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

words'' in the State of the Union Address that Senator KERRY and numerous Senate Democrats and the media cited in accusations that the President misled the country into war.

On January 28, 2003, President Bush told the American people that:

The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.

That was in the President's State of the Union address in January 2003.

When doubt surfaced about some—but not all—of the evidence supporting this claim, Joe Wilson, who had traveled to Niger to investigate an aspect of the intelligence, penned an op-ed in the New York Times accusing the administration of manipulating intelligence.

Not pausing for a full investigation, a partisan parade of Democratic Senators and Presidential candidates took to the streets to criticize the President and accuse him of misleading the Nation into war, a very serious charge.

Sensing a scandal, the media pounced.

NBC aired 40 reports on Wilson's claim. CBS aired 30 reports, while ABC aired 18.

Newspapers did not hold back either. The New York Times printed 70 articles reinforcing these allegations, while the Washington Post printed 98.

Pundits and politicians gorged themselves on the story.

Joe Wilson rose to great fame on the back of this inflammatory charge. He wrote a book for which he received a five-figure advance, he was lionized by the liberal left, and he became an adviser to Senator KERRY's Presidential campaign, a campaign to which he is also a financial contributor.

Of course, we now know Wilson's allegation was false. And we know the chief proponent of this charge, Joe Wilson, has been proven to be a liar.

After more than a year of misrepresentation and obfuscation, two bipartisan reports from two different countries have thoroughly repudiated Wilson's assertions and determined that President Bush's 16-word statement about Iraq's effort to procure uranium from Niger was well founded.

In fact, the real 16-word statement we should focus on is the one from Lord Butler's comprehensive report about British intelligence. Here is what he had to say:

We conclude that the statement in President Bush's State of the Union address . . . is well founded.

Let me repeat Lord Butler's statement:

We conclude that the statement in President Bush's State of the Union address . . . is well founded.

Those are 16 words to remember.

It is now worth the Senate's time to consider Mr. Wilson's claims.

Claim No. 1 is Wilson's assertion that his Niger trip report should have debunked the State of the Union claim.

On this bold allegation, the Senate's bipartisan report included this important conclusion:

The report on the former Ambassador's trip to Niger, disseminated in March 2002, did not change any analysts' assessments of the Iraq-Niger uranium deal. For most analysts, the information in the report lent more credibility to the original CIA reports on the uranium deal. . . .

Let me repeat:

For most analysts, the information in the report lent more credibility to the original CIA reports on the uranium deal. . . .

Claim No. 2 is similarly egregious.

According to the Washington Post, ''Wilson provided misleading information to the Washington Post last June. He said then that the Niger intelligence was based on a document that had clearly been forged . . . '' But ''the documents . . . were not in U.S. hands until eight months after Wilson made his trip to Niger.''

Predictably, this bombshell appeared on page A9. Page A9, Mr. President. After this story had previously enjoyed extensive coverage on Page A1.

There were indeed document forgeries, but these documents were not the only evidence that convinced foreign intelligence services about Iraq's efforts to purchase uranium.

Damningly, the former Prime Minister of Niger himself believed the Iraqis wanted to purchase uranium and according to the Financial Times:

European intelligence officers have now revealed that three years before the fake documents became public, human and electronic intelligence sources from a number of countries picked up repeated discussion of an illicit trade in uranium from Niger. One of the customers discussed by the traders was Iraq.

And the Wall Street Journal has reported that:

French and British intelligence (services) separately told the U.S. about possible Iraqi attempts to buy uranium in Niger.—7/19/04

Mr. President, when the French corroborate a story that Iraq is seeking WMD, you're probably in the right ballpark.

Indeed, the Senate's bipartisan report concluded that at the time:

it was reasonable for analysts to assess that Iraq may have been seeking uranium from Africa based on CIA reporting and other available intelligence.

Claim No. 3 is Wilson's repeated denial that his wife, Valerie Plame, a CIA analyst, never recommended him for the Niger trip.

In his ironically titled book, The Politics of Truth, Wilson claimed:

Valerie had nothing to do with the matter She definitely had not proposed that I make the trip.

In fact, the bipartisan Senate Intelligence Report includes testimony that Plame ''offered up his name'' and quotes a memo that Plame wrote that asserts ''my husband has good relations with Niger officials.''

The New York Times recently reported that:

Instead of assigning a trained intelligence officer to the Niger case, though, the C.I.A. sent a former American Ambassador, Joseph Wilson, to talk to former Niger officials. His wife, Valerie Plame, was an officer in the counterproliferation division, and she had suggested that he be sent to Niger, according to the Senate report.

That story can be read on Page A14 of the New York Times.

