

confirmation, Democrats will have joined in the confirmation of far more circuit court nominees of this President than Republicans allowed on average for President Clinton. In the years 1995 through 2000 just seven circuit court nominees were allowed to be confirmed per year on average. This is the twelfth circuit judge confirmed in the last 9 months. This is in addition to the 17 circuit judges confirmed while I chaired the Judiciary Committee and Democrats made up the Senate majority in 2001 and 2002. That totals 29 circuit judges confirmed in the last 26 months.

Republicans do not want to discuss these facts and seem to hope that the American public is not closely watching the actual work of the Senate since 1995. Far from being obstructionist, Senate Democrats have been accommodating in confirming the vast majority of President Bush's judicial nominees, 150 so far. Despite the very real Republican obstruction of dozens and dozens of President Clinton's judicial nominees, we have turned the other cheek in voting for President Bush's very conservative nominees to seats kept open by Republican obstruction of President Clinton's nominees.

As a consequence, there are now fewer vacancies on the Federal courts today and earlier this year than at any time in the past 13 years. Had we not created new seats for this President to fill, we would be at the all-time low vacancies of the Reagan administration. There are more lifetime appointed Federal judges serving on the bench today than at any time in American history. This is hardly the portrait of obstructionism that Republicans will try to sell to the American people.

We have been fair but we will not be rubberstamps for this or any administration. The stakes are too high and the Constitution is too important to do otherwise.

Mrs. BOXER. Mr. President, I want to comment on the nomination currently pending before the Senate, Judge Carlos Bea for the Ninth Circuit Court of Appeals.

I was delighted to meet Judge Bea and his family at his Judiciary Committee hearing earlier this month.

Judge Bea was born in Spain but has lived in California for most of his life. He received both his undergraduate and law degrees from Stanford University. He practiced law in the San Francisco area for over 30 years before he was appointed a judge on the San Francisco Superior Court. He was elected to the seat in 1990 and has been reelected twice by the voters of San Francisco. He has also taught at Stanford and Hastings law schools.

In addition to his accomplishments in the legal community, Judge Bea is also an Olympic athlete. He played on the Cuban national basketball team during the 1952 Olympic games.

As a judge, he is widely respected for his keen intelligence. As one reporter noted, "he has received high marks for

his specialty, handling complex civil litigation disputes."

I intend to support this nomination.

The PRESIDING OFFICER. If all time is yielded back, the question is on the nomination.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The PRESIDING OFFICER (Mr. TALENT). The question is, Will the Senate advise and consent to the nomination of Carlos T. Bea, of California, to be United States Circuit Judge for the Ninth Circuit.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. ROBERTS) and the Senator from Rhode Island (Mr. CHAFEE) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), the Senator from Illinois (Mr. DURBIN), the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Vermont (Mr. JEFFORDS), the Senator from Massachusetts (Mr. KERRY), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Arkansas (Mrs. LINCOLN), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

I also announce that the Senator from Rhode Island (Mr. REED) is absent attending a funeral.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) and the Senator from New Jersey (Mr. LAUTENBERG) would each vote "yea."

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

The result was announced—yeas 86, nays 0, as follows:

[Rollcall Vote No. 368 Ex.]

YEAS—86

Akaka	DeWine	Lugar
Alexander	Dodd	McCain
Allard	Dole	McConnell
Allen	Domenici	Mikulski
Baucus	Dorgan	Miller
Bayh	Ensign	Murkowski
Bennett	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (SC)	Reid
Bunning	Grassley	Rockefeller
Burns	Gregg	Santorum
Byrd	Hagel	Sarbanes
Campbell	Harkin	Schumer
Cantwell	Hatch	Sessions
Carper	Hollings	Shelby
Chambliss	Hutchison	Smith
Clinton	Inhofe	Snowe
Cochran	Inouye	Specter
Coleman	Johnson	Stabenow
Collins	Kennedy	Stevens
Conrad	Kohl	Sununu
Cornyn	Kyl	Talent
Craig	Landriau	Thomas
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lott	

NOT VOTING—14

Biden	Graham (FL)	Lincoln
Chafee	Jeffords	Reed
Corzine	Kerry	Roberts
Durbin	Lautenberg	Wyden
Edwards	Lieberman	

The nomination was confirmed.

