

On appeal to the Third Circuit, Mr. Hardiman analogized the harm resulting from the racial discrimination at issue to running a red light. The Third Circuit criticized his dismissive analogy and found that his argument and the district court's adoption of it would undermine the Federal housing statutes. The Third Circuit rejected Mr. Hardiman's argument and reversed the trial court.

I am also troubled by Mr. Hardiman's discovery tactics. In answers to written committee questions, he admitted that in the Riga case he repeatedly violated the Federal Rules of Civil Procedure by issuing a subpoena to a nonparty without noticing opposing counsel in this case. After answering two rounds of written questions, Mr. Hardiman subsequently admitted that he had not even reviewed his Riga files before submitting his answers to the committee.

Even the trial judge criticized Mr. Hardiman's associate about their litigation strategy and tactics in this case, including the improper subpoenas. Significantly less troubling matters stalled many judicial nominees of President Clinton.

If this were anytime between 1995 and 2000 and this were a Clinton nominee, the Republican majority would never have accorded this type of nomination a vote. Recall the fate of Clarence Sundrum, Dolly Gee, the 8 district court nominees to vacancies in Pennsylvania and so many others blocked by Republicans from ever being considered.

The Senate has already confirmed 165 of this President's judicial nominees. The current pace of confirmation stands in stark contrast to what occurred with judicial nominees during the Clinton administration. It was not until well into the fourth year of President Clinton's second term, when Republicans controlled the Senate, before this many judicial nominees were confirmed.

It took President Reagan his entire first term to get this many judicial nominees confirmed, and that was with a Senate that was controlled by the same party.

It also took President George H.W. Bush well into his fourth year to get this many of his judicial nominees confirmed.

In contrast, today, with the shifts in Senate control, it has effectively taken a little more than 2 years of rapid Senate action to confirm 165 judicial nominees for this President, including 100 during Democratic control. This year alone the Senate has confirmed 65 judicial nominees, including 12 circuit court nominees in 2003. This includes more judicial confirmations in just 10 months than Republicans allowed for President Clinton in 1995, 1996, 1997, 1999, or 2000. Overall, we have confirmed 29 circuit court nominees of President Bush since July of 2001, which is more than were confirmed at this time in the third year of President

Reagan's first term, President George H.W. Bush's term, or either of President Clinton's terms.

The Senate has held hearings for 13 Pennsylvania nominees of President Bush's to the Federal courts in Pennsylvania. While I was chairman, the Senate held hearings for and confirmed 10 nominees to the district courts in Pennsylvania, plus Judge D. Brooks Smith to the Third Circuit Court of Appeals. In total, we have already confirmed 13 of this President's judicial nominees to the Federal courts in the State of Pennsylvania. Five of these new judges have already been confirmed to the Western District of Pennsylvania.

A look at the Federal judiciary in Pennsylvania indicates that President Bush's nominees have been treated far better than President Clinton's. This treatment is in sharp contrast to the way vacancies in Pennsylvania were kept vacant during Republican control of the Senate when President Clinton was in the White House, particularly regarding nominees in the western half of the State.

Just a few months ago, on May 16, 2003, Jon Delano wrote in the Pittsburgh Business Times, an article titled "Despite Bush Protests, Court Vacancies are Down," about how this President's nominees in the western part of Pennsylvania have been treated more fairly than President Clinton's nominees.

He wrote:

Take the Western District of Pennsylvania, for example. During the years of the Santorum filibuster, that court of 10 judges had as many as five vacancies. Today, the Senate has confirmed four Bush appointees—Judges Joy Conti, David Cercone, Terry McVerry, and Art Schwab—and the fifth nomination, attorney Tom Hardiman, has just been sent to the Senate.

With the elevation and confirmation of Judge Brooks Smith to the U.S. Court of Appeals, the president still needs to name one more judge to the local court, but once completed, Mr. Bush, with less than three years in office, will have named—and the Senate will have confirmed—six of the 10 judges on the local Federal court. That hardly sounds like obstructionism.

Despite the best efforts and diligence of the senior Senator from Pennsylvania, Senator SPECTER, to secure the confirmation of all of the judicial nominees from every part of his home State, there were 10 nominees by President Clinton to Pennsylvania vacancies who never got a vote: Patrick Toole, John Bingler, Robert Freedberg, Lynette Norton, Legrome Davis, David Fineman, David Cercone, Harry Litman, Stephen Lieberman, and Robert Cindrich to the Third Circuit.

Despite how well-qualified these nominees were, they were never considered by the Senate, many waited more than a year for action.

Unfortunately, Mr. Hardiman's record is similar to the record of far too many of President Bush's judicial nominees. Far too many of this President's judicial nominees have less courtroom experience than partisan experience.

In fact, 25 of this President's judicial nominees have earned partial or majority "Not Qualified" ratings from the ABA. In addition to the ABA's review, Mr. Hardiman was also "not recommended" by his county bar association.

Certainly, the citizens of Western Pennsylvania deserve a well-qualified judiciary to hear their important legal claims in Federal court.

I have great respect for the senior Senator from Pennsylvania. I appreciate his efforts to help shepherd the White House's nomination through the Senate.

After considering the negative impression Mr. Hardiman has made on his fellow Pennsylvanians regarding his suitability for this lifetime appointment and his conduct before the Judiciary Committee, I believe that this is among the weakest nominees we have considered.

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#### LEGISLATIVE SESSION

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

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#### UNANIMOUS CONSENT AGREEMENT—H.R. 2989

Mr. FRIST. Mr. President, I ask unanimous consent that on Thursday, October 23, following the period of morning business, the Senate proceed to the consideration of calendar No. 279, H.R. 2989, the Transportation appropriations bill.

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

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#### ORDERS FOR THURSDAY, OCTOBER 23, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Thursday, October 23. I further ask consent that following the prayer and the pledge, the morning hour be deemed expired, 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 begin a period of morning business for 60 minutes, with the first 30 minutes under the control of the minority leader or his designee and the second 30 minutes under the control of Senator HUTCHISON or her designee; provided further, that following morning business, the Senate begin consideration of calendar No. 279, H.R. 2989, the Transportation appropriations bill, as provided under the previous order.

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

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#### PROGRAM

Mr. FRIST. Mr. President, for the information of all Senators, tomorrow, following morning business, the Senate

will begin consideration of the Transportation appropriations bill. It is my hope we can complete action on this bill in an expedited manner, and the two managers will be here tomorrow morning to begin working through amendments to that bill. Senators should expect amendments to be offered and debated throughout the course of the day. Therefore, rollcall votes should be expected throughout the day as well. Senators will be notified when the first vote is scheduled.

ADJOURNMENT UNTIL 9:30 A.M.  
TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:09 p.m., adjourned until Thursday, October 23, 2003, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate October 22, 2003:

THE JUDICIARY

NEIL VINCENT WAKE, OF ARIZONA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA, VICE PAUL G. ROSENBLATT, RETIRING.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT AS CHIEF OF NAVAL OPERATIONS, UNITED STATES NAVY, FOR AN ADDITIONAL TERM OF TWO YEARS, AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 601 AND 5033:

*To be admiral*

ADM. VERNON E. CLARK, 0000

CONFIRMATION

Executive nomination confirmed by the Senate October 22, 2003:

THE JUDICIARY

THOMAS M. HARDIMAN, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA.