the floor. Then we had to go off, I believe for 12 hours, debating the Agriculture conference report, which took the better part of 2 full days.

We have now, I believe, voted on only one amendment on trade promotion authority. That was the amendment I offered. And that was held over. We couldn't clear it after we had a tabling amendment. That was held over several days in order to clear that.

Senator DAYTON has an amendment. I have two additional amendments. I know other colleagues have amendments to trade promotion authority, but we have not been able to get at that, and my understanding was we had people on the floor on the other side saying they were not going to let us do anything until all of this gets negotiated to some successful conclusion.

I think the way to legislate, I say to the majority leader, would be to allow us to proceed with the amendments. If there are those on the floor who are blocking it, perhaps the Senator from Oklahoma and the Senator from Mississippi, if it is on your side, might help us remove that block and let us get to the amendments and have votes on the amendments.

Trade promotion authority is a reasonably controversial measure. People will have a fair number of amendments, but we have had one so far. It seems to me we ought to get at them and have votes on them.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. DASCHLE. I am happy to yield to the Senator.

Mr. LOTT. I will respond to that. I think that is what we should do. That is what I just did; I offered an amendment. But because of concern about the fact we were in morning business, I withdrew it.

I think that is the way to go. Hopefully, maybe we will come to an agreement this afternoon that will allow us to move forward on all three bills. If we do not, then what I urge we do is stay on the trade bill, have amendments, and go forward.

I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. DASCHLE. Senator BYRD informed me, while he intended to speak as in morning business today, he is going to postpone his speech on Mother's Day until tomorrow. So the floor is open, I notify all Senators.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. While the leaders are still on the floor, especially the Republican leader, I want everyone to know that what he did was entirely within his rights. What he did not know when he came on the floor is my counterpart, Senator NICKLES, and I had an agreement. The majority leader had asked I keep us in a quorum call. That is what I intended to do.

What Senator LOTT did was in keeping with the rules of the Senate. What he did following, to vitiate his request, is not in the rules of the Senate. He did that because of the goodness of his heart, and I appreciate that very much. We have to work here, recognizing that no matter in what situation you may find yourself, it may not be one of total understanding at the time you do it. I appreciate very much Senator LOTT withdrawing the cloture motion. I also appreciate his withdrawing the amendment. He did not have to do that. No one could have forced him to do that. We could have gotten into a procedural situation where we would move to table his amendment and things of that nature, but that would not have gotten us to the goal we wanted.

I also express my appreciation to my friend from Oklahoma who expressed to the Republican leader what the arrangement was he and I had.

Of course, I appreciate very much the majority leader working his way through this. I think it will be better for us all that we approach it in this manner.

The PRESIDING OFFICER. The Senator from Pennsylvania.

JUDICIAL NOMINATIONS

Mr. SANTORUM. Mr. President, I thank Senator BYRD. He came over to me a few minutes ago. He was in line to take the next slot, and I appreciate his willingness to give me the opportunity to speak.

I am here on the anniversary of the President's first nominations to the circuit court to, once again, focus the Senate on what really is a great obstruction of justice that is occurring as a result of the actions within the Judiciary Committee.

We have seen the first 11 nominees the President put up for the circuit court—which is the appellate court in this country at the Federal level, and then you have the Supreme Court, obviously. We have 11 nominees the President put forward. Three were moved. But they were three holdovers from the prior administration. The first original, if you will, Bush nominees have not even had a hearing. If they were eight people who had very little to account for, if they were people who were not considered well qualified, if they were people who had clouds hanging over their nominations, that would be one thing. But not one of them has received anything but well qualified, and the vast majority were well qualified by Senator LEAHY's and the Judiciary Committee's standard, which is the American Bar Association, which is not necessarily friendly to Republican nominees for the court.

We have a situation where we have preeminent jurists and litigators who are being held in committee for a year without a hearing, and without explanation. That is sort of the remarkable thing throughout this entire discussion. There is no explanation as to why any one of these nominees is being held up.

We haven't had any discussion, to my knowledge, on the floor or in the press as to the specific reason any one of these nominees has been held back. There is no cloud that I am aware of. It is simply stopping the President's judicial nominees, and stopping qualified jurists from serving.

These are people who have been nominated, and when you are nominated for a position such as this—the Presiding Officer knows; he was Governor—in State office or Federal office, they have to begin to sort of unwind their affairs. They have to begin the process of setting themselves up, because who knows how quickly they could be considered and moved through the Senate?

In the case of Nebraska, I guess there is one house in which they go through in the process.

We have eight people of impeccable integrity who began that process a year ago. Where are they? They are hanging out there. Their lives are in limbo. That is not fair to them. It is not fair to the people who are not getting justice and not having their cases heard on appeal, or are having long delays in getting the resolution of their cases.

