

"We understand that the president has the right to name nominees that he chooses," Shah said recently. "We are willing to look at the record and their political views and see if they will make good judges . . . and not turn back the clock on civil rights, women's rights and environmental protections."

[From the Colorado Springs Gazette, May 8, 2002]

#### JUSTICE DELAYED

##### BLOCKING NOMINEES IS AN OLD POLITICAL GAME—AND IT'S UNDERMINING OUR COURTS

Let's not be naive about how presidential picks, especially for the judiciary, quickly can become political pawns for members of Congress. Holding up a nominee to the bench or to any other office requiring the Senate's advice and consent has become nothing less than a venerated tradition. And it's a bipartisan affair even as each side howls with indignation when the other does it.

Sometimes it's indulged for philosophical reasons—a judicial nominee's stance on abortion or capital punishment, for example. Other times the stonewalling is mundanely political—perhaps some senators want a president to back off of a threatened veto of major legislation. A pending nomination can prove a useful bargaining chip. It all makes for a very old game, and it has been that way almost every time the White House has changed tenants over the years.

But that doesn't make it right. More to the point, the inclination of senators to make judicial appointees cool their heels interferes with the administration of justice. The latest joust between the Senate and the presidency is no exception.

To their credit, Colorado Republican U.S. Sens. Ben Nighthorse Campbell and Wayne Allard have written a letter to the Chairman of the Senate Judiciary Committee, Patrick Leahy, D-Vt., making just that point.

"The current state of judicial nominations is unacceptable. It has devolved into a petty game of entrenchment, creating a vacancy crisis that prevents the service of the very justice upon which our nation depends," they wrote.

Of particular concern to the Colorado delegation is the status of Colorado's former solicitor general, Tim Tymkovich, who was nominated by President Bush in 2001 to fill the Colorado vacancy on the 10th Circuit Court of Appeals. Saturday will mark the one-year anniversary since Tymkovich's nomination was sent to the Judiciary Committee.

It's not as if there are some glaring blemishes on the man's resume. On the contrary, his nomination enjoys the broad support of our state's legal community, and he was deemed qualified when rated by the American Bar Association. and still he remains in limbo.

To reiterate, we're not being naive here. This is an old syndrome that conforms to no political boundaries. Indeed, a couple of years ago, it was Allard who for a time helped delay the nomination of a Clinton administration pick for the 10th Circuit bench.

But the underlying point the Senators make in their letter to Leahy is well taken. Quite simply, there's a slate of looming vacancies on the federal bench across the country thanks in large part to backlogged nominations, and it risks paralyzing the courts.

Whatever reservations members of either party might harbor about any given nominee, and however substantive those concerns may actually be on occasion, at some point they pale next to the need for any judge at all to attend to the logjam in federal courts.

Swift justice is supposed to be a hallmark of our system; its prospects don't look good while the likes of Leahy are making it harder to get before a judge at all.

[From the Rocky Mountain News, May 9, 2002]

#### GOP MAY PROTEST DELAY ON HEARINGS

##### COLORADAN IS AMONG BUSH JUDICIAL NOMINEES

(By M.E. Sprengelmeyer)

WASHINGTON.—Republicans might slow action in the U.S. Senate today to protest a yearlong delay in confirming President Bush's judicial nominees, including one from Colorado.

Saturday will be the one-year anniversary of Bush's nomination of Tim Tymkovich to the 10th Circuit Court of Appeals in Denver.

But he's still waiting for a confirmation hearing, as are eight of the first 11 judicial nominees Bush made a year ago today.

Republican Senators will call attention to the issue in a morning press conference, and then they are expected to invoke procedural maneuvers to slow the Senate's work throughout the day.

"It will be a slowdown in order to make their point," said Sean Conway, spokesman for Sen. Wayne Allard, R-Loveland.

Last week, President Bush called the situation a "vacancy crisis," especially in the 12 regional Courts of Appeals, where one in six judgeships remains vacant. The Denver-based 10th Circuit is still waiting for nominees Tymkovich and Michael McConnell of Utah to get hearings.