The PRESIDING OFFICER. The President will be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

MORNING BUSINESS

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

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

Mr. GRASSLEY. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

SEXUAL MISCONDUCT ALLEGATIONS AT THE AIR FORCE ACADEMY

Mr. DAYTON. Madam President, last week, in a hearing of the Senate Armed Services Committee, I listened to some of the most disturbing testimony I have heard in my entire almost 3 years now in the Senate. Testifying were members of a congressional panel investigating the sexual harassment charges raised at the U.S. Air Force Academy. The hearing, which is the third one this year on this matter, is a great credit to its chairman, Senator WARNER. There is no one in this body for whom I have greater respect than the senior Senator from Virginia, now in his 25th year of outstanding service to the State of Virginia and to our Nation. He and his colleague of 25 years, Senator LEVIN of Michigan, don't always agree, but they always work cordially and constructively together to lead that committee and establish a bipartisan or nonpartisan relations way.

As former Secretary of the Navy, the chairman, who strongly supports the services, clearly does not relish in this kind of critical review of one of the Academies. He does not evade it either. To the contrary, he faced up to it responsibly and resolutely, which led to the hearing last week and to another one scheduled for tomorrow. Last week's testimony was provided on behalf of the congressional panel established by the Congress to investigate sexual misconduct allegations at the Air Force Academy. It was eloquently

presented by its chairwoman, the Honorable Tillie Fowler, a former U.S. Congresswoman from the State of Florida. Seven other members of the panel appeared with Chairwoman Fowler and answered a number of the committee's questions.

I cannot do justice to the outstanding work of this panel. In just a matter of 2 months, they accomplished more than most Government investigations do in 2 years, or even longer. They probed more deeply, they assessed the conditions at the Academy over the past 10 years more comprehensively, and they reported more concisely, yet insightfully and incisively, than grander commissions with more time and costing much more money. They have all performed a very important service to their country and this Congress, which established and charged them with this mission. They did so with great distinction, and I thank them.

While the report was excellent, its findings were by far the opposite. My colleagues will recall that our colleague, Senator ALLARD, in whose State the Academy is located, brought complaints from a couple of his constituents to the Academy and then to the Secretary of the Air Force when he was not satisfied with the Academy's responses. Senator ALLARD also deserves great credit for bringing those deplorable offenses to the Air Force Academy's leadership to deal with them and bring them to the attention of the full Senate and bring the larger spotlight of public attention on to these abuses.

As the first abuses were reported, other women, present and former cadets at the Academy, disclosed rapes and other sexual assaults against them, and Senator ALLARD has heard from a total now, at this time, of 39 women. That number could be even higher by this time.

After denying there was a serious problem, first, by Academy officials, then by the Air Force service and civilian leaders, and the growing number of victims making accusations of being sexually assaulted at the Air Force Academy and continued pressures of Senator WARNER and Senator LEVIN and Senator ALLARD, there was finally forced the necessary attention and investigations and initial actions by those who have been accused.

The publicly reported experiences of women cadets were truly horrible. In fact, twice horrible—horrible in the rape or the physical attack against them by another cadet at the Academy, and horrible in the callous indifference or even putative responses of Academy officials—toward them, the victims, not toward their alleged attackers.

Here is a brief summary of one first year female cadet's nightmare at the Air Force Academy. This is a published report in the Washington Post:

Once not very long ago, [her] eyes shown bright when she spoke of piloting airplanes.

Few her age seem to be too promising in a future in aviation. But now when the conversation turns to flying, the former Air Force academy cadet dips and stares at the floor. Ever since, she says, a fellow cadet raped her a year ago in her freshman year at the academy, her dreams of flying F-16s and her love of the Air Force have crumbled. At age 18, she was a first-year cadet at the academy. But even in that elite group she was one of a very few in her class who had a private pilot's license. In November, 2001, she was chosen as the year's first freshman to fly an Air Force plane, roaring above the academy's football stadium before a game. Her downward spiral began a year ago when a cadet whom she knew slightly from the academy raped her in her dormitory room, she said. What she did not know then is that the same senior, once a star of the academy boxing team, had been accused of sexually assaulting a civilian in California 3 months earlier, as well as another freshman cadet at the academy more than a year before that.

Thus began her dizzying fall from grace. Struggling academically and athletically, emotionally devastated, and she said, harassed and hounded by the academy leadership for minor disciplinary infractions, she finally quit last Christmas. The Academy did not discipline the male cadet for his alleged on-campus assault because Academy officials said evidence was lacking. However, it did expel and court martial and convict him on the charge of forcible sodomy in California. He is now serving an 18-month sentence in a Navy brig.

