

The bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### ORDER OF PROCEDURE

Mr. REID. Mr. President, we intend to be back on this bill at 1 o'clock on Monday. I ask unanimous consent the Senator from Michigan, Mr. LEVIN, be recognized at 1 o'clock when we resume consideration of the bill.

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

Mr. REID. Mr. President, I ask unanimous consent that when the Senate reconvenes on Monday and resumes consideration of this bill at 1 o'clock, there be 5 hours of time left postcloture.

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

#### MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators allowed to speak therein for up to 10 minutes each.

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

#### ANNIVERSARY OF THE REORGANIZATION OF THE SENATE JUDICIARY COMMITTEE

Mr. LEAHY. Mr. President, this week marks the first anniversary of the reorganization of the Senate Judiciary Committee following the change in majority last year. This past year has been a busy one for our committee.

Just this week the Senate adopted as an amendment to the accounting reform and investor protection bill the text of S. 2010, the Corporate and Criminal Fraud Accountability Act. That is a bill we reported in May after committee action in February and April. The Senate also acted on important amendments offered by Senator BIDEN, Senator HATCH, and Senator EDWARDS to that bill and many members of this committee have made important contributions to improve these measures over the last several months.

In the days and months following the terrorist attacks on September 11, members of this committee led the Senate in its responses leading to enactment of the USA PATRIOT Act, the Enhanced Border Security and Visa Entry Reform Act, the Terrorist Bombings Convention Implementation Act, and the Mychal Judge Police and Fire Chaplains Public Safety Officers' Benefit Act. The committee also reported a number of resolutions to honor the victims of those attacks with the Public Safety Medal of Valor and the Law Enforcement Tribute Act, S. 2431. We

continue to work on important matters for victims of terrorism.

We have reported a number of other law enforcement related measures including the Drug Abuse Education, Prevention and Treatment Act, S. 304; the Federal Judiciary Protection Act, S. 1099; the National Child Protection Improvement Act, S. 1868; the Safe Explosives Act, S. 1956; the National Cyber Security Defense Team Authorization Act, S. 1989; a bill clarifying the definition of "vehicle," S. 2621; and an annual authorization for the Department of Justice, S. 1319 and its House counterpart H.R. 2215. The committee reported the Local Law Enforcement Enhancement Act, S. 625, which is an important hate crimes bill; and the COPS Reauthorization Act, S. 924, which extends the highly successful COPS Program. We have also reported legislation on identity theft, such as the Social Security Number Misuse Prevention Act, S. 848, and the Restore Your Identity Act, S. 1742.

In addition, we have reported a number of measures to improve competitive business conditions and protect consumers, such as the Drug Competition Act, S. 754; the Motor Vehicle Franchise Contract Arbitration Fairness Act, S. 1140; and the Product Packaging Protection Act, S. 1233. We have acted on important intellectual property legislation, such as the Madrid Protocol Implementation Act, S. 407; the TEACH Act, S. 487; and the Patent and Trademark Office Authorization Act, S. 1754, as well as related House measures H.R. 1866 and H.R. 1886.

We have reported and worked on a number of immigration matters, including the Anti-Atrocity Alien Deportation Act, S. 864; the Child Status Protection Act, S. 672, and its House counterpart, H.R. 1209; a bill for children of Vietnamese refugees, H.R. 1840; bills to provide work authorization for spouses, H.R. 2277 and H.R. 2278; and others.

Among our most important work has been our aggressive oversight efforts involving the Department of Justice, the FBI, the INS, and the Civil Rights Division. Our oversight efforts have already led to the committee's reporting a bipartisan FBI Reform Act, S. 1974, which is awaiting Senate action.

This week the committee finally began its consideration of a most important legislative initiative we began years ago, the Innocence Protection Act, S. 486.

All in all, in our first year we reported 80 legislative matters and over 250 Presidential nominations to the Senate. We have held more than 100 hearings during our first tumultuous year.