In response, Senate Judiciary Committee Chairman Sen. Pat Leahy, D-Vermont, pointed out that the Senate had confirmed 52 of Bush's nominees since Democrats took control 10 months ago. He said Bush should share the blame for other delays.

"Controversial nominations take longer, and the President can help by choosing nominees primarily for their ability instead of for their ideology," Leahy said in a release.

Some groups have questioned McConnell's nomination, claiming that the University of Utah professor would weaken the separation of church and state. They also question his views because he once represented the Boy Scouts of America in its bid to exclude homosexuals. McConnell backers say the fears are based on misunderstandings and that he has been endorsed by several Democratic academics.

But there is little controversy over Tymkovich, Colorado's former solicitor general.

Last month, Allard and Sen. Ben Nighthorse Campbell, R-Ignacio, wrote Leahy, demanding that Tymkovich get a hearing.

"It has devolved into a petty game of entrenchment, creating a vacancy crisis that prevents the service of the very justice upon which our nation depends," they wrote.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. I thank the Chair.

I congratulate Senator ALLARD for an excellent statement. I have a similar story to tell of one of our nominees from the State of Arkansas.

#### THE PRESIDENT'S COMMITMENT TO EDUCATION

Mr. HUTCHINSON. Mr. President, before I begin discussing the judicial nomination, I wish to respond to the colloquy that took place on the other side of the aisle regarding our President's commitment to education.

I serve on the Education Committee, and I was privileged to serve on the conference committee on the Leave No

Child Behind legislation which reauthorized the Elementary and Secondary Education Act and which was signed into law in January. I saw for more than a year the President's and this administration's deep commitment and involvement to reforming and fully funding our education legislation and our commitment to our elementary and secondary education, special education under IDEA, and the bilingual and other programs that were reauthorized in this legislation.

We have incredible leadership in the White House, and that is why this bipartisan legislation passed by over 80 votes in the Senate. It disappoints me and hurts me to hear my colleagues on the other side of the aisle attack this administration and question its commitment to education. We saw in 30 years under Democrat control an education policy that got us nowhere, in which the learning gap between high-achieving and low-achieving students never narrowed, in which test scores, instead of rising, continued to fall.

Now we have a President who has said: Let's try something different; let's put real accountability into education; yes, let's increase funding, with dramatic increases in title I, dramatic increases in IDEA, special education, and dramatic reforms and increases in bilingual education; but let's accompany spending increases with accountability; let's not just spend more, let's spend smarter.

I, for one, stand and applaud the President for his leadership. I can only say as the President's poll numbers soar on leadership in education and Republicans in general score better on education than ever before, that is the only explanation for the misguided attack on the President on the education issue which we just heard today.

#### JUDICIAL NOMINATIONS

Mr. HUTCHINSON. Mr. President, I wish to speak about the tragic hold up of our circuit court nominees to the Federal bench. It takes only a few numbers to show the dramatic vacancy crisis we are facing in the Federal court system: 10 percent of Federal judgeships are vacant right now, 85; 20 percent of judicial seats at the Federal courts of appeals are vacant. With eight openings, half of the entire Sixth Circuit is now vacant. It is operating at half strength.

The Judiciary Committee has held a hearing on only one of President Bush's seven nominees for the Sixth Circuit, and that hearing was held just a week and a half ago after pending for over 6 months. Two of the Sixth Circuit nominees, Jeffrey Sutton and Deborah Cook, were nominated a year ago today but have not yet had a hearing.

Do they question their ability? The ABA rated both nominees as unanimously qualified, but they have languished for a year.

The numbers simply do not lie: 44 nominations are currently pending before the Judiciary Committee. Unfortunately, 22 of those unconfirmed nominees are for circuit courts, the court of last resort for most cases.

In 1996, the current Judiciary Committee chairman called a vacancy rate of only two-thirds as high as the one we face today a judicial emergency. It is even more so today, and we are doing even less about it.

Of the current 85 vacancies, 37 are considered judicial emergencies by the Administrative Office of the U.S. Courts. This is calculated based on the number of years the judgeship has been open and the size of the court's caseload.

