in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) SERIOUS DAMAGE.—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(b) PROVISION OF RELIEF.—

(1) IN GENERAL.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition.

(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

SEC. 323. PERIOD OF RELIEF.

(a) IN GENERAL.—Subject to subsection (b), the import relief that the President provides under subsection (b) of section 322 may not, in the aggregate, be in effect for more than 3 years.

(b) EXTENSION.—

(1) IN GENERAL.—Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle for a period of not more than 2 years, if the President determines that—

(A) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(B) there is evidence that the industry is making a positive adjustment to import competition.

(2) LIMITATION.—Any relief provided under this subtitle, including any extensions thereof, may not, in the aggregate, be in effect for more than 5 years.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if—

(1) the article has been subject to import relief under this subtitle after the date on which the Agreement enters into force; or

(2) the article is subject to import relief under chapter 1 of title II of the Trade Act of 1974.

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to any article after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

SEC. 327. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

The President may not release information which is submitted in a proceeding under this subtitle and which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party also shall submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

EXECUTIVE SESSION

NOMINATION OF HENRY W. SAAD TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to executive session for the consideration of Calendar No. 705, the nomination of Henry W. Saad, of Michigan, to be U.S. Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report the nomination.

The legislative clerk read the nomination of Henry W. Saad, of Michigan, to be U.S. Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent to proceed, along with Senator COLLINS, as in morning business.

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

(The remarks of Mr. LIEBERMAN and Ms. COLLINS pertaining to the introduction of S. 2701 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Might I inquire of the Chair what the pending business is.

The PRESIDING OFFICER. The pending business is the nomination of Henry Saad, of Michigan, to the Sixth Circuit Court of Appeals.

Mr. KYL. Mr. President, Senator HATCH is chairing a subcommittee hearing and asked that I open the debate with respect to the nomination and confirmation of Judge Henry Saad. So I think my comments are reflective of Chairman HATCH's views, but I will present them as my own as well.

I will first speak a little bit about Judge Saad and his nomination to this court and why we have had a problem in getting this far with his nomination but why I hope our colleagues will be willing to vote to confirm him.

As the Chair noted, he is a nominee to the U.S. Circuit Court for the Sixth Circuit. He was nominated, and I ask my colleagues to think of this date for a moment, on November 8, 2001. It is now 2004. He is a distinguished State court of appeals judge from the State of Michigan with nearly a decade of experience in that court. He has been there since 1994. In that capacity, he is actually elected and reelected, and he has been reelected twice to serve on the court of appeals with broad bipartisan support within the State of Michigan.

The American Bar Association has rated Judge Saad qualified to sit on the U.S. Court of Appeals for the Sixth Circuit. Therefore, his nomination should have come before us long before now. He should be confirmed, obviously.

I will mention a bit about the Sixth Circuit. There are 16 authorized seats on the circuit, but there are 4 vacancies. Obviously, one-fourth of the authorized seats on that court remain vacant today. President Bush has nominated four very well-qualified individuals from Michigan to fill these vacancies. The seat to which Judge Saad has been nominated has been deemed a judicial emergency and, of course, it is not hard to see why with that number of vacancies.

Interestingly, President George H.W. Bush, President Bush No. 41, first nominated Judge Saad to the Federal bench in 1992, but the Democratic Senate failed to act on his nomination at that time, as well as one other from Michigan, prior to the end of President Bush's term. So this is the second time he has been nominated for this prestigious court.

A bit about his personal history. Judge Saad was born in Detroit. He is a lifelong resident of the State. He would be the first Arab-American appointee to the Court of Appeals for the Sixth Circuit. According to the Detroit Free Press, Bush's nomination of Saad in the wake of the September 11 attacks—remember, it was only 2 months to the day following the September 11 attacks:

> conveys an important message to all the citizens and residents of this country that we embrace and welcome diversity and that we are extending the American dream to anyone who is prepared to work hard.

Judge Saad has had a distinguished career as a practicing attorney and law professor before serving on the State bench. From 1974 until 1994 he practiced law, first as an associate and then a partner with the prestigious Detroit firm of Dickinson, Wright. He built a national practice and reputation there in the areas of employment law, school law, libel law, and first amendment law. He serves as an adjunct professor at both Wayne State University Law School and the University of Detroit Mercy School of Law. He received his

bachelor's degree in 1971 and his law degree, magna cum laude, in 1974, both from Wayne State University. He received a special Order of the Coif award in 2000, which is bestowed by a vote of the faculty of the school upon a distinguished graduate who has earned his degree before the law school was inducting members into the Order of the Coif.

Judge Saad has significant appellate experience in both civil and criminal matters, authoring well over 75 published majority opinions. His nomination has broad bipartisan support, including endorsements from such disparate groups as the United Auto Workers and the Michigan Chamber of Commerce.

Judge Saad is dedicated to improving the law and helping his State and local community through volunteer work. He was chairman of the board of the Oakland Community College Foundation, president of the Wayne State University Law School Alumni Association, and he is currently a member of the board of visitors to the Ave Maria Law School.

Judge Saad was a board member of the National Council of Christians and Jews and the American Heart Association, as well as trustee of WTVS Channel 56 Education Television Foundation.

Judge Saad received the ''Salute to Justice John O'Brien Award'' for outstanding volunteer service to the people of Oakland County in 1997, and he received the Arab-American and Chaldean Council Civic and Humanitarian Award for outstanding dedication to serving the community with compassion and understanding in 1995.

