an outstanding record in that. I had hoped we would have a hearing for Judge Boyle.

Michael McConnell, nominated for the U.S. District Court of Appeals for the Tenth Circuit, he happens to be a presidential professor at the University of Utah College of Law and is supported by my friend and colleague, former chairman of the Judiciary Committee. This fact alone says he ought to have a hearing.

What happened to the tradition in the Senate where we respect individual Senators, members of the committee and members of leadership? I am still aghast at what happened last week. I cannot imagine what we did last week. Never before in my tenure in the Senate would we defeat a Republican leader's nominee. We wouldn't defeat a Democratic leader's nominee. It is just not done. We wouldn't defeat the nominee of the ranking member of the Judiciary Committee or even hold them up because of tradition, the fact that we want to work together.

I haven't seen the respect in this institution, and that disappoints me. We have to have respect for individual Members. We haven't shown that respect, certainly when it comes to circuit court nominees.

I could go on. There are eight outstanding individuals. President Bush is to be complimented on nominating several superb individuals. These people are well accomplished leaders in the legal profession. They deserve a hearing.

One is Priscilla Owen, nominated for the Fifth Circuit. She has worked in Texas. She got her B.A. cum laude from Baylor University and graduated cum laude from Baylor Law School in 1977. I could go on and on.

Mr. President, these individuals, men and women, minorities, are entitled to have a hearing. There are two resolutions that we have—The Republican resolution says they shall have a hearing by May—in other words, within a year of being nominated. The Democrat resolution says they will be handled expeditiously. I urge my colleagues to support both of them, and I hope they will be handled expeditiously and I hope all will have hearings by May.

Let's treat these outstanding individuals like the Presidential nominees they are, with the respect of the office of the President in making these nominations. These individuals I have alluded to are to the circuit court. Some people have acted like this is district court in my State and the tradition of the Senate is I have a veto over anybody in the circuit court. That is not the tradition of the Senate. It is that individual Senators have a great deal of influence and advice and consent for nominations in their own State for district court, but not circuit court. Circuit court applies to many States.

I am embarrassed for the Senate for the fact that we have 8 vacancies on the Sixth Circuit Court of Appeals—8 out of 16. Half of the court is vacant because 1 or 2 Senators are not happy about something that happened maybe years ago, so we are going to penalize all the States that are involved in the Sixth Circuit. That is wrong. We are holding up 7 nominees right now, who have yet to have a hearing, who have been nominated by President Bush to fill vacancies in the Sixth Circuit Court of Appeals.

That is wrong. It is wrong for the President and wrong for the system of justice. So it needs to be remedied. I urge my colleagues, before people start—the press has been asking me what kind of retribution there is going to be. I don't want that ''that is the way you treated our judge, so we are going to treat your judge that way.'' I don't want to play that game. I want to treat nominees with respect and do it whether we are in the majority in the Senate or in the minority, or whether the President is in my party or not. I want to treat these nominees with respect and give them the courtesy of a hearing, without undue delay, and maintain the tradition of the Senate, where each President has been getting 90-some percent of their nominees.

Granted, I understand the statistics game. Well, in President Clinton's last year, he didn't get very many. The tradition of the Senate is that nominees are not usually considered in great numbers in the last year of their term. Then if they are reelected, they get more. But for President Clinton, we confirmed 377 of his judges, second only to Ronald Reagan, for whom we confirmed 382 judges. So both of them got a lot of judges confirmed. Those are lifetime appointments. That is pretty good. President Clinton got 129 in his first 2 years and almost 250 in his last several years.

Now, both had a lot of judges confirmed. If you look at Bill Clinton, he got 90 percent of his judges in the first 2 years, including 2 Supreme Court nominees. President Bush 1 got 93 percent of his confirmed in his first 2

years, and Ronald Reagan got 98 percent of his judges confirmed in the first 2 years.

The tradition of the Senate is that we do confirm circuit and district judges pretty rapidly in a President's first 2 or 3 years—maybe not quite so fast in the fourth year. Fair enough. This President hasn't been treated fairly, in my opinion, when it comes to circuit court nominees. I urge colleagues, instead of playing retribution and looking back at President Clinton's last year, let's do this right and treat everybody with respect—individual Senators as well as the nominees. I think if we do so, the Senate will be elevated. I think the treatment of some of these judges, including Judge Pickering, the Senate was not elevated; I think it was demeaning to the Senate. And the way we have treated these 20 circuit court nominees has been demeaning to the Senate. I hate to see that happen to a person who served in this institution and loves it.

One of the most important things we can do in the Senate is the confirmation of lifetime appointments to the Federal bench. We need to do it right and this year, at least on the circuit court nominees, we have not been doing it right.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. How much time does the Senator need?

Mr. SESSIONS. About 2 minutes.

Mr. HATCH. How much time remains?

The PRESIDING OFFICER. There are 5½ minutes remaining.

Mr. HATCH. I have two others who need to speak also. Can the Senator do with 3 minutes?

Mr. SESSIONS. I certainly can.

Mr. HATCH. I yield 3 minutes to the Senator from Alabama.