Perhaps the most staggering fact is this: Of the President's first 11 circuit court nominees submitted to the Senate on May 9, 2001, only 3—Mr. President, only 3—have even received hearings by the Senate Judiciary Committee.

This is a crisis by any definition, by any measure, and it is inexcusable.

One of the nominees who has been waiting almost a year is from my home State of Arkansas.

He is a very distinguished, very qualified jurist named Lavenski Smith. This is my friend Lavenski Smith.

It is very easy to talk numbers. Numbers come and go. People come to the Chamber and argue numbers and statistics, but I want to put a face on what we are really talking about.

Judge Smith was nominated for the Eighth Circuit Court of Appeals almost a year ago, on May 22, 2001. I brought this picture of Lavenski Smith in the hopes this might put a human face on at least one of the people we are hurting by these unjust and inexcusable delays. Judge Smith has received broad support from both of his home State Senators, from colleagues on the bench in Arkansas, from colleagues from his days of practicing law. He has received the support of the American Bar Association. He has received the support of the president of the Arkansas NAACP. He has received the support of editorial boards of both the left and the right ends of the political spectrum in the State of Arkansas.

That is broad support. That is support from the left and the right. There is support from every colleague who has ever worked for him. There is support from his colleagues on the Arkansas Supreme Court. There is support from the American Bar Association. There is support across the board.

The NAACP president has written asking for a hearing. Yet Judge Smith's nomination languishes. Why? If he is confirmed, Judge Smith will be the first African-American Arkansan on the Eighth Circuit. I wonder what the ladies and gentlemen of the press would be saying about this nomination were the tables reversed, were Republicans in control and a Democrat nominee, an African American, who would be the first on the Eighth Circuit Court

of Appeals, had languished for almost a year without even a hearing.

Ever since this nomination, I have looked forward to the day when I could sit next to Judge Smith in the Senate Judiciary Committee and I could give a glowing introduction of my friend at that hearing. I have been waiting, I have been waiting, and I have been waiting. I have written Senator LEAHY over and over, and I have talked to Senator LEAHY. Others have written and pleaded for a hearing, and yet nothing has happened.

I would like to tell my colleagues about my friend. Lavenski Smith earned both his bachelor's degree and his law degree from the University of Arkansas. Following law school and 3 years working in private practice, Judge Smith served the poorest and the neediest citizens of Arkansas as the staff attorney for Ozark Legal Services. At Ozark Legal Services, he represented abused and neglected children. These were children whose own parents were unwilling or unable to act in their best interest, putting the children in danger. So Judge Smith stepped in.

Judge Smith helped these children. He represented them in our complex legal system and navigated the foster care system for them. He helped find the safest place for these children to grow and to thrive. So he is committed to the needy. He is committed to the poorest, and he has demonstrated that with his life, not just with his rhetoric.

In addition to this public service, Lavenski Smith has volunteered his spare time to charitable endeavors such as raising funds for the School of Hope, a school for handicapped children in his hometown of Hope, Arkansas. After Judge Smith spent years working at Ozark Legal Services, Judge Smith opened the first minority-owned law firm in Springdale, AR, handling primarily civil cases. He then taught business law at John Brown University and took several positions in public service, including working as the regulatory liaison for Governor Mike Huckabee in the Governor's office. He currently serves as a commissioner on our Public Service Commission.

Now I mentioned he has this very broad support, and indeed he has. So let me share some of the statements of support for Judge Lavenski Smith, former Arkansas Supreme Court Justice, who was nominated almost a year ago to the Eighth Circuit Court of Appeals and has not been granted even the courtesy of a hearing before our Judiciary Committee.

Dale Charles, the president of the Arkansas NAACP, President Charles wrote:

He's a fine person individually and in his time on the Supreme Court he represented himself and the court well. I encourage them to question him and let his record speak for itself. I do not foresee his confirmation being in jeopardy.

This is Dale Charles, president of the Arkansas NAACP. Dale Charles wrote

this letter some time back. He wrote more recently on April 8 a specific letter to Chairman LEAHY, and I ask unanimous consent that this letter be printed in the RECORD.

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

NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE,

*Little Rock, AR, April 8, 2002.*

Senator PATRICK LEAHY,  
U.S. Senate, Chairman, Judiciary Committee,  
Russell Senate Office Building, Washington,  
DC.