That is not fair either. That impacts the administration of justice, particularly on the civil side, which tends to suffer. We are getting criminal cases through because they are a high priority. But you have people whose lives are almost in limbo because they are not getting the quickest administration of justice that they deserve in our court system.

I want to talk about one particular nominee. He is from Pennsylvania. I will give you sort of the rundown of where we are in Pennsylvania.

We had 11 openings on the district court level in Pennsylvania. We have two circuit nominees who are Third Circuit nominees—who are sort of Pennsylvanian, assigned to Pennsylvania in this informal agreement we have across the country. One of the nominees for the circuit court—the only nominee so far, because the other circuit vacancy just occurred a few weeks ago—is Judge D. Brookes Smith. Judge Smith is the present judge of the Western District in Pennsylvania. He is a very distinguished jurist. He has been on the court for over 10 years and has served on the Common Pleas Court in Blair County and Altoona. But he is from Altoona. He is from just an impeccable law firm and practiced before he was judge. He has great reputation as a common pleas court judge in Pennsylvania, and now as a district court judge.

Again, he has a flawless reputation. He is a man of highest integrity. He is rated well qualified unanimously by the ABA. Thankfully, we had a hearing on Judge Smith. But that hearing was roughly 3 months ago. Judge Smith continues to be held in committee. Again, if you look at what I said before about your life being held in limbo,

here is someone who has already had a hearing and is being held for months without being moved through the process.

Are there serious allegations about any actions Judge Smith has taken while he has been a member of the Western District of Pennsylvania? Are there any decisions out there that have been seriously attacked? The answer is no. There is no ''gotcha'' case, or line of cases, or opinions Judge Smith has offered that has caused any problems.

The only issue I am aware of with respect to Judge Smith is that he belonged to a rod and gun club in Pennsylvania. We are very proud of our sportsmen activities in Pennsylvania. We are a great hunting and fishing State. He belonged to the Spruce Creek Rod and Gun Club.

Some of you who can think 20-odd years ago and of Spruce Creek, you think of Jimmy Carter. That is where Jimmy Carter used to go. You may remember the incident about the rabbit on the boat. That was in Spruce Creek.

Judge Smith was an avid fisherman and someone who belonged to this club for years, and belonged to it when he was confirmed as a judge in the first Bush administration.

Comments were made that this club did not allow women members. They allow women to go to the club and participate in activities, but they don't allow them to be voting members of the club. When asked about that, Judge Smith said he would try to change that policy.

There is a woman who is a county commissioner who served with him when he was a common pleas judge in Blair County who is a member of NOW, a Democrat, who came out and said she knew of nobody who had done more to help women and to promote women in the legal profession than Judge Smith—he has an impeccable record on women's issues—and the promotion of women within the legal system and the court system.

We had five litigators come to Washington, DC, most of whom were Democrats, and all of them practiced in front of Judge Smith. They went through story after story about how he, unlike, unfortunately, some other members of the bench, treated women with particular dignity and respect and was very accommodating to some of their concerns. One of them happened to be pregnant during the trial. He was very accommodating to her particular needs.

So he has a great record.

What is NOW saying? They opposed Judge Smith because he belonged to a gun club that didn't permit women members. It permitted women on the premises. It permitted women to participate in their activities. But it did not permit them to be members.

Judge Smith during his initial confirmation said he would go back and try to change that. He did. Every time there was a meeting and the bylaws were reviewed, Judge Smith attempted to change it. He tried I think four or five times. When he felt that he could no longer stay in the club because he didn't see any hope that in fact they would change that policy, he left.

I will make the argument against NOW's position—that he stayed there after he had been made aware of that and he should have left right away. Had he left right away, there would have been no chance that the club would have changed. Judge Smith did stay in there to fight to change it.

If you wanted to argue anything, you could argue that Judge Smith should be faulted for not still being in the club trying to change it. By walking away from the club, you could make the argument that he walked away from a fight he shouldn't have walked away from. That is not their argument. The argument is he shouldn't have fought in the first place, he should have just gotten up and left.

That is not how we change things in America. We change things by standing up for principles and fighting for them. And Judge Smith fought for women membership. And now, because he did, he is not qualified to be a Federal appeals court judge?

He has been a judge for over 15 years. They have looked at all his cases. There are no complaints about any of the cases. The reason they oppose him is because he stayed in a gun club too long, fighting for allowing women to become members. That is the great sin. That is the reason why. Although we will have no admission of this, so far, publicly, I am told the reason Judge Smith is still in committee is because of that—a man who has incredible credentials, a man who has been a fighter for women in the legal profession, a man who has fought in the ''Old Boys Club'' to admit women as members.

