

Since entering private practice, Mr. Diamond has specialized in the representation of clients in grand jury related litigation throughout the country. In fact, he authored a comprehensive text and several articles on the work of the grand jury. This area of expertise assisted him as he served on the American Bar Association's Grand Jury and Amicus Curiae Briefs Subcommittee where he drafted amicus curiae for the American Bar Association on the novel issue of the propriety of subpoenaing criminal defense attorneys.

In between his many responsibilities, Mr. Diamond has found the time to serve on the Pennsylvania Supreme Court's Lawyers' Fund for Client Security Board. This board helps clients recover some or all losses of money and/or property stolen from them by their attorneys.

Mr. Diamond has also received numerous awards and accolades. I am particularly impressed that Mr. Diamond is listed in Who's Who in the World, Who's Who in America, Who's Who in American Law and Who's Who Among Emerging Leaders. He also received the ABA's highest rating of unanimously well qualified.

I applaud President Bush for his nomination of Mr. Diamond and am confident that he will serve on the bench with compassion, integrity and fairness.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, today the Senate considers the nomination of Paul Diamond to be a United States District Judge for the Eastern District of Pennsylvania. Mr. Diamond has a unanimous rating of "well-qualified" from the American Bar Association and significant experience serving as an assistant district attorney in Philadelphia for 6 years and serving as a litigator in private practice for over 20 years. He is supported by the senior Senator from Pennsylvania, for whom I have great respect.

With the three confirmation votes today, the Senate will now have confirmed 17 judicial nominees this year alone. Seventeen is the total number of judges who were confirmed under Republican leadership in all of 1996. However, in 1996, the first confirmation did not even occur until July.

With these three confirmations today, the Senate will have confirmed a total of 86 judges this Congress and 186 of this President's judicial nominees overall. With 86 judicial confirmations in just a little more than 17 months, the Senate has confirmed more Federal judges than were confirmed during the 2 full years of 1995 and 1996, when Republicans first controlled the Senate and President Clinton was in the White House. It also exceeds the 2-year total at the end of the Clinton administration, when Republicans held the Senate. With 186 total confirmations for President Bush, the

Senate has confirmed more lifetime appointees for this President than were allowed to be confirmed in President Clinton's entire second term, the most recent 4-year presidential term. We have already surpassed the number of judicial appointments won by President Reagan in his entire first term in office.

A look at the Federal judiciary in Pennsylvania demonstrates yet again that President Bush's nominees have been treated far better than President Clinton's and shows dramatically how Democrats have worked in a bipartisan way to fill vacancies, despite the fact that Republicans blocked more than 60 of President Clinton's judicial nominees. With this confirmation, 19 of President Bush's nominees to the Federal courts in Pennsylvania will have been confirmed, more than for any other State.

With this confirmation, President Bush's nominees will make up 19 of the 43 active Federal circuit and district court judges for Pennsylvania. That is more than 40 percent of the Pennsylvania Federal bench. On the Pennsylvania district courts alone, President Bush's influence is even stronger, as his nominees will now hold 16 of the 35 active seats. In other words, nearly half of the district court seats in Pennsylvania will be held by President Bush's appointees. Republican appointees will outnumber Democratic appointees by nearly two to one.

This is in sharp contrast to the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate when President Clinton was in the White House.

Republicans denied votes to ten judicial nominees, nine district and one circuit court nominees of President Clinton in Pennsylvania alone. Despite the efforts and diligence of the senior Senator from Pennsylvania, Mr. 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. Despite records that showed these to be well-qualified nominees, many of their nominations sat pending before the Senate for more than a year without being considered. Such obstruction provided President Bush with a significant opportunity to shape the bench according to his partisan and ideological goals.

New articles in Pennsylvania have highlighted the way that President Bush has been able to reshape the Federal bench in Pennsylvania. For example, The Philadelphia Inquirer, observed that the significant number of vacancies on the Pennsylvania courts "present Republicans with an opportunity to shape the judicial makeup of the court for years to come."

I would note that the Republican leadership has decided to depart from the order of the executive calendar to confirm Mr. Diamond today rather than Juan Ramon Sanchez, a well-

qualified Hispanic nominee to the U.S. District Court for the Eastern District in Pennsylvania. That is their choice. I do not want to see the Democrats blamed for any delay in confirmation of Mr. Sanchez. I support that nomination and believe it will be supported by all Democratic Senators.

I congratulate Mr. Diamond and his family today on his confirmation.

I yield back my time.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Paul S. Diamond, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Indiana (Mr. LUGAR) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 123 Ex.]

YEAS—97

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

NOT VOTING—3

Edwards	Kerry	Lugar
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The nomination was confirmed.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

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

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

Mr. FRIST. Mr. President, let me take a minute to thank the two managers for their hard work on this Defense bill. As I stated before, this is the 11th day of consideration of this bill.

Although I think we have made real demonstrable progress today, I am concerned that we are not quite certain when we will be able to finish the bill and how many amendments may still be offered.

I have had discussions with the chairman and the Democratic leadership, and I am prepared to file a cloture motion this evening.