DEAR CHAIRMAN LEAHY: As the President of the Arkansas State Conference of Branches NAACP, I am writing to express our concern that Attorney Lavenski Smith, who is from Arkansas, has not been given a confirmation hearing. President Bush nominated Mr. Smith approximately a year ago for the Eighth Circuit Court, however, he has not been given a hearing before the Judiciary Committee.

While I understand there are some partisan issues involved, I am asking you as Chairman of the Judiciary Committee to, immediately, schedule a hearing on behalf of the confirmation of Mr. Smith for the Eighth Circuit Court. It is my opinion that Mr. Smith is a fine individual and has served the people of Arkansas well in his capacity as a public official.

For additional information, you may contact me at (501) 227-7231 or by e-mail at dhcharles@prodigy.net.

Sincerely,

DALE CHARLES,  
President.

Mr. HUTCHINSON. I would like to share with my colleagues what the President of the Arkansas chapter of the NAACP wrote concerning my friend Lavenski Smith:

Dear Chairman Leahy, as the President of the Arkansas State Conference Branch of the NAACP, I am writing to express our concern that attorney Lavenski Smith, who is from Arkansas, has not been given a confirmation hearing. President Bush nominated Mr. Smith approximately a year ago for the Eighth Circuit Court of Appeals. However, he has not been given a hearing before the Judiciary Committee. While I understand there are some partisan issues involved—

That is the greatest understatement ever made—

I am asking you, as chairman of the Judiciary Committee, to immediately schedule a hearing on behalf of the confirmation of Mr. Smith for the Eighth Circuit Court of Appeals. It is my opinion that Mr. Smith is a fine individual and has served the people of Arkansas well in his capacity as a public official. Sincerely, Dale Charles, NAACP.

What kind of support does one have to have to get a hearing? How long does one have to wait to get a hearing?

In June of 2001, the American Bar Association, which has been called the gold standard of qualifications, agreed and made a unanimous qualified determination. Chief Justice of the Arkansas Supreme Court, W.H. "Dub" Arnold, well-respected jurist in the State of Arkansas, wrote on behalf of Lavenski Smith:

He is a great man. He is very intelligent. He did a great job for us on the Arkansas Supreme Court. I think he'll make a great Federal judge. I think President Bush made the best possible nomination he could have made.

Now, Justice Arnold is a Democrat, but he is a fair-minded Democrat and he is a distinguished jurist and he weighs in and says President Bush made the best possible nomination he could have made.

We put in a call to Judge Smith to let him know I would be making these remarks on his behalf in this Chamber. Judge Smith said: Well, go ahead. I do not think it will make much difference, but go ahead.

I was so crushed that he is so cynical about the process that has already delayed this nomination for a year and not even given him a hearing, that his attitude about pushing hard for it really will not accrue to any results.

Mike Huckabee, Governor of the State of Arkansas stated:

He just has all the equipment to be an outstanding jurist. I'll be the first to predict that his next stop will be the United States Supreme Court.

Governor Huckabee is a Republican. So we have Dub Arnold, a Democrat, and we have Mike Huckabee, a Republican. We have the NAACP. We have the American Bar Association in June of 2001 saying that a unanimous qualified determination has been made regarding Judge Smith's nomination. Yet he waits. It has now been almost 1 year since he was nominated.

I have thought and thought, why? I understand a nomination that is controversial, a nomination that has severe opposition within the State of Arkansas—perhaps if the letter from the president of the NAACP had been a critical letter or perhaps if his colleagues on the Arkansas Supreme Court had come out publicly and said they question his qualifications, perhaps then there would be some way to understand why there has not even been a hearing for Judge Smith.

So I have thought about why, and the only opposition I can find, I say to my distinguished colleagues and to our Presiding Officer today, to Judge Smith's nomination is found on two Web sites. One is NOW, the National Organization for Women, and the other is NARAL.

Judge Smith, for all of his qualifications, all of his distinguished service, all of his commitment to the poor, needy, and handicapped in our society, has one grave shortcoming: He is pro-life. There are those on the Judiciary Committee who have said: Don't send us a pro-life nominee. They are dead on arrival. That is tragic.