We are saying now that he should not be elevated to the third circuit because he fought for women. How remarkable a place this can be sometimes. How remarkable a place this can be. I would suspect that maybe had he quit, they would have come back and argued: See, he quit. He should have stayed and fought. And they would oppose him for that reason.

This is wrong. This is a man of incredible integrity, terrific credentials, great judicial temperament, who is scholarly, gentlemanly, and he is being subjected to being called anti-women. Even though he has staked out, in his judgeship in the Common Pleas in Blair County, in his judgeship in the Western District, and now as one of the President's nominees, that one of his highest priorities has always been the promotion of women in the court, he has been targeted as anti-women.

This is wrong. This is wrong. This is what is going on here. These are the attacks that are leveled at people who want to serve.

His nomination is being held in committee, and has been for months. It is wrong. This is a man who has worked diligently for women. We had lawyer after lawyer after lawyer from the Western District come here, the Women's Bar Association, supporting Judge Smith. We have not heard anybody from the Western District, who has appeared before Judge Smith, who is a woman saying anything negative. It is just the opposite. I received letter after letter in support of Judge Smith.

So you say: Well, that seems unfair. Yes, it is. If you were Judge Smith, imagine how you would be dealing with this. This is a human being. I know we all put these charts up in the Chamber, and we show the numbers—such and such percent get through, and such and such do not—but we are talking about a human being who has dedicated his life to serve, with a particular emphasis on the inclusion of women in the legal profession.

I have to tell you, I come from western Pennsylvania. At times, I have to say that our area of the country has not always been the most progressive when it comes to promoting women to the bench. He has bucked a lot of the ''Old Boy'' network in doing what he's done for women. And this is what he gets rewarded with, these kinds of outrageous charges which are not based on fact. It is based on the fact that Judge Smith happens to be moderate to conservative.

You see, if you are anywhere right of center here, and if you are looking at the third circuit or you are looking at the sixth circuit or you are looking at any other circuit, you need not apply because we will find some reason—some outrageous, silly reason—that has nothing to do with the incredible track record that you put together through your career; we will find some bogus reason to hold you up and tar you—the politics of personal destruction on decent people who are working hard to make this country better, all for this agenda that no one will talk about. No excuse will be given.

This is one example. I am sure you heard earlier today about others. We have eight people nominated for the circuits that have been sitting out here for a year and, unlike Judge Smith, have not even been given a hearing, have not even been given the decency of presenting their credentials to the committee and saying: Evaluate me based on me, my merits, my record, my temperament, and my ability. The committee has said: No, we are not going to give you the opportunity. The President has selected you, we understand. But we don't even believe you deserve the opportunity to convince us.

Why? That is the question I keep asking. Why? Don't we have to ask ourselves why the chairman of the Judiciary Committee and the committee have decided not to even give these people the opportunity to present themselves to the committee? What are they afraid of?

Let's be very honest about this. If these eight people are that bad, if they are that ''out there,'' if they are that dangerous, if they are that destructive

to the judicial system, then it would be in your favor to bring them up here and show how bad they are, how subversive they would be to the laws of the country, how dangerous they would be to the litigants who would come to their court—but nothing.

What are you afraid of? Are you afraid if you put Miguel Estrada up there, and you listen to this articulate, brilliant, competent, well-tempered man, that this charade that you have been putting on will come collapsing down upon you? Is that what you are afraid of? That is a legitimate fear.

But what you are doing to these people, what you are doing to the litigants in this country, what you are doing to the President is wrong, it is unfair, it is unjust. If you have a case against them, present the case. Bring them before the committee. Present the case. If you don't have a case against them, then treat them justly.

These are outstanding men and women who deserve their day in court, who deserve the opportunity to present themselves to the committee and the Senate. They have earned it because they have earned the trust of the President of the United States, who has nominated them for these positions.

What are you afraid of? Or is it something even more sinister than that? I hope not.

It has been a year. It has been a year in the lives of these people that I am sure they will never forget. It has not been a year that has reflected particularly well on the Judiciary Committee or this Senate.

We have an opportunity, on this anniversary, to begin to start anew. We saw, just a few minutes ago, the two leaders have a little bump in the road. When we have bumps in the road here in the Senate—we often do—we always sort of step back and say: OK, for the good of the Senate, for the long-term health of the Senate, can't we put some of these partisan one-upmanships aside and do what is right for the Senate? Because this place will be here, God willing, much longer than we will be. What we do here does set precedent. And the precedent the Senate Judiciary Committee is setting right now is dangerous to this country, because now there will always be this precedent that we will be able to look back to and say: See, they did it. The precedent has been set. When you set a precedent, particularly a precedent that is damaging to the rights of Presidential nominees to be considered, you lower that bar, you harm the entire judicial system in the future.

We have a chance yet, before the end of this session, to fix this.