Let me read a few statements from people who have endorsed the nomination and confirmation of Judge Henry Saad. The Secretary of Energy, former Senator from the State of Michigan, said:

I have known Henry for twenty years on a personal and professional level. He is a person of unimpeachable integrity and will serve our country and our justice system remarkably well.

John Engler, the former Governor of Michigan, said:

The President selected individuals [including Henry Saad] who are experienced judges and whose reputations for intellect, knowledge of the law, diligence and temperament are well established. Judge Saad has established a distinguished reputation on Michigan's appellate court which he will take to the federal appeals court.

The President of the United Auto Workers, Stephen Yokich, said:

I have known Judge Saad for twenty-five years. He is a man of the highest integrity and a judge who is fair, balanced and hard working. I strongly support President Bush's nomination of Judge Saad to the federal appellate bench.

Congressman JOSEPH KNOLLENBERG, who is a Representative from the State of Michigan, said:

I have known Judge Saad for over twenty-five years. He was an outstanding lawyer and is a highly regarded appellate jurist, known for his scholarly opinions, balance and fairness. I am confident he will be a great addition to the Federal appellate bench.

Justice Stephen Markman from the Michigan Supreme Court said:

In his seven years on the Michigan Court of Appeals, Judge Saad has been one of its most thoughtful and fair-minded jurists. His opinions and his judicial integrity have earned him the respect of a remarkably broad range of his colleagues.

Finally, Judge Hilda Gage of the Michigan Court of Appeals said:

I have served with Judge Saad on the Michigan Court of Appeals for six years. I admire his judicial independence and his scholarly analysis of the law. I applaud the President's nomination of Judge Saad to the Sixth Circuit Court of Appeals.

Those are some of the people who have worked with him, who have known him a long time, who represent a diverse point of view within the State of Michigan, and yet all of whom endorse the President's nomination of Judge Saad to the Sixth Circuit.

Let me speak for a moment about the status of his circuit because, as I noted at the beginning, there are four vacancies. One-fourth of the active seats on this court, are vacant. The President has nominated four very well-qualified individuals to fill these vacancies. All four of these vacancies have been deemed judicial emergencies by the Administrative Office of the U.S. Courts.

I might, for those who are not aware, describe what this means. The Administrative Office of the U.S. Courts characterizes, in some rare circumstances, vacancies on the court as judicial emergencies by virtue of the caseload of the court, the nature of the cases before the court, the ability of the court to turn out decisions and opinions, and the number of judges available to serve on the court. They balance all of those considerations. When the court does not have enough people to do the job it is required to do, when litigants are taking too long to get their matters heard before the court, and in effect when justice is not being done because it is being delayed, then the Administrative Office of the U.S. Courts declares judicial emergencies.

All four of these vacancies in the Sixth Circuit have been so designated. The confirmation of two judges in late April and early May of this year filled two of then six vacancies, but the circuit remains overburdened.

By the way, let me quantify what I said a moment ago. When I spoke of judicial emergency, in the court of appeals, that occurs specifically when adjusted filings per panel are in excess of 700, or any vacancy is in existence more than 18 months where adjudicated filings are between 500 and 700. All four of the Michigan vacancies on the Sixth Circuit have been in existence for more than 18 months and the adjusted filings total 588. That is why it is so important that we act now to fill this vacancy.

Only a substantial commitment on the part of the senior judges of the Sixth Circuit, and the district judges from within the circuit filling in, as well as visiting appellate judges from other circuits, has kept the caseload of this important circuit manageable. It is the third busiest court of appeals in the country. Chief Judge Boyce Martin has asked Congress to authorize a 17th judge for the court.

So if we filled all four of these vacancies today, not only would we have at least filled those judicial emergencies, but the chief judge of the circuit has said we need additional judges in addition to these.

Among the 12 U.S. Courts of Appeals, the Sixth is the 11th in the timeliness in the disposition of cases. Only the Ninth Circuit takes longer to issue its opinions. I am familiar with that, having practiced before the Ninth Circuit. When it takes so long for litigants who have disputes before the court to get action on their cases, justice is denied. This circuit, being the next to the bottom in terms of the speed with which its decisions are made, makes it a clear candidate for the Senate to act. It is unconscionable that we have not been able to confirm Judge Saad as well as the other three nominees to this court.

The district court judges within the Sixth Circuit have complained that what has turned out to be regular duty as substitute judges on the court of appeals has slowed down their own dockets considerably. In other words, they have not been able to do their own jobs because they have had to fill in for the circuit court judges. According to Judge Robert Bell, who is a district judge from the Western District of Michigan:

We're having to backfill with judges from other circuits, who are basically substitutes. You don't get the same sense of purpose and continuity you get with full-fledged court of appeals judges. . . . Putting together a federal appeals court case often takes a Herculean effort in a short time for visiting district judges. ''We don't have the time or the resources that the circuit court has,'' Bell said. You can't help to conclude that if we had 16 full-time judges with a full complement of staff that each case might get more consideration, not to say results would be different.

This quote, by the way, was the Grand Rapids Press, February 21, 2002.

U.S. attorneys in Michigan likewise have complained that the vacancy rate in the Sixth Circuit has slowed justice and complicated the ability to prosecute wrongdoers. It has enabled defendants to commit more crime while awaiting trial. It has led to less consistencies in the court's jurisprudence and effectively deprived the use of en banc review in some cases. En banc review is the situation where a panel of three judges has made a decision and the litigants have asked the full court to hear—in effect to rehear or have a mini-appeal—a case from the decision of the panel of three. If you do not have the full complement of judges on the court, you can't have the same kind of en banc review.