To those who for years have denounced the idea of a litmus test to the Federal bench, that we only look at whether one is qualified or not, no one raised the issue of whether Judge Smith is qualified. Yet the only opposition has been NARAL and the National Organization of Women, and they say he is pro-life; he has a record of being pro-life. How can we possibly consider him for the Eighth Circuit Court of Appeals? That is a litmus test if there ever was one, and they are blatant about it. So we wait. And Judge Smith waits.

Holding up judicial nominees is not just a political game. The confirmation process is not a payback opportunity for perceived wrongs of the past, nor should it be viewed as a chance to throw a roadblock before a new President's administration. The American people are watching the Senate's failure to fulfill its constitutional duty, and they are wondering if we understand what our role is.

Last week, I received a call from a constituent in Arkansas. She had previously written to me asking me why the President's very well-qualified nominee to the Eighth Circuit Court of Appeals, Lavenski Smith, has been waiting for close to a year without the courtesy of a hearing. I responded the way I am sure many Members do, by pointing out the letters I have written supporting Judge Smith's nomination, urging quick attention by the Judiciary Committee. I told her I was working hard to convince the committee to examine his qualifications, as I knew they would find his stellar record more than adequate for the job. I wrote to this lady, my constituent, that Senate procedure required the nominations to be reported out of the Judiciary Committee.

She received my letter and called me last week. She said she had looked through her Constitution and wanted to read to me article II, section 2.2, which states that the President shall appoint justices with the advice and consent of the Senate—not the Judiciary Committee. She wanted to know why the Senate was allowing a partisan hijacking of Senate procedure to prevent fulfillment of our constitutional duty.

I tell this story to illustrate that the vacancy crisis in the judiciary is having affects beyond the administration of justice. Our failure does not just create backlogs that allow dangerous criminals on the street longer, leaves the innocent waiting longer for vindication and slow victims access to justice. When we leave half of the bench of a court of appeals empty and another one only two-thirds full, the American people start to doubt our ability and our will to carry out our constitutional duties.

I know my colleagues on both sides of the aisle share my reverence and respect for the Constitution. I hope we will move forward and confirm, or at a very minimum, have hearings and votes on the 44 nominees still pending, including my very qualified and very dear friend, Lavenski Smith, who would be a very able jurist and judge on the Eighth Circuit Court of Appeals. This will set an important precedent for this circuit court of appeals by serving as the first African American on the Eighth Circuit Court of Appeals.

I ask once again, after nearly a year, for a hearing for my friend and for movement on these very important judicial nominations.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, there have been a couple of speeches on judges. I will say a few things pertinent to the discussion regarding judges.

There is no better place to start than a few statements made by the Republicans in recent days. In 1999, the Republican leader, Senator LOTT, said:

I am saying to you, I am trying to help move this thing along, but getting more Federal judges is not what I came here to do.

That is the Republican leader.

The Senator from Pennsylvania, Senator SANTORUM, said on November 11 of 2001:

The delays are a result of "rank partisanship by Tom Daschle."

But this is what he said on the 18th day of August the year 2000:

A number of my Republican colleagues are not likely to rush President Clinton's lifetime judicial nominees through the confirmation process when they think there is a chance another party could occupy the White House in January.

My friend, Senator CRAIG of Idaho, said in June of 1996:

There is a general feeling . . . that no more nominations should move. I think you'll see a progressive shutdown.

Now what he is saying:

There seems to be a concerted effort to operate very slowly around here.

My friend, ORRIN HATCH, the chairman of the committee, talked about his ideology. He said, when chairman of the committee a couple years ago:

I led the fight to oppose the confirmation of these two judges because their judicial records indicated they would be activists who would legislate from the bench.

A couple of months ago he said:

I would like to address some recent attempt to reinvent history by repeating this convenient myth that I, as chairman, blocked President Clinton's nominations on the basis of political ideology.

That is what he said.

Again, my friend, the Republican leader said:

The reason for the lack of action on the backlog of Clinton nominations was his steadily ringing office phone saying "no more Clinton Federal judges."