We have a chance to get a proper, a sufficient number of circuit court nominees approved by the Senate that comports with the historical precedent. It is still possible to do that. It is also possible that we won't do that. That will set a precedent here, a precedent that, unfortunately, once set will be revisited by somebody somewhere down the road. I don't know which party it will be. It may be our party; it may be your party. The point is, it is not good for this institution, and it is horrible for the country.

I understand the partisan advantage. I understand you don't like the philosophy of some of these people the President nominated. I have voted for judges whose philosophy I hated. But the President won the election. He has the right to nominate good, decent people with whom you disagree on philosophy. He has that right. If they were good, decent people who were qualified and had the proper temperament, I approved them, whether I agreed with their philosophy or not.

That is the role of the Senate. What is going on here may fundamentally change the role of the Senate for the worse. You can't think about the next election or the partisan advantage or even the set of issues we are dealing with today in America. Those sets of issues 40 years from now will be different. The precedent you set now will have a huge impact on those issues. Don't do it. Don't do it. Don't open up a hole in the precedents of the Senate that somewhere down the road will drive a truck over something you may care very deeply about. It is not the right thing to do.

You still have a chance to change it. I pray that you do.

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

Mr. KYL. Madam President, I compliment the Senator from Pennsylvania for the remarks he has just made, especially in relationship to a judge that means a lot to him, Brooks Smith, who has been nominated by the President to serve on one of our Nation's highest courts. There is no reason, as Senator SANTORUM has said, for this fine individual to be held up. It may be that for purely partisan reasons, someone will try to find a pretext such as the business about the club. I have heard that, too. But I can't believe at the end of the day anybody would actually use that, at least publicly, as a reason to oppose the nomination. There is nothing to it.

When people get so caught up in the politics of it, as the Senator from Pennsylvania has said, they begin to do things that in cool, collected thought maybe they would not ordinarily do. They get carried away and even refuse to consider a judge based upon a pretext such as this. When that kind of precedent is set, it does begin to not only demean this institution but degrade the court system and fundamentally alter the relationship between the Senate and the President and our responsibility of advise and consent to the nominees.

The Senator has made a very good general point; unfortunately, a point well taken with respect to a nominee pending before the committee, Judge Smith.

I want to make the clarifying point that it is not just the Judiciary Committee involved here. The Republican members of the Judiciary Committee, of which I am one, would very much like to move forward on Judge Smith and other nominees.

We were called by the President today to join him at the White House because today is an anniversary of sorts. There are three anniversaries today that mean something to me personally. It is my father's birthday; he is 83 years old today. It is the Attorney General's birthday, John Ashcroft, who is 60 years old today. And, unfortunately, the other reason it has meaning is, as the President reminded us, it has been exactly 1 year since he nominated some very fine individuals to serve on the circuit courts of appeals—1 year and not a single hearing on eight of these nominees, all very fine individuals.

There has been no hearing scheduled, no hearing held, let alone moving the process forward so that they could be confirmed.

I don't know of any reason any of these judges or lawyers nominated to the circuit courts should be held up. As a matter of fact, they have all been rated by the American Bar Association as ''qualified'' or ''well qualified'' to serve on the circuit court. That was, according to our Democratic colleagues, the so-called gold standard by which these candidates would be judged. So if it is to apply in these cases, then all of these individuals should be confirmed, and at a minimum, of course, the committee should begin to hold hearings on them.

Why aren't the hearings being held? It could be one of two different reasons. The first has to do with an attempt to change the standard by which we historically have judged judicial nominees.

This morning, the Senator from New York, who chairs a subcommittee of the Judiciary Committee, held a hearing in which he was very clear about his belief that ideology should play a role in the Senate's confirmation of the President's nominees. He expressed a view that nominees of President Clinton were all mainstream or mostly mainstream; whereas President Bush keeps on nominating ideological conservatives, people who, in his view, are out of the mainstream.

The Senator from New York is certainly entitled to his views. He noted, and I agreed, that he and I probably would disagree philosophically on a lot of things. He probably would call himself a liberal Democrat. I would proudly call myself a conservative Republican. We respect each other's rights to believe in what we believe and to pursue those positions. But I don't think either one of us should therefore suggest that we are the best ones to judge what a balance on the court would be. We probably would both want to shade it a little bit toward our particular point of view.

The Senator from New York says he believes it is our job as the Senate to

restore balance to the courts. I pointed out that, of course, balance is all in the eye of the beholder; that probably the President of the United States, elected by all of the people of the country, was a better judge of the mood of the country, especially a President who, by the way, has an approval rating of well over 70 percent.