We have had a record year in considering this President's nominees. Partisans have perpetuated an untrue and unfortunate myth that the Democratic-led Senate and Judiciary Committee have blocked the President's nominees. Nothing could be further from the truth.

The Democratic-led Judiciary Committee has had a recordbreaking year fairly and promptly considering President Bush's nominees. In addition to the dozens of high-ranking Justice Department officials for whom we held hearings, and our work in connection with more than 180 executive branch nominees the committee reported, we have had a record year with respect to judicial nominees.

In this, our first year, we held hearings for 78 of the President's nominees. That is more hearings for this President's district and circuit court nominees than ever held in any of the 6½ years that preceded the change in majority last summer.

In particular, we held more hearings for more of President Bush's circuit court nominees, 16, than in any of the 6½ years in which the Republicans controlled the committee before the change in majority last summer. For that matter, we held twice as many hearings for court of appeals nominees than were held in the first year of the Reagan administration when the Senate was controlled by Republicans and five times more than in the first year of the Clinton administration when the Senate was controlled by Democrats. Those are the facts.

Under Democratic leadership, this Committee in its first year also voted on more judicial nominees, 74, than in any of the 6½ years of Republican control that preceded the change in majority. We voted on almost twice as many circuit court nominees, 15, than the Republican majority averaged in the years they were in control. In fact, this last year we voted on more nominees than were voted on in 1999 and 2000 combined and on more circuit court nominees than the Republicans allowed during 1996 and 1997 combined. And the committee voted on an additional court of appeals nominee yesterday.

We have achieved what we said we would by treating President Bush's nominees more fairly and more expeditiously than President Clinton's nominees were treated by Republicans. By many measures the Senate Judiciary Committee has achieved almost twice as much this last year as Republicans averaged during their years in control.

The Senate has confirmed more circuit and district court judges, 57, than were confirmed during 2000, 1999, 1997, 1996, and 1995, 5 of the prior 6 years of Republican control of the Senate. Republicans averaged 38 confirmations a year. By contrast the Democratic Senate achieved 57 judicial confirmations in our first 10 months, before the Administration's obstructionism stalled Senate floor actions on nominations for more than 2 months. There are another 17 judicial nominees on the Senate Executive Calendar. The delay in the votes on these nominees has been due to the delay in the administration's fulfilling its responsibility to work with the Senate in the naming of members of bipartisan boards and commissions.

I congratulate the majority leader for overcoming this impediment and for his patience and determination in achieving some movement on these matters. I understand that he hopes to be able to resume voting on judicial nominations as soon as next Monday. Had the administration not caused this delay, I am confident that the Senate would have confirmed more than 70 judicial nominations before the end of this week and far outdistanced any Republican total for any preceding year. Nonetheless, we were able to overcome the other obstacles created by the administration and proceed to confirm 57 circuit and district court nominees in our first 10 months in the majority, a record outpacing any Republican total in any 10-month period in which they held the majority.

We have also addressed longstanding vacancies on circuit courts caused by Republican obstruction of President Clinton's judicial nominees. We held the first hearing for a Fifth Circuit nominee in 7 years, the first hearings for Sixth Circuit nominees in almost 5 years, the first hearing for a Tenth Circuit nominee in 6 years, and the first hearings for Fourth Circuit nominees in 3 years.

We have reformed the process for considering judicial nominees. For example, we have ended the practice of anonymous holds that plagued the period of Republican control, when any Republican Senator could hold any nominee from his home State, his own circuit or any part of the country for any reason, or no reason, without any acknowledgment or accountability. We have returned to the Democratic tradition of holding regular hearings, every few weeks, rather than going for months without a single hearing.

It would certainly have been easier and less work to retaliate for the unfair treatment of the last President's judicial nominees. We did not. We have been, and will continue to be, more fair than the Republican majority was to President Clinton's judicial nominees. More than 50 of Clinton's nominees never got a vote; many languished for months and years before they were returned without a hearing. Others waited years—not just a year, but up to more than 4 years to be confirmed. Some never were accorded a hearing, some were finally confirmed after years of delay.