Mr. SESSIONS. Mr. President, it is not as if I would not have a lot to say about this subject, having observed it closely for a number of years. Let me say one thing about the complaint—and this is very important—that President Clinton's nominees were not fairly treated: President Clinton had 377 judges confirmed. He had one judge voted down by the Senate—only one judge voted down. When he left office, there were 41 judges not yet confirmed who had been nominated. There were 41 left pending.

When former President Bush left office in 1991, he had 54 judges pending and not confirmed. There were 54 when he left office. When President Clinton left office, he had only 41, and only one of his nominees had been voted down by this Senate. The reason he was treated fairly is because the chairman of the Judiciary Committee at that time, ORRIN HATCH, treated his nominees fairly. He moved those nominees forward. I voted for 95-plus percent of them. There were many liberals in that group. Very few of the nominees were held up.

There is a tradition here—the blue slip policy—that if a home State Senator objects to a nominee, they can hold him up. That is respected. The Democrats now come in and say this is a bad policy and they want to fix it. No, they want to give even more power. They are proposing regulations that would give a historic increase in the power of one Senator to block nominees.

We have a situation in which we are now in a crisis. There are 100 vacancies in the Federal court. Seventeen of the Federal circuit court vacancies have been declared judicial emergencies by the Administrative Office of the Courts. Fifty percent of the seats on the Sixth Circuit, 8 out of 16, are vacant. Of the seven nominees, none have had a hearing.

In January of 1998, when there were 82 Federal vacancies, the now chairman of the committee, Senator LEAHY, stated:

Any week in which the Senate does not confirm three judges, the Senate is failing to address the vacancy crisis. There were 82; there are 100 now. Since January of 2000, President Bush has only had 7 of 29 circuit court nominations he submitted confirmed. One of those confirmed was in the first batch he sent up, and an excellent group they were. There was a nomination of President Clinton that had not been confirmed, an African American.

President Bush resubmitted his name in a historic effort to reach bipartisanship here in the Senate. He has been a fair President. He submitted judges of utmost quality. If we need to improve the process, we need to look no further than asking how Senator HATCH conducted the committee when he was chairman.

The PRESIDING OFFICER. The Senator's time is up.

Who yields time?

Mr. HATCH. Mr. President, 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 that the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, how much time remains with the majority on this amendment?

The PRESIDING OFFICER. Approximately 30 minutes.

Mr. REID. And how much time remains for the minority?

The PRESIDING OFFICER. Time has expired.

Mr. REID. Mr. President, I ask my friend from Utah, are there speakers on his side who wish to be heard?

Mr. HATCH. I know Senator HUTCHISON wishes to speak, and I also believe Senator BROWNBACK.

Mr. REID. Does the Senator know how much time they wish?

Mrs. HUTCHISON. Mr. President, if I may have up to 5 minutes or 3 minutes, if that is more helpful.

Mr. REID. On behalf of Senator LEAHY, I will be happy to extend the Senator from Texas 6 minutes.

Mr. HATCH. I am very grateful for the graciousness of the assistant majority leader. If we can have 5 minutes for the distinguished Senator from Kansas, I think those are the last two. I presume the leader may want to say a word or two.

Mr. REID. Mr. President, on behalf of Senator LEAHY, I extend 5 minutes to the Senator from Kansas, Mr. BROWNBACK.

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER. The Senator from Texas is recognized for 6 minutes.

Mrs. HUTCHISON. I thank the Chair. Mr. President, I thank Senator LEAHY and Senator REID for allowing me to speak. I did not know the time had expired. I very much want to make a statement on behalf of Priscilla Owen, the supreme court justice from Texas.

I rise in support of Senator LOTT's amendment calling on the Judiciary Committee to hold hearings on the U.S. circuit courts of appeals nominees who have been in the committee since May 9 of last year.

In fact, 7 of the President's 30 circuit court judges have been confirmed. We will have a judicial emergency across our Nation if the Senate continues to delay the confirmation of these fine men and women.

I was concerned when I saw the Wall Street Journal report last Friday that some Members of the Senate may target the nomination of Justice Priscilla Owen to the U.S. Court of Appeals for the Fifth Circuit. In fact, the Committee on the Judiciary in the Senate should take swift action on her nomination, particularly in light of the fact that Judge Owen was among the group of original 11 judicial nominees announced by President Bush on May 9 of last year.

Justice Owen's stellar academic achievements and professional experience are remarkable. She earned a cum laude bachelor of arts degree from Baylor University. She graduated cum laude from Baylor Law School in 1977. When she took the Texas bar exam, which is one of the hardest bar exams in the Nation, she came in first. She earned the very highest score on the Texas bar exam that year.

Prior to her election to the Texas Supreme Court in 1994, she was a partner in the Texas law firm of Andrews & Kurth, where she practiced commercial litigation for 17 years.

Justice Owen has delivered exemplary service on the Texas Supreme Court, as affirmed by receiving positive endorsements from every major newspaper in Texas during her successful reelection bid in 2000.