When he ran for President, it was clear that if he won, he would be the person nominating the judges. As a matter of fact, Vice President Gore made a point during his campaign to warn voters that if they elected President Bush, then-Governor Bush, he would be making the nominees to the court. He was right about that. When President Bush was declared the winner, he had every right to make these nominations.

If the people are not well qualified, then the Senate should vote them down. On occasion that has happened, but it is quite rare. As the Senator from Pennsylvania pointed out, the test has been, for most of us over the years, even if you don't like the person ideologically, if that is the President's choice and the individual is otherwise well qualified, then you really ought to vote to confirm.

All of us have done that. I have swallowed hard and voted for people I didn't particularly care for and whose ideology I very definitely didn't care for. I voted for them nonetheless because I couldn't find anything wrong with them. They graduated high from their law schools. They had done a good job in a law practice or on some other bench. Even though I figured they would probably be quite ideologically liberal—and by the way, some have turned out to be ideologically liberal—I felt it was my obligation, since that was the President's choice, and there was no question about qualification, that we should approve them. That I did.

That has been the tradition in this body for a very long time. I don't think it is appropriate for us to try to define what a proper balance of ideology is and to turn down the President's nominee because of that.

I especially think it is wrong not to give them a hearing and find out. These eight nominees to the circuit court the President made exactly a year ago have never had an opportunity to come before the committee and answer any questions about their ideology.

There is a presumption that has not necessarily been backed up by reality or by facts.

I would think that, as the Senator from Pennsylvania said, if there is no reason to be afraid of these judges, then we ought to have a hearing. And if there is, I would think people would want to bring those reasons out to demonstrate why they are not qualified to sit on the bench. But, in fact, there has been no suggestion that there is a reason why any of these eight candidates are not qualified.

In fact, I don't think even most of them could be fairly characterized as somehow ideologically way out of the American mainstream. The other thing that might be offered as an excuse not to hold hearings is—and I have heard this often from my Democratic colleagues—they believe that some of the Clinton nominees for courts were not treated fairly because they were not given hearings. It is true there were a few that, for one reason or another, did not get a hearing. Of course, in the case of those nominated at the end of the last year of the Presidency, there is good reason for that because there is no time to do it. But there were still probably some who could have had a hearing and did not.

A hearing was held this morning by the Senator from New York in which four of those individuals were called to testify. And each one of them made the point that they were disappointed—actually, one had gotten a hearing but had not been confirmed. They all made the point they were disappointed and they didn't think it was fair. Two of them, particularly, I thought, made a very good point that when you get right down to it, it is very unfair for a nominee not to have a hearing. They believe that all nominees should have a hearing. That, of course, applies today as much as it applied to them. If it was wrong for them to be denied a hearing, it is just as wrong for President Bush's nominees to be denied a hearing.

The second reason that sometimes is offered up to me why President Bush's nominees are not being given a hearing or moved forward through the process for confirmation, it seems to me, is based upon a false premise; that is, in effect, saying two wrongs make a right. It is wrong not to give somebody a hearing. Some of President Clinton's nominees were not given a hearing, so we are not going to give President Bush's nominees a hearing. If it is wrong, it is wrong. If it is wrong, it should stop.

I heard one colleague say, but we need to go back and fix the wrong. To my knowledge, there is only one President who has gone back and nominated people his predecessor of another party had nominated who were not confirmed. President Bush has actually gone the extra step and renominated two of the Clinton nominees who have been confirmed already by this body. To my knowledge, President Clinton didn't renominate any of the 40-some—I believe that is the correct number—nominees pending at the end of the Bush 41 administration. President Bush 43 has done that.

So I think it is wrong to say we are not going to have a hearing on these individuals because some other candidates didn't get a hearing and that was wrong. Again, two wrongs don't make a right.

Today, President Bush told us that he called upon the Senate, and specifically the Senate Judiciary Committee, to move forward with these nominees. He told us he thought it was very unfair to the fine people he had nominated that their lives, in effect, are in limbo at the moment because they don't know whether they are going to get a hearing, whether they are going to be confirmed. In the meantime, their law practices are suffering, if they are still in the practice of law. Their reputations are hanging in the balance.

Let me tell you a little bit about a couple of them. Of these eight nominees who have languished before the committee and have not had a hearing, one is John Roberts, a nominee to the DC Circuit Court of Appeals. He is one of the country's leading appellate lawyers. He has argued 36 cases before the Supreme Court. He served as Deputy Solicitor General. He has a great track record. There is nothing wrong with this nominee. He is one of the smartest people and one of the most experienced people we could put on the DC Circuit Court. Nobody denies that. So why hasn't he had a hearing? Why?

You can cite all kinds of statistics about how many Clinton nominees were approved and this and that. But when you get right down to it, there is absolutely no reason this fine man hasn't had a hearing now in a year.

