

Of course, more than two-thirds of the federal court vacancies continue to be on the district courts. The Administration has been slow to make nominations to the vacancies on the federal trial courts. In the last five months of last year, the Senate confirmed a higher percentage of the President's trial court nominees, 22 out of 36, than a Republican majority had allowed the Senate to confirm in the first session of either of the last two Congresses with a Democratic President. Last year the President did not make nominations to almost 80 percent of the current trial court vacancies. As we began this session, 55 out of 69 vacancies were without a nominee.

In late January, the White House finally sent nominations for another 24 of those trial court vacancies. After the Committee receives the indication that the nominees have the support of their home State Senators and after the Committee has received ABA peer reviews, these recent nominations will then be eligible to be included in Committee hearings. Because the White House shifted the time at which the ABA does its evaluation of nominees to the post-nomination period, these 24 nominees are unlikely to have completed files ready for evaluation until after the Easter recess. Even then, over two and one-half dozen of the federal trial court vacancies, 31, may still be without eligible nominees.

We have accomplished more, and at a faster pace, than in years past. We have worked harder and faster than previously on judicial nominations, despite the unprecedented difficulties being faced by the nation and the Senate. I am encouraged that this confirmation today was not delayed by extended, unexplained, anonymous holds on the Senate Executive Calendar, the type of hold that characterized so much of the previous six and one-half years. Majority Leader DASCHLE has moved swiftly on judicial nominees reported to the calendar.

I thank all Senators who have helped in our efforts and assisted in the hard work to review and consider the dozens of judicial nominations we have reported and confirmed. I thank, in particular, the Senators who serve on the Judiciary Committee for their helpful action since this summer. As our action today demonstrates, again, we are moving ahead to fill judicial vacancies with nominees who have strong bipartisan support.

Madam 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.

The PRESIDING OFFICER. In my capacity as a Senator from New York, I ask unanimous consent that the order for the quorum call be rescinded.

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. The time of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m. today.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m., whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. JOHNSON).

Mr. REID. 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. DORGAN. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

Mr. DORGAN. Mr. President, is the Senate currently in morning business?

The PRESIDING OFFICER. No, it is not.

Mr. DORGAN. What is currently pending?

The PRESIDING OFFICER. The regular order is to have the clerk report the pending business.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak in morning business for 10 minutes.

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

ENRON CORPORATION CEO SUBPOENAED

Mr. DORGAN. Mr. President, I come to the floor of the Senate to discuss, just for a few minutes, the action taken this morning in the Senate Commerce Committee. We voted unanimously to support a subpoena being delivered to Mr. Kenneth Lay, who is the former chairman and CEO of the Enron Corporation. I want to describe for my colleagues what brought us to this point and why we believed we had to vote to authorize a subpoena being issued.

About 4 to 6 weeks ago, Mr. Lay's attorneys told us that Mr. Lay would be willing to appear before the Senate Commerce Committee. That was in response to a request by us as we began to investigate what happened with respect to the Enron Corporation. As you know, this is the largest bankruptcy in American history. There is substantial information that has been available for some while now, prior to and since the bankruptcy, about things that had happened inside the corporation that cause a great deal of concern.

A memo by one of the vice presidents of Enron was presented to the CEO, Mr. Lay, in August of last year. That memo by Vice President Watkins talked about accounting hoaxes and irregularities of sorts, and warned about what people would find if they dug into the partnerships that were being created in this corporation.

Then, in November and December, that company's auditors, Arthur An-

dersen and Company, talked about possible illegal acts with respect to that corporation and the review of some documents.

Then, last Saturday, a report that was commissioned by the board of directors of the Enron Corporation, the Powers report, described a broad range of very serious problems that went on inside that corporation.

At any rate, during this period of time we had requested the testimony before the subcommittee and the full committee of the Commerce Committee by Mr. Lay. His attorneys said he would be made available on February 4 at 9:30 in the morning. They continued to say that even through last Friday and Saturday.