Justice Owen enjoys bipartisan support, and the American Bar Association's Standing Committee on the Federal Judiciary has unanimously voted Justice Owen well qualified.

Filling judicial vacancies is a critical duty of the Senate. I hope we will be

able to move forward. I have asked the Judiciary Committee to let us confirm three of the four U.S. attorneys for the State of Texas. The State of Texas has four judicial districts. One of our U.S. attorneys has been confirmed, but three U.S. attorneys remain unconfirmed. So we have appointed leaders in those offices where we really need to have permanent leaders, at least a permanent leader during this term, who will be able to lead the office and organize it and make sure we are hiring and staffing the offices in these important districts.

One of those has the largest caseload in the United States, the Southern District of Texas. We need to have the prosecutors on board. We need to make sure the U.S. attorney who is going to run the office is setting the priorities for those offices. We know that our border districts, both the Western and Southern Districts, are the busiest districts in America.

I ask that our U.S. attorneys in three of the four Texas districts be confirmed immediately. I had hoped we would do it before the recess because these three people are waiting and ready to go. All three of them are in Government now. They are not in private practice that has to be tied up. They are assistant U.S. attorneys and one is a magistrate. They could make the moves swiftly and begin to lead these offices.

I ask the Judiciary Committee, with all due respect, to please expedite these nominees for U.S. attorney, particularly with Justice Priscilla Owen, who is a personal friend of mine, who I know to be of the very highest caliber. Having been appointed May 9, 2001, and not yet having a hearing I think is a pretty difficult situation. She is so well regarded by everyone who has appeared before her in court or has practiced law with her.

I ask that we have a fair hearing on Justice Owen and that we be able to go forward with our three U.S. attorneys and Justice Priscilla Owen on an expedited basis.

I thank the Chair, and I yield the floor.

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

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

The Senator from Vermont.

Mr. LEAHY. Mr. President, I love reading Lewis Carroll. I remember Lewis Carroll and ''Alice in Wonderland.'' When I hear the descriptions of history today and listen to some of the discussion in the Senate, it brings me back to when I was a child. I extend my appreciation to my colleagues on the other side for livening our more serious times with a little bit of fiction.

They talk about how terrible it is we have some people—actually several of whom do not have blue slips—who have been here for several months and we have not had a hearing even though they know some of the blue slips are not in. We will be, as we go along, scheduling hearings, as compared to people who did have blue slips in when the Republicans were in charge. I think of Helene White. She waited 1,454 days. I do not recall a single Member of the Republican Party saying should she not at least have a hearing; even if we vote her down, should she not at least have a hearing. She did not even have a hearing or a vote in the committee; 1,454 days, not a word.

We have seen the crocodile tears today. Even though we are moving much faster than the Republicans ever did when there was a Democratic President, we see these crocodile tears for people who have been waiting a month or 2 months or even 3 months. No recognition of course that for some of that time the Republicans held the Senate majority and for some of that time they delayed the reorganization of the Senate and no recognition of the numbers of vacancies and problems they left for us to try to remedy. But 1,454 days?

I look at the other qualified nominees we had to wait for. There was another one, Fifth Circuit. H. Alston Johnson waited 602 days, no hearing. There was James Duffy, Ninth Circuit, 546 days, no hearing. And Kathleen McCree Lewis, extraordinarily competent attorney, daughter of one of the most respected solicitors general ever in this country, she waited 455 days and never received a hearing. There was Kent Markus of the Sixth Circuit who waited 309 days under the Republicans and never got a hearing. And Robert Cindrich of the Third Circuit who never received a hearing in over 300 days.

Then there were the nominations that were held up without a hearing such as Judge James Beaty who waited 1,033 days, no hearing. James Wynn, Fourth Circuit, 497 days, no hearing. Enrique Moreno, Fifth Circuit, waited 455 days, never got a hearing. Jorge Rangel, the Fifth Circuit, 454 days, never received a hearing.

Allen Snyder, the D.C. Circuit; now I will give them credit, he waited 449 days and finally did get a hearing. Of course, they never brought it to a vote in the committee, but he did receive a hearing. He and Bonnie Campbell, the former Iowa Attorney General had hearings but never were on the Committee agenda for a vote.

So as I say, I enjoy fiction as much as the next person. I heard a great deal of it, along with the crocodile tears. It did enliven an otherwise slow-moving day.

On the one hand I know there are a number of Republicans who do want judicial nominees to go forward. I have had a dozen or more Republican Senators come to me and explain the situation they had in their State or their circuit with a judge they needed at home. I think in virtually every one of those cases, certainly in most of them, within a very few weeks, we had the hearings on those judges. They are all Republicans. We held hearings on them. They cooperated in bringing them forward. We put them on the Committee agenda and we voted them out, put them on the Executive Calendar and the Senate confirmed them and every single Democrat voted for them—over 40 judges. They voted for them, and they got through.

I remember shortly after the shift in majority last summer when we had nominations pending. We came to the August recess. Normally what we do by unanimous consent is keep the nominations here. The Republican leader said and objected and by Senate rule then all had to go back to the White House. Although we tried to keep them here, he objected. I was put in a bind and had no nominees whatever pending, even though I still held 2 days of hearings in the August recess in anticipation of the names coming back.