Miguel Estrada has been nominated to the DC Circuit and he has a great story to tell. He would be the first Hispanic ever to serve on the DC Circuit. He has argued 15 cases before the U.S. Supreme Court. By the way, this is a big deal for a lawyer to argue before the Supreme Court. I have had three cases there in my law career, and it is a great honor for a lawyer. When you can say you have argued 15 cases—and I argued 1—and when you can say you argued 36 cases, that is something very few lawyers have ever had the opportunity to do. It shows that you are an extraordinary lawyer. So why isn't Miguel Estrada even getting a hearing? He would be the first Hispanic to serve on this court. He was an Assistant U.S. Solicitor General. He was a Supreme Court law clerk. He has been a Federal prosecutor. No one can say he is not qualified.

In fact, the Bar Association unanimously recognized both of these individuals are well qualified, with their highest rating.

Justice Pricilla Owen, a nominee to the Fifth Circuit, has served on the Texas Supreme Court since 1994. Every newspaper in Texas endorsed her in her last run for reelection. So why isn't Justice Pricilla Owen even receiving a hearing? There is no reason she should not receive a hearing—or at least no fair reason.

I am told Michael McConnell is one of the most intelligent people ever to be nominated to a circuit court. He is nominated to the Tenth Circuit, and he is one of the country's leading constitutional scholars and lawyers. He has an incredible reputation for fairness, as has been illustrated by the support he has received from literally

hundreds of Democrat and Republican law professors around the country. He is clearly one of the outstanding jurists in the country. He hasn't even gotten a hearing. Why?

Jeffrey Sutton is another of the country's leading appellate lawyers. He has been nominated to the Sixth Circuit. He graduated from Ohio State Law School and was first in his class. He has argued over 20 cases before the U.S. Supreme Court and State supreme courts, and he served as solicitor of the State of Ohio.

Justice Deborah Cook, a nominee to the Sixth Circuit, has served as a justice on the Ohio Supreme Court since 1994, a State supreme court justice. She was the first woman partner in Akron's oldest law firm. This is another extraordinarily qualified individual. There is no reason for her not to have a hearing. Why hasn't this nominee even had a hearing?

Judge Dennis Shedd has been nominated to the Fourth Circuit. He was unanimously confirmed by the Senate as a Federal district judge in 1990. He is strongly supported by both home State Senators—one a Democrat and the other a Republican. In fact, he is past chief counsel to the Senate Judiciary Committee. He, too, has a great number of friends on both sides of the aisle. He would be a great judge on the circuit court. Why hasn't he even received a hearing? Is there anything wrong with him?

Judge Terrence Boyle, also nominated to the Fourth Circuit, was unanimously confirmed to be a Federal district judge in 1984. He has served all of this time, and I haven't seen anybody come forward with anything that would suggest he is not qualified. As a matter of fact, the State Democratic Party chairman supports Judge Boyle's nomination. He says that he gives everyone a fair trial.

If the former chairman of the Democratic Party in the State can endorse a Republican President's nominee to the circuit court, that is a pretty good thing. You would think partisan consideration could be laid aside. Why hasn't this individual even received a hearing?

It is not too much to ask that, after 365 days, the first step in the confirmation process be taken. A year ago, President Bush said: There are over 100 vacancies on the Federal courts causing backlogs, frustration, and delay of justice.

Today, a year later, he is asking us to begin the process of clearing up this backlog. He has done his part. Chief Justice Rehnquist recently stated that the present judicial vacancy crisis is ''alarming,'' and on behalf of the judiciary, he implored the Senate to grant prompt hearings and have up-or-down votes on these individuals.

I noted that the chairman of the Senate Judiciary Committee, Senator LEAHY, in 1998, at a time when there were 50 vacancies, said that number of vacancies represented a ''judicial vacancy crisis.'' Those were his words. Today, there are 89 vacancies. We are getting close to twice as many. It is a 10-percent vacancy rate. The Judicial Conference of the United States classified 38 of these court vacancies as judicial emergencies.

The President has 18 individuals nominated to fill a seat designated as a judicial emergency. What that means is that litigants cannot get to court. There are delays of 6 and 8 years of people not being able to get to court or have their cases resolved—in the case of some criminal cases. This is unfair to litigants, and it has been said many times that justice delayed is justice denied. There are many situations in which that is true, but that is what is happening as a result of not being able to fill these positions, especially with regard to those denominated as judicial emergencies.

The 12 regional circuit courts of appeals are the last resort, other than the Supreme Court. There are 30 vacancies, which is a 19-percent vacancy rate. Filings in the 12 regional courts of appeals reached an all-time high last year. They have increased 22 percent since 1992, and I could quote from former presidents of the American Bar Association and others who have expressed grave concern about the ability to do justice when these kinds of vacancies exist.