Senator LOTT said he received a lot of phone calls saying "No more Clinton judges." So that is what he did.

He said to the Bulletin's Frontrunner, a newspaper:

Until we get 12 appropriations bills done, there is no way any judge, of any kind, or any stripe, will be confirmed.

Senator HATCH said:

The claim that there is a vacancy crisis in the Federal courts is simply wrong. Using the Clinton administration's own standard, the Federal Judiciary currently has virtual full employment.

We have established the vacancies in the Federal judiciary created by Republicans. Senator HATCH said don't worry.

Although just a short time ago he said:

If we don't have the third branch of government staffed, we're all in trouble.

The Republicans say they want hearings. I heard my friend from Arkansas say they want hearings.

These are people President Clinton nominated who never ever got a hearing—not 2 days later, 2 weeks later, 2 months later, 2 years later. They never got a hearing. Fine people. In Illinois, Wenona Whitfield; in Missouri, Leland Shurin; in Pennsylvania, John Bingler; in South Dakota, Bruce Greer; in California, Sue Ellen Myerscough; Texas, Cheryl Wattley; in Texas, Michael Schaffman.

Circuit judges in the Fourth Circuit, James Beaty; Richard Leonard, never got hearings; Annabelle Rodriguez. In the 105th Congress, Helene White, Ohio; Jorge Rangel in Texas; Jeffrey Coleman, North Dakota; James Klein, District of Columbia; Robert Freedberg, Pennsylvania; Cheryl Wattley, Texas; Lynette Norton, Pennsylvania; Robert Raymar, Third Circuit; Legrome Davis, Pennsylvania; Lynne Lasry, California; Barry Goode, California. No hearings.

In the 106th Congress, 33 never got a hearing: H. Alston Johnson, Louisiana; James Duffy, Hawaii; Elana Kagan, District of Columbia; James Wynn, North Carolina; Kathleen McCree-Lewis, Ohio; Enrique Moreno, Texas; James Lyons, Colorado; Kent Markus, Ohio; Robert Cindeich, Pennsylvania; Stephen Orlofsky, New Jersey; Roger Gregory, Virginia; Christine Arguello, Colorado; Elizabeth Gibson, North Carolina; J. Rich Leonard, District of Columbia; Patricia Coan, Colorado; Dolly Gee, California; Steve Bell, Ohio; Rhonda Fields, District of Columbia; S. David Fineman, Pennsylvania; Linda Riegle, Nevada; Ricardo Morado, Texas; Gary Sebelius, Kansas; Ken Simon, Hawaii; David Cercone, Pennsylvania; Harry Litman, Oklahoma; Valerie Couch, Oklahoma; Marion Johnston, California; Steve Achelphol, Nebraska; Richard Anderson, Montana; Stephen Liberman, Pennsylvania; Melvin Hall, Oklahoma.

Before I sit down, they talk about Hispanic nominees. There is a Hispanic nominee they say has not moved quickly enough.

Jorge Rangel, who was nominated in July of 1997, never got anything. Enrique Moreno, Fifth Circuit, nominated in 1999, didn't get anything. Christine Arguello, July of 2000—nothing happened. Ricardo Morado, south Texas—nothing happened. Anabelle Rodriguez—these are just some of the names.

I suggest before the tears run too heavily down the cheeks of my Republican friends, they should go back and read their own statements given by their own Senators, and find out the States where people who were nominated by President Clinton never got a hearing.

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

Mr. NELSON of Florida. Mr. President, how much time do we have remaining on this side?

The PRESIDING OFFICER. The Senator has 14 minutes.

Mr. LOTT. Mr. President, parliamentary inquiry, if the Senator will yield:

How much time is remaining on this side of the aisle?

The PRESIDING OFFICER. Fourteen minutes.

Mr. LOTT. On each side?

The PRESIDING OFFICER. Yes.

Mr. LOTT. Mr. President, the majority leader took some time at the beginning of this debate. Was that out of leader time?

Mr. REID. It was not out of leader time.

Mr. LOTT. It was not out of leader time?

The PRESIDING OFFICER. It came out of morning business time.