I got criticized by the Republicans for holding hearings during the August recess. Members get criticized for not holding hearings immediately; Members get criticized for holding hearings. One Republican—one Republican—showed up for 1 day of the 2-day hearings on President Bush's nominees and we got the nominees through.

I am looking forward to see where we are by July 10 of this year. That will be 1 year to the day from the time I had a fully organized committee and could start hearings. We held a hearing on judicial nominees, including a court of appeals nominee the very next day on July 11.

Incidentally, instead of going—as my friends on the Republican side—month after month after month after month after month without even holding a hearing on President Clinton's nominees, within 10 minutes of the time the Senate adopted a resolution reorganizing, I noticed the first set of hearings. They were on the calendar within a few weeks thereafter, notwithstanding the fact that up until July there was not a single hearing on any judge.

Democrats were not in charge from the end of January until June and into July. It was July when we took over a committees and had assigned members. The Republicans while in charge did not hold a single hearing. Ten minutes after the Senate reorganized, we started the process to hold hearings.

I mentioned what happened in the past not to say this should be tit for tat, by any means. I don't believe in that. The Republicans for 6 years under President Clinton were delaying, stopping hearings and not even allowing nominees to have hearings and not allowing them to have votes in the committee. And I knew if they had a vote in Committee they could be voted down and that would have been the end of it. If they vote them up, they come to the floor. That has been the precedent and practice of the Committee. My concern

was that they would not even give the nominees hearings, scores of nominees.

Sadly, we did have one judge who they voted through the committee twice, and then on a party-line vote voted him down on the floor, including Senators who voted for him in the committee who then voted him down on the floor. That was done without warning, without notice and on the first party-line vote on the Senate floor to defeat a judicial nominee I can remember. Even with the other controversial nominations of the last several years, such as the nomination of Judge Bork to the Supreme Court, some Democrats voted for him and some Republicans against.

I do not believe in tit for tat and have not engaged in pay back. I have been here 27 years, several times in the majority and several times in the minority. I believe we should go forward. That is why I have been moving much faster on judges than the Republicans ever did for President Clinton.

I intend to continue to move faster. We set up a process. When we have a hearing, we have at least one court of appeals judge, something not consistently done during the time the Republicans were in charge. I intend to do that.

They can try to change what the record is. They can try to change the history.

I am stating what I intend to do. We are moving to hold more hearings than they did. We are moving faster on confirmations than the Republicans ever did for President Clinton. I am not going to put us back to the kind of thing they did to President Clinton. Ultimately, it damages the independence of the Judiciary.

However, I would like to see at least a modicum of cooperation from the White House. If they send up judges from a circuit or State where they have not sought any consensus from the Senators from that State, of course they will have difficulty. I have been here with six Presidents from both parties. Every one of those Presidents consulted with Senators from the State where the judges came from. That does not mean Senators can nominate the judges; the President nominates judges. But they sought consensus first. When they did this, they always went through.

I have already voted for some 40 conservative Republican nominees as judges from President Bush. I have voted for more than 120 of the President's executive branch nominees in the Judiciary Committee, ranging from U.S. attorneys to senior Justice Department officials. I assume the judicial nominations that we have considered were Republicans, and I assume conservative Republicans; I voted for all but one of them so far.

However, there has to be consensus. And people that are not ideologues; people who will enforce and apply the laws and not try to remake them, and people who will instill fairness in their courtrooms and those nominees I have always supported, not people who will legislate and make laws—that is our job. We may do it poorly, but that is our job.

This year we were talking about cooperation. Senator GRASSLEY is one of the most respected members of the Senate Judiciary Committee, former chairman of the Finance Committee. I served with him both on the Judiciary Committee and the Agriculture Committee for a quarter of a century. He asked if we could proceed with Judge Melloy of Iowa to the Eighth Circuit. In the past, Republicans had held up judges from Iowa. I thought Senator GRASSLEY made a good case. I told him I would proceed, as soon as we came back in session this year. And I did.

We have also held hearings this year on Judge Pickering and Judge Smith at the request of Senators LOTT and SPECTER. Senator ENZI asked for a hearing on Terrence O'Brien of Wyoming to the Tenth Circuit. We moved as quickly as we could and held his hearing this week. So the four Court of Appeals nominees on whom we have had hearings this year were each at the request of a Republican Senator.

Of the 48 judicial nominations on which we have had hearings —for those who think this is partisan—25 came from States with no Democrats in the Senate and 12 came from States with one Republican Senator. So 37 of the 48 nominees were basically from Republican States. We moved forward. That is the bipartisanship I want. By the way, the other 11 are not all from States with two Democratic Senators. Far from it. The remaining 11 include four nominees to federal courts in the District of Columbia and among them was the former Republican Chief Counsel of the Senate Judiciary Committee for Senator HATCH.

It is difficult and takes a certain amount of time to do this, but Senators often ask to move right away on a nomination, and I try to be accommodating. But when Senators then come on the floor and say we are not moving fast enough on somebody else well, we can only do so many.