Let me quote a letter from 31 assistant U.S. attorneys in the Eastern District of Michigan sent to our colleague,

Senator CARL LEVIN, on January 16, 2002:

In years past, it was the normal practice of the Sixth Circuit that a case would be heard by the Court approximately three months after all briefs were filed, and in most cases an opinion would issue in about three additional months. At present, due to the large number of vacancies on the Court . . . it has been taking on average between twelve and eighteen months longer for most appeals to be completed than was the case for most of the 1990's.

These are the prosecuting attorneys. These are the people who I noted have complained that the vacancy rate has complicated their ability to prosecute wrongdoers. Our failure to act in the Senate has real-life consequences on the people of Michigan. When justice cannot be dispensed with because there are not enough judges and wrongdoers are awaiting trial and they are able to go out and commit additional crimes, we have a responsibility to solve that problem. That is why it is so important for us to vote and to vote up or down on the confirmation of Judge Saad.

I serve on the Judiciary Committee. I heard some questions raised about whether he would be a good addition to the court. You heard just a summary of the many people who spoke on his behalf with a wide diversity of opinion. He has a ''qualified'' rating from the Bar Association.

If my colleagues want to vote no on his nomination, they are free to do so. On rare occasions, I have voted no against judicial nominees. I voted no on very few occasions when President Clinton was making the nominations, but I felt that I always had the right to express my view one way or the other. That is all Judge Saad is asking for. With the nomination pending now for almost 4 years, it is time that he have a vote up or down.

Let me read to you a letter from 31 assistant U.S. attorneys in the Eastern District to Senator LEVIN:

[D]elays in criminal cases hurt the government; the government has the burden of proof, and the longer a case goes on the more chance there is that witnesses will disappear, forget, or die, documents will be lost, and investigators will retire or be transferred.

I go on from a different portion of this letter:

In some cases, convicted criminal defendants are granted bond pending appeal. The elongated appellate process therefore allows defendants to remain on the street for a longer period of time, possibly committing new offenses. In addition, the longer delay makes retrials more difficult if the appeal results in the reversal of a conviction.

Further quoting from this letter:

The Sixth Circuit has resorted to having more district judges sit by designation as panel members. This practice has contributed to a slowdown of the hearing of cases in district courts, because the district judges are taken out of those courtrooms. The widespread use of district judges also provides for less consistency in the appellate process than would obtain if full-time Circuit judges heard most of the appeals.

In some cases, the small number of judges on the Court has served to effectively deprive the United States of en banc review. . . . Achieving a unanimous vote of all of those judges of the Court who were not part of the original panel is, as a matter of practice, impossible, and not worth seeking. However, if the Court was at full strength, an en banc review could have been granted with the votes of about two-thirds of the active judges who were not part of the original panel.

Why haven't we been able to vote on Judge Saad? The two Senators from the State, notwithstanding the fact that there are four vacancies in their own State, that the prosecutors from the State have written as I have just indicated, that people of wide disparate views in their State support his nomination, the two Senators from the State have urged their colleagues not to allow the vote to go forward. The reason is because two nominees to fill vacancies in Michigan were left without hearings at the end of the Clinton administration in 2001. It is not uncommon at the end of an administration for there to be nominations pending. I predict that because of opposition from the minority party, there will be a lot of nominations President Bush would like to have confirmed but which will not be confirmed because the other party will not allow it to happen. Sometimes nominations are made too late in the year for the vetting to be done, for the Bar Association to report, for the hearings to be held, for the executive work of the Judiciary Committee to report the judges to the Senate floor, and for the full Senate to vote. That is not an uncommon occurrence.

I note, for example, that Senators who are upset that two judges weren't considered at the end of the Clinton administration should also note that two nominees, including John Smietanka, the very well qualified U.S. attorney from the Western District of Michigan, were also left without hearings at the end of President Bush's term in 1993. So President Clinton got to appoint the same number of judges to the Sixth Circuit as the number of vacancies that came open during his Presidency. As with his predecessor, there were a couple of nominations still pending at the time his term ended.

But as these examples illustrate, both parties have had nominations left pending at end of their President's terms. The effort of the Senators from Michigan to block the consideration of Judge Saad as well as the other three nominations of President Bush at the outset of his term in 2001 is unheard of. It might be one thing if these nominations had just occurred and we didn't have time to consider them, but Judge Saad, as I said, was nominated on November 11, 2001, 2 months after the historic event of September 11. Five of the Sixth Circuit active judges—nearly half—were appointed by President Clinton—one President. I don't think it is possible to argue here that there is some kind of political agenda by Republicans or by President Bush to deny President Clinton nominations and confirmations of his nominations.

I might note that an editorial opinion in Michigan confirms this point. It is overwhelmingly opposed to the tactics of the minority to prevent confirmation of the nominees President Bush has made to fill these vacancies.

Let me quote from the Grand Rapids Press of February 24, 2002. This is only 3 months after the nomination of Judge Saad:

The Constitution does not give these Senators from Michigan [Senators Levin and Stabenow] co-presidential authority and certainly does not support the use of the Court of Appeals to nurse a political grudge. . . . [Senators Levin and Stabenow] have proposed that the President let a bipartisan commission make Sixth Circuit nominations or that Mr. Bush re-nominate the two lapsed Clinton nominations. Mr. Bush has shown no interest in either retreat from his constitutional prerogatives. Nor should he. Movement in this matter should come from Senators Levin and Stabenow—and, clearly, it should be backward.