With that said, I still hope we can work out an agreement to allow us to finish the bill after a certain number of amendments, and with a time certain for passage. I will continue to discuss our options with the managers of the bill and hope that we can proceed in a balanced way to finish the bill.

CLOTURE MOTION

I send the cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 503, S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the armed services, and for other purposes.

Bill Frist, John Warner, Bob Bennett, John Cornyn, Mitch McConnell, Norm Coleman, Susan Collins, Lamar Alexander, Kay Bailey Hutchison, Rick Santorum, Lisa Murkowski, Gordon Smith, Thad Cochran, Wayne Allard, Chuck Hagel, Craig Thomas, Jeff Sessions.

Mr. FRIST. Mr. President, I ask unanimous consent that the mandatory quorum be waived.

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

Under the previous order, the Senator from Alabama is recognized to offer an amendment on which there will be 10 minutes of debate.

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask unanimous consent that I be recognized for 5 minutes and be notified at

the conclusion of the 5 minutes, and the senior Senator from New York, Mr. SCHUMER, be recognized.

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

AMENDMENT NO. 3372, AS MODIFIED

Mr. SESSIONS. Mr. President, for decades, civilian employees of the United States working overseas were shielded from prosecution for criminal acts that were committed abroad. These persons were outside the scope of military justice, and they were beyond the jurisdiction of Federal courts in the United States, and also our State courts. Often, foreign countries, when incapable of investigating and prosecuting the cases, or they didn't have adequate laws, or they were not even criminal offenses in the foreign country, did not prosecute. Maybe the foreign country had no interest in prosecuting a fraud against the United States.

In 1999, one of my constituents approached me with a terrible story of how two innocent children were molested while living overseas with their father, who was an Army service person. Because the perpetrator of the crime did the act overseas, he was beyond the scope of jurisdiction in the United States. Moreover, German law didn't cover this, so the person was completely unprosecutable at that time.

After hearing this story, I began to work on and introduce the Military Extraterritorial Jurisdiction Act, which was signed into law eventually in the year 2000.

It provided U.S. Federal courts with jurisdiction over civilian employees, contractors, and subcontractors affiliated with the Department of Defense who commit crimes, and would have subjected that person to at least 1 year of prison had the offense occurred in the United States.

We worked with the Department of Defense, the Department of Justice, and the Department of State and produced legislation which I think was very helpful.

Now, in the war on terrorism, the Department of Justice is finding this statute very helpful. In fact, the contractors involved in the Abu Ghraib prison would probably not be prosecutable had we not passed this law some time ago.

But as we have looked at it, we understand there are some gaps that still exist.

Senator SCHUMER raised this issue in the Judiciary Committee, and I began to work on dealing with those loopholes.

This act will deal with what our previous act dealt with—those who were directly related to the Department of Defense, either contractors or civilian employees. But the abuses in Abu Ghraib involved private contractors who may not have in every instance been directly associated with the Department of Defense, and as such, perhaps those people—or some of them at

least—might not be prosecutable under this statute. So it highlighted our need to clarify and expand the coverage of the act.

I offer an amendment today, and I am pleased that Chairman WARNER and Ranking Member LEVIN have agreed to it. I believe it has been cleared on both sides and accepted by the managers.

This amendment would give the Justice Department authority to prosecute civilian contractors employed not only by the Department of Defense but by any Federal agency that is supporting the American military mission overseas.

The number of private contractors working in Iraq is about 10 times as great as it was in the Persian Gulf conflict.

Private contractors are necessary to rebuilding a healthy Iraq. Yet we cannot allow them to escape justice for crimes they may commit overseas.

I am not sure right now the Iraqi government has the ability or the interest in prosecuting a contractor who may have defrauded the United States. It clearly remains true that if they are to be prosecuted, it needs to be done here.

Our mission overseas is an honorable endeavor. It should not be tainted by illegal acts by any, particularly a few, who embarrass our country. Recent events have brought to light the need to ensure that those acting improperly are held accountable in a court of law.

This amendment clarifies existing precedent and leaves no doubt whether wrongdoers can be brought to justice. This includes physical acts against personnel by contractors. It also includes frauds that could be committed against the Department of Defense such as overcharging. Fraudulent activities of any kind could be prosecuted under this act.

I yield the remainder of my time to the Senator from New York, who, having suffered the blows of terrorism firsthand, has taken an interest in these matters for some time now. I am delighted to work with the Senator on this legislation.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, this amendment is an important amendment to this bill. It is passing with bipartisan cosponsorship, both the House and the Senate unanimously. It shows we can get things done in a bipartisan way. In good part that is because of my colleague from Alabama. I salute him for his leadership on this issue. He originally discovered the loophole about contractors who work for DOE, that they could not be prosecuted should they commit crimes abroad. He successfully passed a law last year about this issue.

When we discovered all the problems in the prisons in Iraq, it was clear that not all the contractors were contracted to by DOD. Other agencies contracted them. It made sense to me that we prosecute them as well. I believe it