Only 1 of over 160 nominees before the Judiciary Committee over the last nine months has been voted down. When people ask: Why aren't we moving faster and doing more? Part of the answer is that it took 4 days over several weeks to have hearings and a vote on that one controversial nominee. In those 4 days, let alone the hours and hours and days of preparation, we could have gotten a dozen judges through. I dare say that we will spend more time in the debate this afternoon than we have debating the 14 judges confirmed so far this year.

I inherited a vast number of judicial vacancies, including longstanding problems, especially political problems. I am doing my best to change that. I am doing my best to move forward.

I urged that we get rid of the secret holds and make blue slips public. And now we finally have. Republicans did not do that when they were in the majority. I have urged the Rules Committee to take the position, if the Democrats are in majority next year, to divide the budget 50/50. I have had Republicans chair portions of hearings this year and have reported bills introduced by Republican Senators. These things did not occur in the recent past.

If we stop the partisanship and the confrontational tactics of last year and this last week and if we show cooperation, if the White House got involved and did those things, we could speed this up. Consult and work with Senators—we will go forward faster.

The President, for whom I have great respect, has had an enormous amount on his plate since September 11. I understand. However, there are some, unfortunately, who advise him who come with the idea they can only have judges they have signed off on by particular special interest groups. Then there will be a confrontational battle. It should not be that way.

Check how it was done under the last six Presidents with whom I have served. Find out how it was done. It was done by trying to work together. If we do that, maybe things were work more smoothly. Instead, the President's key political adviser in the White House appeared before an ideological advocacy group last week and committed—actually, recommitted—the administration to selecting judicial nominees to reflect a hard right ideology, an ends-oriented judicial philosophy. That is unfortunate. Can you imagine if Bill Clinton had gone before a group and said: I am only going to select judicial nominees to reflect a hard left ideology, and an ends-oriented judicial philosophy? You thought some had to wait 1,000 days to even have a hearing or were denied a hearing—can you imagine what would have happened if the Clinton administration had done that? It is wrong when the Bush administration does that.

All that says is, if that person is confirmed and if you are a litigant before that judge, basically what the President's political adviser was saying is, unless you reflect a hard right ideology and an ends-oriented judicial philosophy, forget about coming before this judge because you are not going to have fair treatment.

People ask me if I have a litmus test. I sure do. My litmus test has been the same with the six Presidents with whom I served, and I voted against Democratic nominees when I believed they didn't follow this litmus test. That is, if somebody comes before that judge, whether they are conservative, liberal, rich, poor, white, black, Republican, Democrat, north, south, wherever they are from, plaintiff or defendant—they can look at that judge and say: Whatever happens in this case, I know I have had a fair judge. That is my one litmus test.

When the Presidential adviser actually goes before a political advocacy

group and says we are not going to do that, we have to have nominees who reflect a hard right ideology and an ends-oriented judicial philosophy, that is wrong. That is wrong.

Actually, what that tells me is that rather than succumb to a notion of advice and rubberstamp, we had better do what the Constitution says, advice and consent, and go through the process carefully.

I say, again, we are scheduling hearings on judicial nominations and have continued to schedule hearings in spite of the unfair criticism because I do want to get through as many good judges as possible and fill as many of the vacancies I inherited as fast as possible. I will consider a number of factors: Consensus of support for the nominee, the needs of the court for which he was nominated, and the interests of the home State Senators.

I have served with 270 Senators, I believe, since I have been here. I have found more and more how important it is to rely on the views of home State Senators, Republican and Democratic alike.

Mr. President, how much time remains to the Senator from Vermont?

The PRESIDING OFFICER (Mr. REED). The Senator from Vermont has approximately 8 minutes remaining.

Mr. LEAHY. I have tried, again, to include at hearings judges Senators have asked for in both parties, including the court of appeals nominees, including hearings this year. I attempted to comply with the requests of Senators GRASSLEY, LOTT, SPECTER, and ENZI. We did that.

One was voted down. I know the Republican leader, who has been my friend for years, was disappointed at the committee vote on the nomination of Judge Charles Pickering. He argued strongly for the judge, as he should. The Senator from Kentucky, Mr. MCCONNELL, argued strongly for him and gave an excellent argument for him before the committee, as did the Senator from Ohio, Mr. DEWINE.

I tried to afford Judge Pickering—who, incidentally, still has a lifetime tenure as a Federal judge—every courtesy. I extended the time. I had a second hearing. I extended the time for the vote. I was willing to do all that.

But I still have to decide how I vote. I remember for a Democratic President and a nominee he very much wanted, I voted against him for some of the same reasons, the exact same reasons, in fact, that I voted against Judge Pickering. He was voted down in the committee—just as Judge Pickering was, and that was the end of it.

I do not want to go back to the situation where almost a third of President Clinton's court of appeals nominees waited more than 300 days from nomination to confirmation, an average of 441 days for these individuals; nearly a quarter waited more than a year, 20 percent waited more than 500 days, 6 waited more than 700 days, 2 waited more than 1,000 days, and one waited more than 4 years—if they got hearings at all.