From the Detroit News, June 30, 2002:

It was wrong for the Senate to fail to act on Clinton's Michigan nominees. But another wrong won't make things right for Michigan. Enough is enough. . . . Senators, it is long past time to fill Michigan's voids in the hall of justice.

I will conclude with one comment. Colleagues on the other side of the aisle will argue that we actually have confirmed a lot of President Bush's nominees. The truth is that we have confirmed about the same number of district court judges as is usual for the Senate during the first term of the President. In the first 3½ years of President Bush's term, we have confirmed, so far, 198 judges, and that is pretty close to the other President's by this overall statistic. President Bush would be on about the same pace as President Clinton, who appointed a total of 371 judges in 8 years—just 4 fewer than the 375 appointed by President Reagan. This would be about par.

The problem is, in the circuit court judges, Presidents ordinarily get most of their nominees confirmed, but President Bush is only getting about half of his confirmed.

Here are the statistics. President Clinton saw 71 percent of his circuit court nominees receive a full vote in the Senate; the first President Bush, 79 percent. President Reagan, 88 percent of his circuit nominees were confirmed; President Carter, 92 percent. But in the 107th Congress—our Congress—President Bush has only gotten 53 percent of his circuit court nominees voted on by the full Senate, 17 out of 32.

That is where the problem is and there is no secret why. As has been described many times by my friends on the other side of the aisle, the circuit court is just below the Supreme Court. It is viewed as more powerful and more important than the district courts. There are many more district court judges. They are the court of first resort. Their cases are appealed to the circuit courts.

Most of the time, circuit court decisions are not appealed or the appeals

are not accepted by the Supreme Court. It can only hear maybe 300 cases or so a year, so, as a practical matter, the circuit courts become the court of last resort. That is why Democrats have refused to even vote on President Bush's nominees for circuit courts because they believe President Bush's nominees would not be as capable, have the right political philosophy, or serve the interests of justice as well as a President of their party.

As I have noted, whether Democrat or Republican, the full Senate under Republican control, as well as under Democratic control, has allowed votes on the vast majority of the circuit court nominees of previous Presidents. It is only President George Bush who has only received a vote on half of his circuit court nominees. That is what is going on. It is wrong. We need to vote. We need to vote on a nominee who has been pending now since November 11, 2001, Judge Henry Saad. I urge my colleagues when that opportunity comes within the next several hours, we will have that opportunity, they will agree to permit an up-or-down vote. That is all we are asking for.

If they have objections, and I see a couple of my colleagues are here, perhaps they would like to discuss their objections to Henry Saad. But let the Senate vote on this nominee as we do with most other issues. We bring it to the vote. Our Members want to vote. But at least this man, who has been waiting now for 3 years, would have a chance to have his nomination either confirmed or rejected.

I urge my colleagues to provide him that opportunity.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. I ask unanimous consent that I be permitted to speak as in morning business and after I finish, in approximately 15 minutes, the Senator from New York be given an opportunity to speak.

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

BIN LADEN FLIGHT MANIFEST

Mr. LAUTENBERG. Mr. President, today I rise to discuss some disturbing information that was released to the public today. It concerns the aftermath of the terrorist attacks on the United States on September 11, 2001.

A little more than a week after September 11, precisely on September 19, 2001, a luxury airliner 727 took off from Boston Logan Airport. It was wheeled up, at 11 o'clock at night, under the cover of darkness. That airplane left the United States for Gander, Canada, then on to Paris, Geneva, and the final stop was Jeddah, Saudi Arabia.

The question was, Who was on this charter flight carrying people who will never again set foot in the United States? That charter flight, 1 week after September 11, carried 12 members of the bin Laden family out of our country. When they left, they took a million unanswered questions with them.

Now, on this chart is the flight manifest of that fateful flight. I will read the names of those with the last name of bin Laden: ''Najia Binladen, Khalil Binladen, Sultan Binladen, Khalil Sultan Binladen, Shafig Binladen, Omar Awad Binladen, Badr Ahmed Binladen, Nawaf Bark Binladen, Mohammed Saleh Binladen, Salman Salem Binladen, Tamara Khalil Binladen, Sana's Mohammed Binladen, and Faisal Khalid Binladen.''

I ask my colleagues, why in the world would we let 12 members of Osama bin Laden's family leave the country at that moment?

One of the first rules of a criminal investigation when you have the suspect on the run is to interrogate the family members. Osama bin Laden had just murdered over 3,000 Americans, but the administration let his family flee. The question is, Why?

There are reports that some of the bin Ladens were interviewed on the airplane by the FBI. Interviewed on the airplane? Everybody knows when the FBI is conducting a serious interview they do not do it within hearing of everyone else. These people were about to take off. Why would they disclose anything to U.S. law enforcement? They were getting out of here.

I have talked to law enforcement officials who said, at the very least, the bin Laden family should have been detained on a material witness warrant and put under oath and asked the question, Do you know where Osama bin Laden is? Do you know where his safe houses are? Where does he get his money? Who are his associates?

The Saudi PR machine has been spinning that Osama bin Laden is ostracized from his family; no one has any contact with him anymore. Most experts believe that is not the truth. It may be true for some family members but certainly not all.

It is, at the very least, unclear what bin Laden's position on Osama bin Laden really is. Osama bin Laden's brother, Yeslam bin Laden, was interviewed on television recently. He was asked the question, Would you turn Osama bin Laden in, if you knew where he was? He essentially said no.