Those who now seek to pretend that the Democratic majority in the Senate caused a vacancy crisis in the Federal courts are ignoring the facts. Under Republicans, court vacancies rose from 63 in January 1995 to 110 in July 2001, when the committee reorganized. During Republican control before the reorganization of the committee, vacancies on the courts of appeals more than doubled, increasing from 16 to 33. That is what we inherited. But in 1 year of Democratic control, and despite 45 additional vacancies caused largely by the retirements of many past Republican appointees, we have reduced the

number of district and circuit court vacancies.

Vacancies continue to exist on the court of appeals, in particular, because a Republican Senate majority was not willing to hold hearings or vote on more than half—56 percent—of President Clinton's circuit nominees in 1999 and 2000, and was not willing to confirm a single circuit judge during the entire 1996 session. Republicans caused the circuit vacancy crisis, and it has taken a tremendous effort to evaluate and have hearings for 16 circuit court nominees in less than a year.

We are hard at work evaluating the records of the few remaining nominees who have not yet had hearings. While we have moved as quickly as possible to evaluate all of the nominees, the Senate is not, and should not be, a rubber stamp. If this President is successful in filling all of the vacancies he inherited due to Republican obstruction as well as the new vacancies that have arisen on the circuits, Republican appointees will constitute the majority, and often a two-thirds majority, on 11 of the 13 appellate courts below the Supreme Court. Such a takeover would affect the next 20 years of judicial decisions coming from the courts of appeal.

The President and his advisers know this and, aside from the few relatively moderate nominees we have been able to confirm quickly, they have also chosen a number of people with records of judicial activism or out-of-mainstream ideology, including several young men in their thirties and early forties, for many of these lifetime appointments to the federal bench. What the President and his advisers acknowledge they are doing is nominating ideologically conservative judicial nominees to stack the fifth, sixth, and DC Circuits with judicial activists of their choice. That is part two of the Republican strategy.

In part one, several Republicans in the Senate prevented many of these vacancies from being filled in the first place, so that whatever balance there might be, or might have been, on those courts is missing. They kept off well qualified moderate nominees, not chosen because of any litmus test or ideology. They did so to provide a Republican President with the opportunity to load the bench, especially the appellate court bench, with right wingers.

Advice and consent does not mean giving the President *carte blanche* to pack the courts. The ingenious system of checks and balances in our Constitution does not give the power to make lifetime appointments to one person alone, to remake the courts along narrow ideological lines, to pack the courts with judges whose views are outside of the mainstream, and whose decisions would further divide our Nation.

We have worked hard to balance these competing concerns over the past year: how to address the vacancy crisis we inherited, while also not being a rubberstamp and abdicating our re-

sponsibilities to provide a democratic check on the President's choices for lifetime appointment to the Federal courts. These are the only lifetime appointments in our system of government, and they matter a great deal to our future.

In 1801, when Thomas Jefferson, the first President who was not a member of the Federalist Party was elected, he faced a similar situation. The Federalists in Congress had passed, and the lame duck President Adams had signed, a bill creating a number of new seats on the Federal courts. President Adams then appointed a number of Federalists who have been called "midnight judges." One of the first things President Jefferson did was to get that law repealed and to refuse to sign the appointment papers of some of those judges. That is part of the story of the famous Supreme Court case, *Marbury v. Madison*.

Thus, it took only 12 years of our new Nation for an effort to pack the courts to occur. It took the first transition in political parties for one to give in to the temptation to try to stack the deck and affect the outcome of cases through the appointment of judges.

The best-known attempt to pack the courts occurred during the administration of President Franklin Roosevelt. President Roosevelt's attempt to pack the Supreme Court with justices of his choosing, to get more votes on the side of cases he wanted to win, was rejected by Congress and the American people.