The Senator from Florida.

Mr. NELSON of Florida. I ask, of the remaining 14 minutes, that I have consent to have 5 minutes and the remaining time for my colleague from Minnesota, to be followed by me.

Mr. LOTT. I reserve the right to object, Mr. President. I believe the agreement was we would have it equally divided; we could go back and forth. So after 5 minutes I would like to then have an opportunity to speak out of our time on this side.

Mr. NELSON of Florida. Then, Mr. President, I will yield to the Senator from Minnesota. He has a time problem.

Mr. WELLSTONE. Mr. President, that is very gracious. The Senator from Florida will go now followed by the minority leader and then I will follow the minority leader.

The PRESIDING OFFICER. The Senator from Florida.

#### THE NEGRO LEAGUES

Mr. NELSON of Florida. Mr. President, last week I learned of the death of three men. They lived apart from each other—one in Florida, one in Virginia, and one in Maryland—but they shared a special past.

All three played in baseball's Negro Leagues. They did not receive million-dollar contracts. They did not get endorsement deals. They just played baseball.

Sadly, these three men were part of a group of about 165 players who never received a pension for their time in the leagues.

The Negro League was founded in 1920 by Andrew "Rube" Foster. With 72 teams and more than 4,000 players, the Negro Leagues lasted until 1960, when its last team folded.

For half a century, most of the Negro League players were denied the opportunity to play in the Majors.

Even though Jackie Robinson broke the color barrier in 1947, it took another decade for Major League Baseball to really become integrated. All the while, baseball had its antitrust exemption to unfairly compete against the Negro Leagues, and systemically discriminated against most Negro League players for many years after 1947.

That is the crux of the argument many of these old-timers have about not getting even a small pension.

Though Baseball Commissioner Bud Selig sought to fix some of the problems of the past when, a few years ago, he awarded an annual \$10,000 pension benefit to some of the Negro Leaguers, he left out those who played solely in the Negro Leagues from 1948 to 1960.

Major League Baseball contends they were left out because the sport was integrated during that time. But an accurate reading of history shows it took the Big Leagues many years to integrate following Jackie Robinson's debut. In fact, the Boston Red Sox didn't have a single black on its team until 1959—more than a decade after Robinson's move to the Majors.

The players still seeking a small retirement have been reaching out to Commissioner Selig now for 5 long years now. But their requests have been ignored. I joined them last year in trying to find some resolution to this dispute, but my efforts to meet with Commissioner Selig also have been ignored.

Meantime, these ex-players are getting old. Three of them died late last month—two on the same day.

On April 23, we lost James "Pee Wee" Jenkins, a native of Virginia. Jenkins pitched for the New York Black Cubans.

Just last year, Jenkins threw out the first pitch at Shea stadium, as the 2001 Mets—dressed in Black Cuban uniforms—paid tribute to Jenkins and the rest of his fellow 1947 Negro League World Series champions.

James Cohen, Sr., of Washington DC, also died on April 23. A World War II veteran, he pitched for the Indianapolis Clowns from 1946 to 1952, earning the nickname "Fireball."

In his last year with the Clowns, he played with the great, legendary Hank Aaron. Mr. Cohen went on to be a postal clerk for 35 years. And in 1994, he was honored at the White House by Vice President Al Gore. Mr. Cohen was survived by two sons, seven grandchildren and five great-grandchildren.

Back in Florida, we lost Eugene White, of Jacksonville, on April 26. He was an infielder for the Chicago American Giants and the Kansas City Monarchs. As a retiree, he coached little league. On the playing field, he taught more than baseball.

Rob Stafford, one of Mr. White's former players, recently recalled some of the lessons Mr. White taught the kids.

Said Mr. Stafford:

He taught me a lesson that I only learned to appreciate as a man—the lesson of tolerance.

He taught me to never prejudge, minimize or marginalize a person. He taught me that every person deserves a chance to participate, to be included. . . .

He is now a star on God's level playing field.

Mr. White, Mr. Jenkins and Mr. Cohen were some of baseball's living legends. But these legends are dying.

And so today, to Mr. Selig and to Major League Baseball, I say this: time is running short for you to do the right