While the female cadet remains angry about the sexual assault, she is angriest at her treatment by the Academy's majors, colonels, and generals who she said turned the tables on her after she reported the assault. She said some officers criticized her for acting affectionately with her boyfriend, who is a different person from the individual who committed the rape. They said she was "no lady" and suggested her behavior was generally promiscuous. It is not a problem of a few bad cadets, the woman now says, the problem is a few bad generals.

For a long time, after first denying there was a significant problem with cadet sexual assaults at the Air Force Academy, the Academy and Air Force leadership questioned how extensive the problem really was. On a couple of occasions during the past decade when students were surveyed on the subject, an alarmingly high percentage of female cadets reported they had been raped or otherwise sexually assaulted during their 1 to 4 years at the Air Force Academy.

The response of the Academy administration was to claim the surveys were not statistically valid, and in two instances, simply not to ask that question in the next year's survey, just defies belief. Talk about sticking their heads in the sand. They really didn't want to know how bad the problem was at the Academy. Now we have a good idea.

One of the accomplishments of the Fowler panel was to obtain from the Department of Defense and inspector

general preliminary data from its May 2003 survey of female cadets at the Air Force Academy. Of 579 women in the classes of 2003 to 2006, 88 percent of all women cadets at the Academy at that time responded to this survey: 43 cadets, 7.4 percent, said they had been victims of at least one rape or attempted rape during their 1 to 4 years at the Air Force Academy. That is 1 out of every 13 women. In the senior class, those women who had been there for 4 years, 11.7 percent, or 1 out of 8 female cadets were raped or victims of attempted rape during their 4 years at the Academy; 109 female cadets, 19 percent of all respondents, said they suffered one or more sexual assaults during their years there. That is almost 1 out of every 5 female cadets being sexually assaulted at the Air Force Academy.

The Air Force response to this survey? They consider the definition of "sexual assault" used in the survey too broad and thus the percentage too high. That definition is a sexual assault is:

Cadet victim, witness, assistance, and notification procedures—the touching of another without their consent in a sexual manner, including attempts in order to arouse, appeal to, or gratify the lust or sexual desires of the accused, the victim, or both. Sexual assault includes, but is not limited to, rape, sodomy, fondling, unwanted touching of a sexual nature and indecent sexual acts the victim does not consent to or is explicitly or implicitly forced into. It is immaterial whether the touching is directly upon the body of another or is committed through a person's clothing.

That sounds like a clear definition of sexual assault to me, and the keywords are "without their consent."

A couple of the other survey findings were that over two-thirds of women cadets, 68.7 percent, reported they had experienced sexual harassment, defined as unwanted and uninvited sexual attention in the form of "sexual teasing, jokes, remarks or questions" while at the Academy—over two-thirds of women cadets.

Of the sexual assault victims, only 19 percent, less than 1 in 5, were reported to the authorities, and of those who did report these incidents, almost half, 46 percent experienced what they called reprisals. That is how extensive these atrocities were if the Academy or Air Force leadership had wanted to know, but they didn't.

An internal Academy working group decided whatever problem did exist there was attributable to, according to the report, among other things, the definition of "sexual assault" in the Academy instruction book was confusing, the training had little focus on the moral leadership or character components of deterrence, and, amazingly enough, the self-defense training given to fourth class women cadets often occurred too late in the semester to be effective.

Let me repeat that. The self-defense training given to fourth class—in other

words, first-year women—often occurred too late in the semester to be effective. In other words, the Academy didn't get around to giving them self-defense training before they were raped or sexually assaulted there.

The Fowler panel, which is a document I commend to all of my colleagues as being both incisive and insightful in its own right, and the example of what an outside panel can accomplish in a brief period of time, stated other than the reassignment of recent Academy leadership and retiring the immediate past superintendent in lower grade, the Air Force has not held any member of the Academy leadership accountable for a decade of ineffective action or, in many cases, inaction concerning sexual assaults and the culture that tolerated them.

While the record is not complete, the evidence before the panel shows the highest levels of leadership had information about serious problems at the Academy, yet failed to take effective action. It may be impossible to ever fully know what the Air Force leadership knew or suspected about sexual assault problems in the past 10 years, nonetheless the panel uncovered substantial information showing Air Force headquarters had serious and repeated indicators of a problem. If the Air Force headquarters did not act on this information or did so tepidly, it should be held accountable for avoiding its responsibility and accepting sexual misconduct as an unavoidable condition at the Air Force Academy.