Before it left this country, this charter flight stopped in several U.S. cities. It started by picking up one bin Laden, Najia bin Laden, in Los Angeles. It then flew to Orlando to pick up more members of the bin Laden family. Once in Orlando, the crew of this charter flight found out who they were carrying as passengers and threatened to walk out. They did not want to fly that flight but the charter company insisted they stay on the job. The airplane was flown from Orlando to Dulles, near Washington, to pick up more bin Ladens. Then the flight landed at Logan Airport in Boston to pick up additional family members to leave the country.

At Logan Airport, the officials there were not eager to let this plane full of bin Ladens take off so easily. The airport officials demanded clearances from the Bush administration before they let this airplane leave. But then, to their astonishment, the clearances quickly came through. Let them leave, was the order from the Bush administration. And we ask, Why?

Look at the names of the bin Laden family members who are allowed to leave the country. It is astounding, 12 of them, all of them with bin Laden last names. That is a pretty good indication that they ought to be questioned, ought to be interpreted, that they ought to tell what they know about Osama bin Laden, the murderer of our Americans.

Millions of Americans were still distraught on September 19. Thousands of foreigners were detained across our Nation and across the world, but the family of the perpetrator was let go. It makes no sense.

Some of these individuals' names raise specific concern. Take Omar bin Laden. He was under suspicion for involvement in a suspected terrorist organization. This was known on September 19, 2001, but the administration allowed him to flee. Once again, we must ask the question, why?

The President of the United States should explain to the American people why his administration let this plane leave. The American people are going to be shocked by this manifest, and they deserve an explanation.

These are 12 names that may have been inconvenienced in September 2001, if we detained them and subjected them to questioning under oath. They might not have liked it. That is 12 people potentially inconvenienced compared to the almost 3,000 names of those murdered on 9/11.

The American people deserve an answer. This information is reliable. Manifests are always filed with flights, especially those going out of the country. The destination: Saudi Arabia, Saudi Arabia, Saudi Arabia—all the way down the line. The passport numbers are blocked out on this chart, but their identity is quite clear.

This is a question that must be answered.

With that, I yield the floor and 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. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HAGEL). Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I know my colleagues are waiting, so I will try to be brief. I have come to the floor to talk about a resolution Senator CORNYN and I are submitting on human trafficking. Before I get into that, I want to mention a couple of points in reference to my good friend from Arizona. One is a numerical question. He talked about courts of appeals

judges who have been approved under previous administrations and then mentioned the 107th Congress of this administration. It is sort of a bit of comparing not apples and oranges but apples and half apples.

I believe if you look at the number for the whole of President Bush's term, it goes up considerably. It might not be quite as high as some of the others, but it is much higher than the 53 percent Senator KYL mentioned. Senator KYL is a good friend of mine. I mentioned this to him while he was here.

But the second point I would make—I know my good colleague from Michigan, CARL LEVIN, will be bringing this up at some length—to me, the issue is not a tit-for-tat issue. They did a lot of wrongs previously when President Clinton was President and they did not let judges come through, and that created the vacancies in Michigan. But I have some sympathy for the Detroit News article Senator KYL quoted that said there should not be tit for tat here.

Two wrongs don't make a right. It is sort of anomalous for those creating the wrong to say two wrongs don't make a right. But there is a far more important point, and that is this: The reason we have no approval of judges in Michigan is the President has ignored the part of the Constitution that talks about advise and consent. For the vacancies in Michigan, if the President sat down with the Michigan Senators, Mr. LEVIN and Ms. STABENOW—both reasonable people, people who have engaged in many bipartisan relationships themselves—and said: ''How do we work this out?'' it would have been worked out in the first 6 months of the President's term.

The idea that, A, previous Senates have created vacancies, and then the President says to the Senators of that State or to the Senators of this body: ''It's my way or no way. I'm picking the judges. You have no say,'' that is what has created the deadlock.

The Constitution calls for advice as well as consent. In States where there has been advice, it has worked. In my State of New York we have no vacancies. Why? Because the administration has consulted with me. My colleague Senator CLINTON and I have nominated some judges to vacancies in New York. They have nominated the lion's share, but none of them would meet with this body's disapproval.

I am sure, if the President would simply sit down with Senator LEVIN and Senator STABENOW, and say: ''How do we work this out?'' it would be worked out, pardon the expression, in a New York minute. But they do not. They have an attitude: Here is what we want. You approve them. And if you don't approve every single one, then you are obstructionists.

As has been mentioned over and over again, of the 200 judges this body has dealt with, 6 have been disapproved and 194 have been approved. That is a darn good track record. I am a Yankee fan. The Yankees' percentage is up there around .700, .650 in terms of wins and losses. We are all proud of that. The President is doing a lot better than the Yankees.

The idea that ''It's my way or no way'' is not going to work. Furthermore, I would argue to my colleagues, it is not what the Founding Fathers wanted. If they wanted the President to appoint judges unilaterally, they would have said so in the Constitution. But they wanted the Senate to have a say.

I remind my colleagues, one of the first judges nominated by President Washington, John Rutledge of South Carolina, was rejected by the Senate because, of all things, of his views on the Jay treaty. And in that Senate were a good number of Founding Fathers, people who had actually written the Constitution, so clearly the Founding Fathers did not intend the Senate to be a rubberstamp.

Certainly they did not intend for the Senate to hold up a majority of judges, but when the President nominates people way out of the mainstream, when the President refuses to sit down and negotiate, these are the results. And I would guess—again, I defer to Senator LEVIN, who is on the floor—my view is, if the President or his counsel were to pick up the phone and say to Senator LEVIN: ''How do we work this out?'' it is still not too late, even as we enter the twilight of this Congress, to get it done.