I will read one quotation from one letter:

> I urge you to heed President Bush's call and not as Republicans and Democrats, but as Americans. It's time for the Senate to act for the good of our judicial system.

In the Sixth Circuit Court of Appeals, half of the court is vacant. Of the 16 authorized judges, 8 stand vacant today. At a time when there were only four vacancies on that court, Chief Judge Merritt of that court wrote to the Senate Judiciary Committee and said this:

> The court is hurting badly and will not be able to keep up with its workload. Our court should not be treated in this fashion. The public's business should not be treated this way. The litigants in the Federal courts should not be treated this way. The situation in our court is rapidly deteriorating due to the fact that 25 percent of our judgeships are vacant.

Now it is 50 percent. The caseloads in Federal court can be expected to increase because of the war on terrorism and in my area because of the extraordinary amount of illegal contraband and illegal immigration coming across the border.

It is sad that the Senate cannot bring itself to even hold hearings on people who have now been sitting for a year since their nomination, individuals who by any measure are extraordinarily well qualified, are among the most qualified in the country. There is nothing wrong with them, and yet no hearing.

As of this date, the Senate has confirmed only 9 of the President's 30 circuit court nominees. By contrast, President Clinton had 42 percent of his circuit court nominees confirmed by this same date in his term.

I know we can quote statistics, and that is not really the most important issue. I quote from the Washington Post editorial of November 30 of last year:

> The Judiciary Committee chairman, Democratic Senator Patrick Leahy, has offered no reasonable justification for stalling on these nominations.

The point is, anybody can cite statistics, and most of us are pretty good lawyers and can argue the case, but at the end of the day, there is no reasonable justification for stalling on these nominations. There is no reasonable justification for stalling, unless—I think the Post might have gone on to say—you are trying to get even because of some perceived slight. That is beneath the Senate of the United States of America, and it should not be the motive of anyone, and I cannot believe it would be. This is no reason why these nominees should be denied a hearing.

Lloyd Cutler, who was President's Clinton's White House counsel, and former Congressman Mickey Edwards recently wrote an op-ed in the Washington Post. They said:

> Delay in confirming judges means justice delayed for individuals and businesses, and combined with the bitter nature of some confirmation battles, it may deter many qualified candidates from seeking Federal judgeships.

That is the unfortunate additional result of what is happening here. More and more good candidates are going to say: Why should I put myself and my family through all of this? And that is going to be a real shame.

Historically, Presidents were able to get their nominees, especially their first nominees, confirmed. President Reagan, President Bush 1, and President Clinton all enjoyed a 100-percent confirmation rate on their first 11 circuit court nominees—100 percent. All were confirmed within a year of their nomination. Remember, these eight we are talking about have not even had a hearing within a year.

The broader picture is no different. The history of the last three Presidents' first 100 nominations shows that, one, President Reagan got 97 of his first 100 judicial nominations confirmed in an average of 36 days; President George Herbert Walker Bush saw 95 of his first 100 confirmed in an average of 78 days; and President Clinton saw 97 of his first 100 confirmed in an average of 93 days. But to date, this Senate has confirmed only 52 of President Bush's first 100 nominees, and the average number of days to confirm has exploded to 150.

It is not possible to say that nothing is happening, that nothing is different, that this is no different than in previous administrations, that President Bush's nominees are being treated the same as any others. It is just not true. The statistics belie that.

Madam President, even if you do not want to talk about the statistics, I just

ask you to focus on what President Bush focused on today. He said: I nominated 11 good people a year ago today, and only 3 of them have even had the courtesy of a hearing. Would you please go back to your colleagues and implore them to treat these people fairly? He said: It is not for me; it is for the American people. He made that point a couple times. And it is for justice and for the American people. I also think that it is going to say something about the Senate.

The PRESIDING OFFICER. The time controlled by the minority in morning business has expired.

Mr. KYL. Madam President, if we do not move on these nominations, it is going to cause a significant decline in the reputation of the Senate.

The PRESIDING OFFICER. The Senator from Minnesota.

IMPORTS OF FOREIGN LUMBER AND WOOD PRODUCTS

Mr. DAYTON. I thank the Chair.

Madam President, I rise in morning business to discuss an amendment which Senator CRAIG from Idaho and I are going to offer when we resume consideration of the trade bill. I wish to take a few minutes in morning business now to talk about it.

It is an amendment that I believe will complement the intent of TPA. Others may view it differently. It is one Senator CRAIG and I developed out of our shared experiences working with and representing members of our respective States, Idaho and Minnesota, who have lost jobs, farms, and farm income because of trade policies.

I first had the opportunity to work with the Senator from Idaho when Minnesota loggers and small business owners running sawmills were being harmed seriously—some put out of business, some losing their jobs—as the result of imports of foreign lumber and wood products coming into this country and to our State. I found that Senator CRAIG had been working on these problems for years before I arrived.