Judge Helene White of Michigan waited more than 4 years. She never got a hearing. In fact, 56 percent of President Clinton's circuit court nominees in the last Congress, nominated or renominated in 1999–2000, were not acted upon by the Judiciary Committee. I am trying to repair that damage.

That is why we are moving forward—we are moving forward as quickly as we can, and I will continue to do that.

No matter what is said on the other side, no matter how much things are taken out of context, no matter how much fiction we hear on the floor from that side, I will move them forward.

Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Vermont controls approximately 4 minutes 50 seconds. The time of the Senator from Utah has expired.

Mr. LEAHY. I understand some of my time has already been given to the Republican side previously; is that correct?

The PRESIDING OFFICER. Five minutes has been offered to the Senator from Kansas, Mr. BROWNBACK.

Mr. LEAHY. I believe we also gave time to the Senator from Texas, did we not?

The PRESIDING OFFICER. She has already consumed that time.

Mr. LEAHY. I tried to help, just to be fair. Let me say this, in the remaining 3 minutes.

It doesn't have to be this way. We are moving far more rapidly than the Republicans did when they were in charge and President Clinton was President.

We have had a lot that has gone on in the past few months. I have not used the events and aftermath of September 11 as an excuse but have instead continued to hold hearings and votes on judicial nominees. Some of the Republican special interest groups pooh-pooh the fact that we even would refer to the events of September 11. They allow it as a justification for many things and an excuse for everybody else but not for the Judiciary Committee. Well, we have not made excuses. Instead, we build a good record.

We actually had to put together an antiterrorism bill during that time, which we did, one which the President certainly felt good about. He praised me and Senator HATCH for our work on that.

We had to do that. We had this building that we are in right now emptied because of an anthrax scare. Most of our staffs, Republican and Democratic, are in the Dirksen and Hart Buildings. That was vacated for a period of time because of anthrax. The Hart Building was vacated for a very considerable period of time.

I was one of those who received an anthrax letter designed to kill me, as was Senator DASCHLE. Me and my staff—it turns out there was enough anthrax to kill an awful lot more people than that. So this has not been a usual year.

But as I pointed out in the charts earlier, in the 9 months the Democrats have controlled this committee, we have done more than during any comparable period during the time when the Republicans controlled the committee.

I am assuming—and I pray—this country will not face something similar to September 11 again. I assume and I pray that our Capitol will not face something like that again.

I take a moment to applaud the brave men and women of our Capitol Police and the work of our Secretary of the Senate and Sergeant at Arms in protecting us up here.

I have talked with the White House about one simple procedure they could do without giving up any of their rights or any of their privileges. One simple procedure they could do, which would take 4 or 5 weeks off many judicial nominations. They could potentially be able to go to hearing 4, 5, or 6 weeks faster if the White House would simply speeding up the process of getting all the paperwork and the reviews done and getting them up here.

Those are things that can be done.

Mr. President, how much time remains?

The PRESIDING OFFICER. Forty seconds.

Mr. LEAHY. Mr. President, this has been a good debate. I might ask the Senate to pass a resolution that just said very simply the Democratic majority will be required to go at the same pace that the Republican majority did under President Clinton. But I have a feeling, if we did that, President Bush would be very upset because I have a feeling he does not want us to go back to the procedures used when his party controlled the Senate. We will not.

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

Mr. HATCH. Mr. President, I ask unanimous consent to take 4 minutes of the leader's time.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Mr. President, I am going to object. I will tell you why. We have given more than that amount of time. If somebody had told me they wanted to, I would have given time from my own time. We have already given the time.

Mr. HATCH. How about 2 minutes of leader's time? Would you be gracious enough for that?

Mr. LEAHY. If the leader wants to, of course, I will yield to him.

The PRESIDING OFFICER. Does the Senator from Vermont object?

Mr. LEAHY. Yes.

The PRESIDING OFFICER. Objection is heard.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, let me rephrase my question. As ranking member of the Judiciary Committee, I am

asking my colleague to consent to 2 minutes of the leader's time to be used by me. I don't think he would be totally displeased with what I have to say.

Mr. LEAHY. Would I then have 2 minutes available to me if I wish to use it?

Mr. HATCH. I agree to that.

Mr. LEAHY. I have no objection.

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

The Senator from Utah.

Mr. HATCH. Mr. President, I personally thank the distinguished chairman the Judiciary Committee for doing the job he is doing on district court nominees. The problem here is not just reporting nominees—although we think more should be approved—it is 31 circuit court vacancies. A number of them are judicial emergencies, as defined by the Administrative Office of the Courts.

But I have listened to my colleague's comments about holding hearings when Senators have asked him to do so. I have been patient for many months, but I do believe I have to say this today. I am Ranking Member of the Judiciary Committee. It was just there 2 days ago when one of my judges was given a hearing, Professor Paul Cassell. His nomination had been pending since June of last year. I don't understand waiting this long. And the second judge nominated for a spot in my home state of Utah, Michael McConnell, has not had a hearing even though I have been promised one. I have requested at least 15 times for these two to get hearings, to be marked up in committee, and to be brought to the floor. Michael McConnell's nomination probably enjoys the widest and most vociferous support of legal scholars from all across the political spectrum—Democrats and Republicans of any currently pending nominee.