That is all I will say on that matter. I will leave the rest to my colleague from Michigan.

(The remarks of Mr. SCHUMER pertaining to the submission of S. Res. 413 are printed in today's RECORD under ''Submitted Resolutions.'')

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank the Senator from New York for his comments relative to judicial appointments. He is exactly right in terms of the number of judges that this Senate has confirmed with the support of this side of the aisle. He is exactly right when it comes to the willingness of Senator STABENOW and myself to compromise the deadlock that exists with this administration over the Michigan judges. We have been willing to do that from the beginning of this administration. We continue to be willing to attempt some kind of a compromise relative to these vacancies.

What we are unwilling to do is to allow a tactic, which was used relative to these two women who were nominated by President Clinton which denied them hearings for over 4 years and over 1½ years respectively, to succeed, as the good Senator from New York said, to either create these vacancies or to leave these vacancies opened for the next President to fill. That is not the way things should work. It is not the way the Constitution contemplated it. We are going to do our best to continue to press for a bipartisan solution in a number of ways but in the meantime to not simply say, OK, go ahead, fill vacancies which should not exist but only exist because of the denial of hearings for two well-qualified women who were appointed by President Clinton.

I thank the Senator from New York for his comments, for his perception, for his willingness and determination—more than willingness—to look at the full meaning of the Constitution so that it is not just the President who makes appointments in a situation such as this and assumes that the vacancies, which were created by denial of hearings for nominees of the previous administration, will be rubberstamped by this body.

Mr. SCHUMER. Mr. President, will my colleague yield?

Mr. LEVIN. I am happy to yield.

Mr. SCHUMER. First, I compliment my friend from Michigan for his steadfastness on this issue. Everyone knows the desire of the Senator and his colleague, Senator STABENOW from Michigan, to compromise. Over and over and over again, we on this side of the aisle have said: We don't expect the President to appoint judges that we agree with on most things. In fact, for 200 judges, the vast majority of us have voted for judges with whom we don't agree on many issues.

The point is, to blame these vacancies, as my friend from Arizona tried to do, on the Senators, when the President refuses to just pick up the telephone and call them and say, ''How do we work this out,'' is very unfair.

I ask my colleague, once again, is he willing—and is Senator STABENOW, to his knowledge, willing—to sit down with the White House and come up with a compromise to fill these vacancies and that these vacancies don't have to remain vacant except for almost the intransigence of the White House to say, ''If you don't do it our way, we are not doing it any way''? Am I wrong in that assumption?

Mr. LEVIN. The Senator from New York is decidedly right. We have expressed that willingness. There have been a number of suggestions which have been made for compromise. One of the suggestions which we have made was that there be a bipartisan commission appointed in Michigan to make recommendations to the White House to fill these vacancies. The recommendations do not have to include these two women. Bipartisan commissions have been appointed in other States without this kind of a deadlock existing but simply to promote bipartisanship. That suggestion has been rejected by the White House.

There was another suggestion that was made by Senator LEAHY when he was chairman of the Judiciary Committee for that period of time the Democrats were in the majority. That suggestion was actually supported by the then-Republican Governor of Michigan. There was a recommendation by then-Chairman LEAHY as to how to resolve this issue. That was also

rejected by the White House. We continue to be open to suggestions to fill these vacancies, but we are deeply of the belief that the tactic that was used to deny hearings to qualified women—one of whom is a Michigan court of appeals judge and the other one of whom is a celebrated appellate lawyer in front of the Sixth Circuit—should not succeed. Maybe it succeeds in some places where there are not Senators in those States who will object because the new President of their party picks somebody they like and may have recommended.

But in a situation like this, when you have the advise-and-consent clause in the Constitution, and where there has been this kind of a tactic used, which the White House acknowledges was unfair—Judge Gonzalez has acknowledged that that tactic of denying hearings was unfair—simply to then fill the vacancies that were unfairly created is not something we can simply roll over and accept.

Mr. SCHUMER. Will my colleague yield further?

Mr. LEVIN. Yes.

Mr. SCHUMER. I thank the Senator for his steadfastness. He is hardly a person with a reputation of being unwilling to compromise and work things out. To my knowledge, he loves to do that kind of thing.

I will make one more point before yielding the floor. This involves my previous discussion with the Senator from Arizona, to corroborate and clarify the RECORD. There have been 35 court of appeals judges confirmed under President Bush. There were 65 in the 2 Clinton terms, twice as long. At least thus far, we are doing a better job confirming President Bush's court of appeals nominees than the previous Senates did in confirming President Clinton's. The numbers are fairly comparable, with President Bush doing a little bit better.

With that, I yield back to my colleague and tell him I fully support him in his quest for some degree of fairness and comity.

Mr. LEVIN. I thank my friend from New York.

Mr. President, I discussed with the Senator from New York the situation and the background relative to these Michigan vacancies. Two women, Helene White, a court of appeals judge, and Kathleen McCree Lewis, well known in Michigan as a very effective advocate—particularly appellate advocacy—were nominated by President Clinton to be on the Sixth Circuit Court of Appeals.

Judge White was denied a hearing for over 4 years, which is the longest time anyone has ever awaited a hearing in the Senate. She was never given a hearing by the Judiciary Committee. Kathleen McCree Lewis waited over a year and a half without a hearing in the Judiciary Committee.