If one thoroughly examines the types of nominees this President is sending us, one might conclude that we are facing another attempt to pack the courts. The Senate Judiciary Committee is working very hard to analyze all of President Bush's judicial nominees fairly, one by one. In our first year, we have already had 21 hearings on 78 judicial nominees, including 16 circuit court nominees. We are planning another hearing for next week.

In the meantime, Republicans have been unfairly critical that not every nominee has yet had a hearing or been confirmed. Some have asserted that there is some sort of "honeymoon" period for Presidents in getting confirmation of their first choices for the courts. Of course, the Constitution provides for no such abdication of responsibility for a President's first few lifetime appointees or his last. To support this extra-constitutional theory, Republicans assert that the last three Presidents had a 100-percent confirmation rate of their first several circuit court nominees. When they say this, they conveniently leave a few details out. First, it took previous Senates more than a year to confirm 11 circuit court nominees of past Presidents. We have only had a year and the Senate has already confirmed nine of this President's circuit court nominees and five more are awaiting a vote by the full Senate.

President George W. Bush has said previously that he would choose judges

in the mold of two ideologically conservative activists, Justice Scalia and Justice Thomas. No judicial nominees should be rubber-stamped by the Senate, not even a President's first few choices. All nominees for these lifetime positions merit careful review by the Senate. When a President is using ideological criterion to select nominees, it is fair for the Senate to consider it as well. Federalist Society credentials are not a substitute for fairness, moderation or judicial temperament. When a President is intent on packing the courts and stacking the deck on outcomes, consideration of balance and how ideological and activist nominees will affect a court are valid considerations for Senators entrusted by the Constitution to evaluate these lifetime appointees.

The high dudgeon expressed by Republicans about the order in which we have been considering this President's circuit court nominees is especially unwarranted in light of the objectively unfair way they treated President Clinton's circuit court nominees. Some of the vacancies we inherited date back to 1990, 1994 and 1996.

Partisans conveniently ignore the Republicans' terrible record of obstruction when they complain that a few of President Bush's nominees have not yet had a hearing. Those nominees chosen without consultation with both parties in the Senate and, in particular, those who do not have home-State Senator support do not get hearings, according to longstanding Senate tradition. Republicans have tried to measure our achievements by standards they never met but surely even they are not now suggesting overriding the longstanding Senate tradition of consent or blue slips from both home-State Senators on which they themselves insisted. Republicans averaged only seven confirmations a year for President Clinton's circuit court nominees. We confirmed nine in our first 10 months.

I have tried to work with the White House on judicial nominations. I have gone out of my way to encourage them to work in a bipartisan way with the Senate, like past Presidents, but in all too many instances they have chosen to bypass bipartisanship. I have encouraged them to include the ABA in the process earlier, like past Presidents, but they have refused to do so even though their decision adds to the length of time nominations must be pending before the Senate before they can be considered.

This past January, I again called on the President to stop playing politics with judicial nominations and act in a bipartisan manner. Just last month I sent a detailed letter to the President on these issues. My efforts to help the White House improve the judicial nominations process have been rejected. My most recent effort met with a perfunctory acknowledgment or receipt, which I will ask unanimous consent to have printed in the RECORD at

the end of my remarks. Unfortunately, this letter is about the most constructive response that I have received from the White House to my many efforts to improve the process and speed up the filling of judicial vacancies with qualified, fair-minded judges.

Republican statements on judicial nominees regularly rely on superficially appealing but misleading statistics to gloss over the types of nominees they are choosing for our Federal courts. For example, they complain that Presidents Reagan, Bush and Clinton got 97, 95 and 97 percent, respectively, of their first 100 judicial nominations confirmed. What they conveniently fail to mention is that it took 2 full years for President Reagan to have 89 of his judicial nominees confirmed, and well into year 3 to reach the 100 mark. Similarly, the first President Bush had only 71 judicial nominees confirmed after 2 full years, and it took well into year 3 to reach 100 confirmations.