I would like to have the courtesy extended to me that I extended to the distinguished Chairman when he was the Ranking Member. I believe it is time for me to raise this issue because I have been very upset that this hasn't happened.

Last, but not least, keep in mind—everybody listening to this debate—that the Senate confirmed 377 Clinton judges, which is only 5 fewer than the all-time champion, Ronald Reagan, who got 382 judges confirmed. And both had 6 years of a Republican Senate—which was the opposite party for President Clinton and the allied party for President Reagan. Both got essentially the same number of judges. In fact, Clinton would have had more had it not been for Democratic holds and objections.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, as I said earlier, we will continue to move at a faster pace on the nominees for President Bush than the Republicans ever did with nominees of President Clinton. I will continue to move at a faster pace for them. I will continue to try to overcome the objections to hearings on Senator HATCH's nominees, and we will have a hearing.

I yield the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3040 offered by Senator REID of Nevada.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Vermont asked for the yeas and nays.

Mr. HATCH. I suggest the absence of a quorum, Mr. President, until the minority leader arrives.

The PRESIDING OFFICER. The Chair has to determine if there is a sufficient second for the yeas and nays.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, 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. 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.

Mr. LOTT. Mr. President, I thank Senator HATCH for trying to put in the quorum so I would have an opportunity to make some very brief remarks. I hope everybody understands that was what was going on—to give me a chance to be here and just wrap up some of what needs to be pointed out again before we get to a vote.

We have a real problem in the Senate. I think it could be a growing problem. We are very concerned about the nominees who are being moved and those who are not being moved; and, more specifically, the fact that the first eight circuit court judges have not been moved, have not been voted on, and, in fact, have not even had a hearing. I believe that is accurate. The first eight, to go back to May 9, 2001, an outstanding group of nominees, men and women and minorities, have not had any opportunity to make their case, to be voted on in the Senate Judiciary Committee, and be voted on in this Chamber.

That is what our resolution says. That is all it says. This is not a quantum leap, saying you have to have a hearing, you have to vote, you have to bring it to the floor, and you have to get it done. But it does say that in the interest of administration of justice, the Judiciary Committee shall hold hearings at least on the nominees submitted by the President on May 9, 2001, by May 9, 2002.

That seems like a very small step, to move toward some progress being made and helping to begin to cure some very frayed feelings about the way the Judiciary Committee acted with regard to Judge Pickering. But moving beyond that and moving into the broader sense, one judge will not this session make. But this pattern is a major problem.

Conversely, the other resolution just says that the Judiciary Committee should move forward expeditiously on these nominees. Goodness gracious, that is not saying very much, it doesn't appear to me. I hope they will be moving forward expeditiously.

But what does it mean? Does it mean they are going to get a hearing? Does it mean it is going to get some actual result? No.

That is basically the difference. One resolution says that these outstanding nominees—I will not list their names because I am sure they have been talked about individually and collectively—should at least have a hearing by May 9. The other resolution says it should be considered expeditiously.

The point is, though, to highlight this issue, this will not be the last resolution in this area, unless we begin to see some fair progress. There will be others. And they perhaps will be more pointed.

But it goes to the much bigger question of how we are going to go through the rest of this session, how these nominees are going to be treated, and, as a matter of fact, how we are going to act on legislation.

I urge my colleagues to vote on both sides of the aisle for the resolution that would lead to results and that is the one that calls for hearings by the specified date of May 9, 2002.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I can certainly appreciate the frustration expressed by some of our colleagues. We have been there. We know how frustrating it is to have judges who are not given the time and attention, and the fair consideration they deserve. Because we have experienced that all too often while we were in the minority.

What we have attempted to do is respond to that frustration by doing what we have said we were going to do from the very beginning, that we were going to treat judges fairly, we were going to try to do as much as we could to move them quickly. And we believe we have done that.

I do not recall a time when our Republican colleagues ever agreed to hold at least one hearing on a circuit court judge with every group of district court judges receiving hearings. But that is exactly what our chairman of the Judiciary Committee has committed to do.

I will look at the numbers, and we can compare statistics all day long, but all one has to do is look at the bottom line. We have exceeded their record in many ways. In 9 months, we have confirmed more judges than the Republicans confirmed in President Reagan's first year—12 months. We have confirmed more circuit court judges already this year than Republicans did in

1996 when they confirmed zero circuit court judges. But we can compare these back and forth. What I am simply prepared to do today—as you have heard Senator LEAHY and members of our committee say on so many occasions—is to say, we are going to deal with these judges fairly and expeditiously. I think our record shows that.

I thank Senator LEAHY for his leadership, for the commitment he has made, and for the diligence he has shown in getting us to this point.