For a time, there was a refusal to return blue slips on these two nominees by my then-colleague Spence Abraham. But even after Senator Abraham returned the blue slips in the spring of 2000, the women were not given hearings. They never got a vote in the Judiciary Committee or on the floor.

That distortion of the judicial nominating process was unfair to the two nominees. It deprived the previous administration of consideration by the Senate of those two nominees. Senator STABENOW and I have objected to proceeding to the current nominees until a just resolution is achieved.

Moving forward without resolving the impasse in a bipartisan manner could indeed deepen partisan differences and make future efforts to resolve this matter more difficult. I have said repeatedly that the number of Michigan vacancies on the Sixth Circuit provides an unusual opportunity for bipartisan compromise.

Judge Helene White was nominated to a vacancy on the Sixth Circuit on January 7, 1997. I returned my blue slip on Judge White's nomination. The junior Senator from Michigan, Mr. Abraham, did not. More than 10 months later, on October 22, 1997, Senator LEAHY, as ranking member of the Judiciary Committee, delivered what would be the first of at least 16 statements on the Senate floor, made over a 4-year period regarding Sixth Circuit nominations in Michigan. He called for the committee to act on Judge White's nomination. His appeal, like others that were to follow, was unsuccessful.

For instance, in October of 1998, more than a year and a half after Judge White was nominated, Senator LEAHY returned to the floor, where he warned the following:

> In each step of the process, judicial nominees are being delayed and stalled.

His plea was ignored. The 105th Congress ended without a hearing for Judge White.

On January 26, 1999, the beginning of the next Congress, President Clinton again submitted Judge White's nomination. That day, I sent one of many notes to both Senator Abraham and to the chairman of the Judiciary Committee. In that letter, I said the 105th Congress had ended without a Judiciary Committee hearing for Judge White and suggested that fundamental fairness dictated there be an early hearing in the 106th Congress. Again, no hearing.

On March 1, 1999, Judge Cornelia Kennedy took senior status, opening a second Michigan vacancy on the Sixth Circuit. The next day, Senator LEAHY returned to the floor, repeated his previous statement that nominations were being stalled, and raised Judge White's nomination as an example.

On September 16, 1999, President Clinton decided to nominate Kathleen McCree Lewis to that second vacancy. Soon thereafter, within 2 weeks, I spoke with Senator Abraham about both nominations, the Lewis and the White nominations. It had been more than 2½ years since Judge White was first nominated. Twice in the next month and a half, Senator LEAHY urged the committee to act, calling the treatment of judicial nominees unconscionable.

On November 18, 1999, I again wrote to Senator Abraham and Chairman HATCH, urging hearings in January 2000 for the two nominees. I then noted that Judge White had been waiting for nearly 3 years for a hearing, and I stated that confirmation of the two women was essential for fundamental fairness. My appeals were for naught, and 1999 ended without hearings in the Judiciary Committee.

In February of 2000, Senator LEAHY spoke again on the floor about vacancies on the Sixth Circuit. A few weeks later, in February of 2000, I made a personal plea to Senator Abraham and Chairman HATCH to hold hearings on the Michigan nominees. Again, I was unsuccessful and no hearing was scheduled.

On March 20, the chief judge of the Sixth Circuit sent a letter to Chairman HATCH expressing concerns about an alleged statement from a member of the Judiciary Committee that ''due to partisan considerations,'' there would be no more hearings or votes on vacancies for the Sixth Circuit Court of Appeals during the Clinton administration. The judge's concern would turn out to be well-founded.

On April 13, 2000, Senator Abraham returned his blue slips for both Judge White and Ms. Lewis without indicating his approval or disapproval. The day Senator Abraham returned his blue slips, I spoke to Chairman HATCH and sent him a letter reminding him that blue slips had now been returned, that objections had not been raised, expressed my concern about the unconscionable length of time the nominations had been pending, and I urged that they be placed on the agenda of the next Judiciary Committee confirmation hearing.

Those efforts were unsuccessful. Two Michigan nominees were not placed on the agenda. I tried again early May 2000. I sent another note to Chairman HATCH, but those nominations were not placed on the committee's hearing agenda then or ever.

Over the next several months, Senator LEAHY went to the floor 10 more times to urge action on the Michigan nominees. More than once, I also raised the issue on the Senate floor.

In the fall of 2000, in a final attempt to move the nominations of two Michigan nominees, I met with the majority leader, Senator LOTT, and Senator DASCHLE to discuss the situation. I sent a letter to the majority leader urging him, stating, ''The nominees from Michigan are women of integrity and fairness. They have been stalled in this Senate for an unconscionable amount of time without any stated reason.''

Neither the meeting with the majority leader nor the letter resulted in the Judiciary Committee holding hearings on these nominations, and the 106th

Congress ended without hearings for either woman.

Judge White's nomination was pending for more than 4 years, the longest period of time of any circuit court nominee waiting for a hearing in the history of the Senate. And Ms. Lewis's nomination was pending for over a year and a half.

There has been a great debate over the issue of blue slips. I am not sure this is the place for a lengthy debate on that issue, but I will say there has not been a consistent policy, apparently, relative to blue slips, although it would seem as though the inconsistency has worked one way.

In 1997, when asked by a reporter about a Texas nominee opposed by the Republican Senators from Texas, Chairman HATCH said the policy is that if a Senator returns a negative blue slip, that person is going to be dead. In October 7, 1999, Chairman HATCH said, with respect to the nomination of Judge Ronnie White:

> I might add, had both home-State Senators been opposed to Judge (Ronnie) White in committee, John White would never have come to the floor under our rules. I have to say, that would be true whether they are Democrat Senators or Republican Senators. That has just been the way the Judiciary Committee has operated. . . .