On the Sunday evening before Mr. Lay's scheduled appearance, we were called by his attorneys. They told us that Mr. Lay had changed his mind and he would no longer be available to testify and would therefore not appear on Monday morning.

Mr. Lay's attorneys wrote a letter saying the problem was that Mr. Lay had heard comments about his company that concerned him. They felt it would probably be a prosecutorial kind of environment in the committee hearing on Monday, and therefore he did not want to appear.

The fact is, the comments that were made by a number of Members of the Senate prior to Sunday were no different than the assertions made to the CEO of Enron by his own employee last August, by his accounting firm in November and December, and especially by his own company's board of directors on Saturday last.

Mr. Lay, in my judgment, following the report by the board of directors of this corporation, decided that he did not want to talk to anybody publicly and decided to lay it off on some Members of Congress, saying that is the reason he did not want to come and testify.

Let me tell you what was in that report, just to give one small example. This report says that in this corporation, one of the corporate officers, Mr. Fastow, in creating one of the partnerships—incidentally, there were a lot of secret partnerships created here—Mr. Fastow invested \$25,000 of his own money in a partnership in a corporation of which he was an officer. Sixty days later, that \$25,000 was \$4.5 million to Mr. Fastow.

Does anybody in this room know of investments like that? Would you like to make a \$25,000 investment that, in 60 days, becomes \$4.5 million? Where can you do that? The lottery, but that is not a sure thing.

No, this wasn't gambling inside the corporation. This was just people playing fast and loose with the truth and with other people's money. When someone takes \$25,000 and turns it into \$4.5 million in 2 months, in my judgment, that is stealing. That is just stealing—yes, quote unquote, stealing—from investors who own the shares in that corporation.

At the same time that you have an officer of the company taking \$25,000 and in 60 days turning it into \$4.5 million, at the same time that is happening, one of my constituents in North Dakota is writing a two-page letter to me. That letter, an anguished cry from this family, asks the following question:

What on Earth has happened? I worked for this company's subsidiary for many, many years and have put away \$300,000 into a retirement account. Do you know what my retirement account is worth today?—\$1,700; from \$300,000 to \$1,700.

He and his family have lost it all. But inside that corporation we had people making millions.

Was that a corporate culture of corruption? You bet your life it was. And the reason Mr. Lay has decided not to come to the Congress to testify was not because of anything anyone has said. It is because of what this Powers report has found that went on inside this company. I will give another example.

This company decided to create a little partnership called Braveheart to accommodate some business they were going to do with the Blockbuster Corporation. They were actually going to have Blockbuster be the repository of movies. They were going to stream these videos or movies to consumers around the country. It was going to be a big business. It was announced in March of 2000. By February of the next year it was gone. But in the meantime they created a little partnership called Braveheart to take care of all this.

Do you know what Braveheart did? Braveheart borrowed roughly \$112 million from a Canadian bank. Then it sold its assets to the Enron Corporation for slightly over \$100 million. The Enron Corporation booked it as a business profit, when in fact all it was a bank loan from a Canadian bank, run through a partnership that wasn't doing any business at all—just a few test markets with a few customers. You tell me whether that is honest business.

It is not. Can someone come to the Congress and defend that? They can't. That is why we have people who were at the head of this corporation who were unwilling to talk.

I just wanted to make the point that the assertions by attorneys on behalf of principals in this corporation are suggesting that they have been offended because they might find a prosecutorial approach at some of these hearings. No one suggested that a hearing before this Congress would ever be a walk in the park, especially when you have a record inside this corporation of financial manipulation, of dishonest accounting, and of personal enrichment of officers and directors.

I wanted to make that point about what we had to do this morning. We issued a subpoena for Mr. Lay. It was issued on a unanimous vote by the Senate Commerce Committee. That is nearly unprecedented. We don't issue subpoenas in the Commerce Com-

mittee. We have the power and authority to do so, but we don't do it very often. But we did it because we felt we had no choice.