Forty-two judges have been confirmed; 7 circuit court judges have already been confirmed. What Senator LEAHY and the Judiciary Committee are now saying is, we will improve upon that in the coming weeks and months. When you look at what we will have been able to do by the end of this session, I think everyone will be able to say, without equivocation: You have done a good job.

That is what we are committing to do. That is what our resolution says. That is why I believe, very strongly, that supporting the Democratic resolution is, again, supporting the clear intent of our caucus and of this Senate that these nominees are going to get fair treatment. We are determined to do that. And we will demonstrate that with each passing week.

I yield the floor.

VOTE ON AMENDMENT NO. 3040

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3040. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Wyoming (Mr. ENZI) and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 1, as follows:

[Rollcall Vote No. 56 Leg.]

YEAS—97

Akaka	Dodd	Levin
Allard	Domenici	Lieberman
Allen	Dorgan	Lincoln
Baucus	Durbin	Lott
Bayh	Edwards	Lugar
Bennett	Ensign	McCain
Biden	Feingold	McConnell
Bingaman	Feinstein	Mikulski
Bond	Fitzgerald	Miller
Boxer	Frist	Murkowski
Breaux	Graham	Murray
Brownback	Gramm	Nelson (FL)
Bunning	Grassley	Nickles
Burns	Gregg	Reed
Byrd	Hagel	Reid
Campbell	Harkin	Roberts
Cantwell	Hatch	Rockefeller
Carnahan	Helms	Santorum
Carper	Hollings	Sarbanes
Chafee	Hutchinson	Schumer
Cleland	Hutchison	Sessions
Clinton	Inhofe	Shelby
Cochran	Inouye	Smith (NH)
Collins	Jeffords	Smith (OR)
Conrad	Johnson	Snowe
Corzine	Kennedy	Specter
Craig	Kerry	Stabenow
Crapo	Kohl	Thomas
Daschle	Kyl	Thompson
Dayton	Landrieu	Thurmond
DeWine	Leahy	Torricelli
	Voinovich	Wellstone
	Warner	Wyden

NAYS—1

Nelson (NE)

NOT VOTING—2

Enzi Stevens

The amendment (No. 3040) was agreed to.

VOTE ON AMENDMENT NO. 3033

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3033 offered by the Republican leader.

Mr. HATCH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Wyoming (Mr. ENZI) and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The PRESIDING OFFICER (Mr. JOHNSON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 47, nays 51, as follows:

[Rollcall Vote No. 57 Leg.]

YEAS—47

Allard	Fitzgerald	Murkowski
Allen	Frist	Nickles
Bennett	Gramm	Roberts
Bond	Grassley	Santorum
Brownback	Gregg	Sessions
Bunning	Hagel	Shelby
Burns	Hatch	Smith (NH)
Campbell	Helms	Smith (OR)
Chafee	Hutchinson	Snowe
Cochran	Hutchison	Specter
Collins	Inhofe	Thomas
Craig	Kyl	Thompson
Crapo	Lott	Thurmond
DeWine	Lugar	Voinovich
Domenici	McCain	Warner
Ensign	McConnell	

NAYS—51

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Lincoln
Biden	Edwards	Mikulski
Bingaman	Feingold	Miller
Boxer	Feinstein	Murray
Breaux	Graham	Nelson (FL)
Byrd	Harkin	Nelson (NE)
Cantwell	Hollings	Reed
Carnahan	Inouye	Reid
Carper	Jeffords	Rockefeller
Cleland	Johnson	Sarbanes
Clinton	Kennedy	Schumer
Conrad	Kerry	Stabenow
Corzine	Kohl	Torricelli
Daschle	Landrieu	Wellstone
Dayton	Leahy	Wyden

NOT VOTING—2

Enzi Stevens

The amendment (No. 3033) was rejected.

Mr. DASCHLE. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DASCHLE. Mr. President, we are currently consulting about the remainder of the day. It is fair to say Senators should expect additional rollcall votes. We are hoping we might reach an agreement procedurally on how to make additional progress on the bill during the remaining hours of today. At this point we cannot say with any confidence what tomorrow holds. It depends, in part, on what the schedule will be for the remainder of the day. We are working to arrange for additional votes and consideration of additional amendments. We will propound that request as soon as it becomes available.

PROVISION FOR CONDITIONAL RECESS OR ADJOURNMENT OF CONGRESS

Mr. DASCHLE. I have a request regarding the adjournment resolution. It has been approved by the Republican leader.

I ask unanimous consent the Senate now proceed to the adjournment resolution which is at the desk, H. Con. Res. 360.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

The House concurrent resolution (H. Con. Res. 360) providing for a conditional adjournment of the House of Representatives and conditional recess or adjournment of the Senate.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DASCHLE. I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table with no intervening action or debate.

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

The concurrent resolution (H. Con. Res. 360) was agreed to, as follows:

H. CON. RES. 360

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Wednesday, March 20, 2002, or Thursday, March 21, 2002, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, April 9, 2002, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns at the close of business on Thursday, March 21, 2002, Friday, March 22, 2002, or Saturday, March 23, 2002, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, April 8, 2002, or at such other time on that day as may be specified in the motion to recess or adjourn, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.