I actually took his lead. He spearheaded a group of us working on the impact of sugar coming into this country on sugar beet growers in Minnesota and Idaho. I know he is someone who has a deep and abiding commitment to do what is right for the citizens of his State, as I hope I can demonstrate for the people of Minnesota.

Madam President, you probably had this experience in your State as well. The trade policies of this country which have been in effect over the last couple of decades from one Republican administration to a Democratic administration and now to a Republican administration have relatively consistently encouraged the expansion of trade, the expansion of exports upon which a lot of jobs in Minnesota depend and on which a lot of businesses in Minnesota, large and small, have successfully and profitably expanded markets across this country and the world—grain traders, commodity traders, those who provide that transportation, those who finance the businesses engaged in all of this. There are a lot of winners in Minnesota, a lot of beneficiaries through jobs, through expanding businesses, through rising stock portfolios, who say, hey, more trade is better for us, who frankly cannot even imagine why I am torn on this subject.

I find in the presentations and the discussions about trade authority, there is very seldom a recognition, even an acknowledgment, of the thousands of men and women whose jobs, whose farms, whose businesses, have been lost. And lost is not even the right word; they have really been taken away from them because of the impact of these trade policies.

So recognizing that this legislation, the so-called trade promotion authority, is a high priority for the administration, that was passed by the House of Representatives, that, as the Senator from Oklahoma said earlier, the tradition of the Senate has been to support free trade in anticipation of the probability that final legislation will pass the Senate if we get to that point, I think this amendment is a crucial addition to standing beside and with those men and women in my State anyway, and I think elsewhere across the country, who are being harmed by these policies or who will be in the future.

This amendment says if an agreement comes back that has been negotiated by trade representatives, acting at the behest of the President but not elected by the people of this country—comes back with changes in the trade remedy laws, which change—in most cases weaken—these laws that have been passed by the Congress, signed into law by the President of the United States, for the purpose of protecting those who will be harmed by these trade agreements, by illegal dumping of products—it has certainly been devastating to northeastern Minnesota, to the steelworkers there and across this country—that before those laws and their provisions can be altered or weakened or negotiated away or used as bargaining chips to get some other purpose achieved, the Congress has the authority—it is not required but it has the option—to remove those sections of the bill and put the rest of the agreement through the fast track, so-called, the procedures that will have been enacted into law, but to reserve the prerogative to review these changes, these measures, that are going to affect the kind of protection, the kind of safety net, the kind of assistance that Americans think they can depend on, cannot be taken away, cannot be altered, except by more careful consideration by the Senate and Congress.

The fact that we have 26 Members of the Senate who are cosponsors and are in support of this legislation, 13 Republicans, 13 Democrats, men and women from all different parts of the country with all different perspectives and philosophies, says to me they have had this same experience in their own States with their own constituents, that they too have recognized that these trade policies have very mixed results in their States, and particularly those who are not the beneficiaries, who are going to be the casualties of expanded trade, the increased imports which have been, I think, really tilting our trade policies out of balance in a way that is detrimental to this country.

Last year, the trade imbalance, the deficit in our trade, was $436 billion. We owed other nations $436 billion more from their imports than we received from our exports. In agriculture, well, there is still a positive trade balance, but that positive balance has been reduced. We have seen from NAFTA a flood of imports of food, of automobiles, of other manufactured goods, and our trade imbalance with Mexico has gone from being a slight positive in 1993 to a negative balance in the year 2000. Our trade balance with Canada has gone from being slightly in the negative to seriously in the negative in those 7 years.

Again, I have seen in Minnesota men and women, farmers, workers, business owners, who have lost all of that, lost their hopes, lost their livelihoods, lost their homes, lost their pensions, lost their health care as a result of this. To me, it would be unconscionable to hand that over to an unelected representative of any President, any administration—previous administration, this administration, a future administration—and allow that situation to develop where that agreement would come back and we would be told, take it or leave it, up or down; either make that decision that is going to benefit people but disregard those who are going to be most harmed.

I see the Senator from Nevada has returned, hopefully with some illumination for us. We have taken this opportunity to talk about the amendment.

Mr. REID. If the Senator will yield, the majority leader is on his way.

Mr. DAYTON. I will yield even more so when the majority leader arrives.

I thank the Senator from Idaho for his work on this. I think he has heard more about it from other parties than I have.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, we are in morning business, are we not?

The PRESIDING OFFICER. That is correct.

Mr. CRAIG. I ask unanimous consent that I be allowed to speak for 15 minutes.

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

TRADE MUST BE BALANCED AND FAIR

Mr. CRAIG. Madam President, I am pleased my colleague from Minnesota,