Mr. President, I had asked permission to speak in morning business. I have just a couple of other things to mention very briefly, and I want to do that in a separate section of morning business. How much time is remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 1½ minutes remaining.

Mr. DORGAN. Let me ask if I can extend that by 2 minutes by consent.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. I will not object to that at this point. I know Senator TORRICELLI has some brief remarks. I know they both are very interested in these issues and it is time we talk about them, but we have a stimulus package on the floor and we want to get to that as soon as possible.

Is 5 minutes all right for Senator TORRICELLI?

The PRESIDING OFFICER. The Senator from North Dakota has the floor. Is there objection to his request?

Mr. TORRICELLI. Reserving the right to object, Mr. President, I request at the conclusion of Senator DORGAN that I be recognized for 10 minutes.

Mr. SESSIONS. I have to object to 10 minutes.

Mr. TORRICELLI. The Senator has 5 minutes. Mr. President, I hate to get into a bidding process, but I would like to have a reasonable amount of time to be recognized after Senator DORGAN.

Mr. SESSIONS. We have business on the floor, and I know people would like to change the focus of our debate on the stimulus package, which is overdue in my view. I was willing to let the Senator have a few more minutes. I would not object to 5 minutes.

Mr. TORRICELLI. I withdraw my objection.

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

The Senator from North Dakota.

Mr. DORGAN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Two and one-half minutes.

Mr. DORGAN. Mr. President, I asked for 2 minutes in addition to the minute and a half remaining at that point. I expect I will have 3 and a half minutes.

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

THE STIMULUS PACKAGE

Mr. DORGAN. Mr. President, I'd like to talk a moment about several items I think ought to be included in the economic recovery package.

One, I have filed an amendment that would provide for a 5-year extension of the wind energy production tax credit. We really must get that done. Regrettably, this credit was allowed to expire at the end of last year. As a result, many lenders have stopped providing financing for new wind energy projects.

Wind development projects underway have come to a screeching halt.

Extending the wind energy production tax credit would provide an immediate boost to the economy. We have a lot of projects on the books that aren't moving because the credit expired. A long-term extension will jump-start development activity, create jobs and help this country meet its future energy needs. Each new wind turbine placed into service creates about \$1 million in economic activity.

I would like to make the wind energy production tax credit permanent. My proposal today would extend it for 5 years. Clearly, a shorter term extension will not provide developers the certainty and stability they need to plan and finance new wind energy projects. I think Congress must act quickly to ensure the availability of the wind energy tax credit over the long term. If we don't act now, many wind energy initiatives will be scrapped at a time when this country can least afford it.

Second, I intend to offer and have filed an amendment to permit companies that have recently suffered net operating losses to carry back those losses for 5 years for federal income tax purposes. I will not go into a lengthy description of why we ought to do that. But my amendment should provide some needed financial help for those companies that have been hurt most during the current economic downturn. It will increase cash flow for many of these firms and help them make payroll, avoid additional layoffs and, hopefully, encourage new hiring. It will also help them to make investments in equipment and machinery they need to rebuild, grow and prosper.

There is bipartisan support in both the Senate and the House of Representatives for net operating loss carry-back relief proposals. We ought to include in a 5-year net operating loss carry-back provision in the economic recovery package.

Finally, I've filed an amendment that would provide tax relief for many S-corporations that sell "built-in" gain assets and reinvest the proceeds from those sales back into their companies. Today, there are hundreds of thousands of firms that operate as S corporations that would have a huge tax impediment if they were to sell certain appreciated business assets. The taxes they would be required to pay on that gain, even if they reinvest it, would be prohibitive. As a result, many S-corporations are forced to keep these assets—even if they are no longer productive and could be converted into assets that generate new growth and jobs.

The amendment I filed today would allow those who are involved in these S-corporations to sell built-in gain assets without facing a massive federal tax bill, provided they reinvest the proceeds into the business within a two-year period. That, too, is stimulative.

Many of these companies are the job-producing companies in this country.