We are moving quickly, but responsibly, to fill judicial vacancies with qualified nominees we hope will not be activists. In our first year we confirmed 57 judges and reported 74 judicial nominees. Partisans ignore these facts. The facts are that we are reporting President Bush's nominees at a faster pace than the nominees of prior Presidents, including those who worked closely with a Senate majority of the same political party. We have accomplished all this during a period of tremendous tumult and crisis.

The Judiciary Committee noticed the first hearing on judicial nominations within 10 minutes of the reorganization of the Senate, and held that hearing on the day after the committee was assigned new members. Yesterday was the 1-year anniversary of that first hearing for Judge Roger Gregory, who was initially nominated by President Clinton, but like so many other judicial candidates, including other African-American nominees to the Fourth Circuit, his nomination languished without a hearing by the Republican-controlled Senate. Because of this history of inaction on such nominees to that court, President Clinton made a recess appointment to make Roger Gregory the first African-American judge in history to sit on the Fourth Circuit, and he sent his nomination for a permanent position on that court back to the Senate at the beginning of the 107th Congress. Unfortunately, President Bush withdrew Judge Gregory's nomination in March of 2001, but he finally sent it back to us later that year. When the Senate Judiciary Committee held the hearing on the nomination of Judge Roger Gregory to the Fourth Circuit last year, it was the first hearing on a Fourth Circuit nominee in 3 years, although five nominees to that court during that period were never given hearings by Republicans.

Subsequent to that hearing, we held unprecedented hearings during the August recess last year and proceeded

with a hearing 2 days after the 9/11 attacks and shortly after the anthrax attack. We will hold our 22nd hearing for judicial nominees next week. We are doing our best to address the vacancy crisis we inherited.

The Senate Judiciary Committee and the Democratic-led Senate has a record of achievement and of fairness to be proud of on this anniversary. I thank the Members who have worked cooperatively with me to make progress in so many areas over the last year.

Mr. President, I ask unanimous consent that the letter previously referred to be printed in the RECORD.

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

THE WHITE HOUSE,  
Washington, June 27, 2002.

Hon. PATRICK LEAHY,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR LEAHY: This is to acknowledge the receipt of your letter to the President expressing the need for bipartisan cooperation while the Senate considers judicial nominations.

I hope you will understand that in light of the tragic events of September 11th, enhanced screening of all incoming White House mail prevented our office from receiving your correspondence and providing you with a prompt reply to your letter.

I have shared your letter with the President's advisors and the appropriate agencies who have been formulating policy recommendations in this area. Your letter is receiving their close and careful attention.

Thank you for your patience.

Sincerely,

NICHOLAS E. CALIO,  
Assistant to the President and  
Director of Legislative Affairs.

#### HONORING 65 MEN FROM ALEXANDRIA WHO WERE KILLED IN ACTION OR MISSING IN ACTION IN SOUTHEAST ASIA DURING THE VIETNAM WAR

Mr. ALLEN. Mr President, I rise today to recognize 65 fallen servicemen from Alexandria, VA, who paid the ultimate sacrifice with their life while defending freedom in the Vietnam war.

No mere words can express the depth of gratitude this country owes to the families of our fallen service members for the loss of their sons, daughters, brothers, sisters, husbands, or wives. By touching their names etched in granite and marble on monuments and statues in countries around the world, we who are living and those who come after us have the ability to connect with these fallen heroes. We must never take the sacrifices of past generations of Americans for granted, for each new generation is called upon to defend representative democracy's first axiom: that "freedom is not free."

On July 6, 2002, the city of Alexandria dedicated a beautiful memorial plaza to pay tribute to the 65 fallen American heroes from Alexandria who were killed in action or who remain missing in action in southeast Asia from the Vietnam war. Toby Mendez, a brilliant