By contrast, when the general counsel of the Air Force, who had led a review of a working group and a report issued by the same, stated that, in the words of the Fowler panel, despite the considerable evidence of long-term knowledge by the Air Force and the persistence of sexual misconduct problems at the Academy, the working group, headed by the Air Force general counsel, concluded that "there was no systemic acceptance of sexual assault at the Academy or institutional avoidance of responsibility." In other words, nobody was responsible for all of these atrocities occurring over the previous 10 years, probably longer but not reported or documented before that time. Nobody in positions of command at the Air Force Academy or the Air Force itself is responsible for any of this, and the Fowler report clearly documents instances time after time over that decade where the top command knew, was informed, and failed to act, failed to follow through, replace, failed to communicate, failed to even hold meetings as frequently as required, failed time after time in a myriad of ways to assume the responsibility that they had for the young lives that had been entrusted to them by their families and who were recommended for those appointments by Members of this body and the House of Representatives, who placed their faith and trust in that institution, and not just let down, they were abused, their lives were emotion-

ally devastated, their careers at the Air Force Academy were, in many instances, destroyed, and the perpetrators of these violent crimes, these rapes and sexual assaults, have gone untouched, unsanctioned, and now are pervasive throughout the Air Force itself.

It is so bad, in fact, that in one survey taken by the panel, over 20 percent, over one-fifth of those cadets the Air Force surveyed didn't believe women belonged at the Air Force Academy. The Air Force Academy has been accepting women since 1973—in other words, since before those cadets were born.

How did they conclude, based on the history, since the time they came into consciousness, that women who are an integral part of the Air Force Academy "did not belong" there? How could they not belong any more or less than male cadets?

The panel concluded, as one of them said, the culture at the Air Force Academy is infected. This is not a matter of misguided young adults. In fact, I know from my experience, as I am sure my colleagues have had approximately the same experience, the young men and women who we nominate for appointment to the Air Force Academy, or any of the service academies, are extraordinary young men and women. At least in my State of Minnesota they have to compete with other extremely well-qualified young men and women, and they are selected only after a careful review process. They have to have distinguished careers in high school with their curricula. I have not seen and I would not nominate anybody who has had problems with sexual misconduct or problems in understanding their responsibilities at such an academy to be inclusive, to be honorable, and that they report any violations cited by a commission of these kinds of actions.

According to the panel, what has happened—and I would concur from my own brief experience—is that the culture is infecting those cadets with the wrong ideas, with the wrong views, and with the notion that they can commit those acts with no consequence, that those who are the victims are the ones who are going to be punished, and the honor code notwithstanding, they should just look the other way or ignore what they see happening.

What a terrible climate to create at this institution which is paid for with taxpayer dollars and which is producing men and women who we are going to rely on to pilot Air Force planes and defend this Nation for years to come.

As I said, the very distinguished chairman of the Senate Armed Services Committee, Senator WARNER, deserves such enormous credit for spiriting this inquiry on the part of our committee. He has scheduled another hearing tomorrow where the Secretary of the Air Force and the general counsel of the Air Force are scheduled to

testify. I look forward to that hearing so we can get answers to some of these unresolved questions, answers that better be found by the time this matter has been concluded, because, otherwise, I have serious questions whether the Air Force Academy is in a fit position to continue to receive the young men and women of this country and whether, despite the new leadership, it is so systemically "infected," to use the panel's word, with these cultural biases that it is simply not fit to continue to provide training, especially the training of moral conduct and leadership, that these young men and women deserve and which our Nation requires.

To be continued, I will report to my colleagues on my impressions after that hearing, after receiving that report.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### ORDERS FOR TUESDAY, SEPTEMBER 30, 2003

Mr. MCCONNELL. Madam President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:15 a.m., Tuesday, September 30. I further ask that following the prayer and pledge, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day and the Senate then proceed to executive session for two votes on judicial nominations as provided under the previous order; provided that following the second vote the Senate begin a period for morning business until 11:30 a.m. with the first half of that time under the control of Senator HUTCHISON or her designee and the remaining time be under the control of the minority leader or his designee; provided further that at 11:30 a.m. the Senate resume consideration of H.R. 2765, the DC appropriations bill. I further ask consent that the Senate recess from 12:30 to 2:15 for the weekly party lunches.

Mr. REID. No objection.

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

#### PROGRAM

Mr. MCCONNELL. Madam President, for the information of all Senators, tomorrow the Senate will immediately proceed to executive session to vote on two judicial nominations. The first vote will be on the nomination of Marcia Crone to be a United States District Judge for the Eastern District of Texas. The second vote will be on the nomination of Ronald White to be