Apparently, it is not operating that way anymore because both Michigan Senators have objected to this nominee based on the reasons which I have set forth: that we cannot accept a tactic which keeps vacancies open, refusing hearings to the nominees of one President to keep vacancies open so they can then be filled by another President. That tactic should be stopped. It is not going to be stopped if these nominations are just simply approved without a compromise being worked out which would preserve a bipartisan spirit and the constitutional spirit about the appointment of Federal judges.

It is my understanding that not a single judicial nominee for district or circuit courts—not one—got a Judiciary Committee hearing during the Clinton administration if there was opposition from one home State Senator, let alone two. Now both home State Senators oppose proceeding with these judicial nominees absent a bipartisan approach.

Enough about blue slips. Senator Abraham then did return blue slips in April of 2000. He had marked them neither ''support'' nor ''oppose'', but they were returned without a statement of opposition. And what happened? What happened is, even though those blue slips were returned by Senator Abraham, there still were no hearings given to the Michigan nominees to the Sixth Circuit.

There was also an Ohio nominee named Kent Markus who was nominated to the Sixth Circuit. In his case, both home State Senators indicated their approval of his nomination, but nonetheless, this Clinton nominee was not granted a Judiciary Committee hearing, and his troubling account of that experience shed some additional light on the Michigan situation.

He testified before the Judiciary Committee last May, and said the following. This is the Ohio Clinton nominee to the Sixth Circuit:

> To their credit, Senator DeWine and his staff and Senator Hatch's staff and others close to him were straight with me. Over and over again they told me two things: One, there will be no more confirmations to the Sixth Circuit during the Clinton administration, and two, this has nothing to do with you; don't take it personally—it doesn't matter who the nominee is, what credentials they may have or what support they may have.

Then Marcus went on. This is his testimony in front of the Judiciary Committee:

> On one occasion, Senator DeWine told me ''This is bigger than you and it's bigger than me.'' Senator Kohl, who kindly agreed to champion my nomination within the Judiciary Committee, encountered a similar brick wall. . . . The fact was, a decision had been made to hold the vacancies and see who won the Presidential election. With a Bush win, all those seats could go to Bush rather than Clinton nominees.

We are not alone in the view that what occurred with respect to these Sixth Circuit nominees was fundamentally unfair. Even Judge Gonzales, the current White House counsel, has acknowledged it was wrong for the Republican-led Senate to delay action on judicial nominees for partisan reasons, at one point even calling the treatment of some nominees ''inexcusable,'' to use his word.

The tactic used against the two Michigan nominees should not be allowed to succeed, but as determined as we are that it not succeed, we are equally determined that there be a bipartisan solution, both to resolve a current impasse, but also for the sake of this process. There is such an opportunity to have a bipartisan solution because there are four Michigan vacancies on the Sixth Circuit.

In order to achieve a fair resolution, Senator STABENOW and I have made a number of proposals, and we have accepted a number of proposals. We proposed a bipartisan commission to recommend nominees to the President. Similar commissions have been used in other States. The commission would not be limited to any particular people. The two nominees of President Clinton may not be recommended by a bipartisan commission. Of greater importance, the existence of recommendations of a commission are not binding on the President.

The White House, in response to this suggestion—again, even though it was used in other States—has said that the constitutional power to appoint judges rests with the President, and of course it does. So there is no way anyone would propose or should propose that a bipartisan commission be able to make recommendations which would be binding upon the President of the United States, nor is the recommendation binding upon the Senate of the United States. It is simply a recommendation. This has occurred in other States under these and similar circumstances, and there is no reason why it should not be used here.

We also, again, were given a suggestion by the then-chairman of the Judiciary Committee, Senator LEAHY, who has tried his very best to figure out a solution to this deadlock. Senator LEAHY made a suggestion which was acceptable to both Senator STABENOW and me. It was acceptable even to the then-Republican Governor of the State of Michigan, Governor Engler, but it was rejected by the White House.

We have an unusual opportunity to obtain a bipartisan solution. It is an opportunity which has been afforded to us by the large number of vacancies in Michigan on the Sixth Circuit Court of Appeals. Finding that bipartisan path would be of great benefit, not just as a solution to this problem but to set a positive tone for the resolution of other judicial disputes as well.

In addition to the points which I have made, we made the additional point at the Judiciary Committee relative to the qualifications of Judge Saad. We indicated then and we went into some detail then that it is our belief that his judicial temperament falls below the standard expected of nominees to the second highest court in this country.

The Judiciary Committee considered a number of issues relating to that subject, judicial temperament or shortfall thereof, of this nominee in a closed session of the Judiciary Committee. I will not go into detail further, except to say we have made that point. We feel very keenly about that issue.

The vote in the Judiciary Committee was 10 to 9 to report out this nomination. It was a vote along party lines. The temperament issue, however, was raised, and properly so, in the Judiciary Committee, as well as this basic underlying issue which I have spent some time outlining this afternoon.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. ALLARD). Without objection, it is so ordered.

THE IRAQ DEBATE

Mr. MCCONNELL. Mr. President, I rise today to discuss a matter of great relevance to the debate about the war in Iraq and the recent Senate report on the intelligence community. This report has illuminated a subject of considerable controversy and partisan criticism of the President.

I also rise to speak about the importance of maintaining a basic standard of fairness in American politics.

I am talking about the controversy that erupted over the infamous ''16