Claim No. 4 is Wilson's allegation that the CIA warned the White House about the Niger claim and that the White House manipulated intelligence to bolster its argument for war. Wilson charged:

The problem is not the intelligence but the manipulation of intelligence. That will all come out despite (Sen.) Roberts' effort to shift the blame. This was and is a White House issue, not a CIA issue.

This reckless charge by Wilson was, we know, repeated by many of the President's critics.

Of course, it is not true. It simply is not true.

The Senate Intelligence Report determined the White House did not manipulate intelligence, but rather that the CIA had provided faulty information to policymakers. And the Washington Post recently reported that ''Contrary to Wilson's assertions the CIA did not tell the White House it had qualms about the reliability of the Africa intelligence.'' (Susan Schmidt, Washington Post, A9, 7/10/04)

Again: Front page news on Page A9.

According to the New York Times and the Senate Intelligence Report, Joe Wilson admitted to Committee staff that some of his assertions in his book may have, quote, ''involved a little literary flair.''

''Literary flair'' is a fancy way of saying what ordinary people shooting the breeze on their front porches all across America call by its real name: a lie. That is what it is.

So, the truth is Joe Wilson did not expose the Administration; in fact, he has been exposed as a liar.

He misrepresented the findings of his trip to Niger, he fabricated stories about recognizing forgeries he never saw, he falsely accused the White House of manipulating intelligence, and he misrepresented his wife's role in promoting him for the mission.

Joe Wilson's false claims have been exposed, but the networks aren't rushing to correct the story. Will NBC correct the 40 times it ran Wilson's claims, will CBS correct the 30 times, will ABC correct the 18?

To be sure, a few networks and newspapers have noted the Senate Intelligence Report conclusions, but where is the balance? Where are the lead stories? Where are the banner headlines? In short, where is the fairness?

Sadly, that is the state of political coverage in this election year. Screaming charges about the President made on A1, repudiation of the charges on A9, if they are made at all. Is that fair?

What of the political campaigns? It's a small wonder the Democrat candidates for President and their supporters aggressively picked up the Wilson claim. After all, the media was driving the train, so why not hitch a ride?

However, now that Wilson's false claims have been exposed, shouldn't a

basic sense of fairness prevail? Shouldn't the partisans admit they were wrong, too?

For example, some of my colleagues in the Senate should ask themselves if it's now appropriate to distance themselves from Joe Wilson's distortions. Speaking on this floor on March 23, the Minority Leader praised Wilson and accused the Administration of retaliating against him:

When Ambassador Joe Wilson told the truth about the administration's misleading claims about Iraq, Niger, and uranium, the people around the President didn't respond with facts. Instead they publicly disclosed that Ambassador Wilson's wife was a deep-cover CIA agent.

Just last month, Senator DASCHLE noted:

Sunlight, it's been said, is the best disinfectant. But for too long, the administration has been able to keep Congress and the American people in the dark . . . other serious matters, such as the manipulation of intelligence about Iraq, have received only fitful attention.

I hope he will acknowledge now the inaccuracy of his statement, and allow the sunlight to shine on Ambassador Wilson's fictions.

Senator KERRY welcomed Wilson onto his campaign team of advisors, and his campaign hosts Wilson's website, which carries a disclaimer that it is ''Paid for by JOHN KERRY for President, Inc.''

The Kerry/Wilson website includes a collection of articles by and about Joe Wilson that propound his baseless allegations against the Bush Administration, which I don't have time to go into today. Suffice it to say that showcasing Wilson's discredited views should at least be met with some acknowledgement that he was wrong all along.

Perhaps we can learn a thing or two from the recent episode involving Sandy Berger.

Berger, an advisor to President Clinton and Senator KERRY stepped down from the Kerry campaign. He's under investigation for removing and possibly destroying classified documents being reviewed by the 9/11 Commission.

Were I to engage in a little literary flair, I might say it seems Sandy walked out of the National Archives with some PDBs in his BVDs, and some classified docs in his socks. At any rate, I think it is appropriate, and politically wise, for him to leave the Kerry campaign.

It is clear Senator KERRY approved of Mr. Berger's departure. He should certainly ask the discredited Mr. WILSON to leave the team as well.

I close with a simple observation. I believe vigorous political disagreements are the heart of a strong democracy. When our debates are rooted in fact, impassioned political disagreement makes our country stronger.

I also believe Americans value fundamental fairness—fundamental fairness—and deserve a news media that reflects this value. How is it fair to report an accusation with blaring page 1 headlines and around-the-clock television coverage and not give a slam-dunk repudiation of the charge the same kind of attention?

We will watch over the next few days to see if fundamental fairness will be met, and if those who championed Mr. WILSON's charges will set the record straight.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I compliment the distinguished majority whip, the assistant floor leader, for what is an excellent set of remarks, long overdue and very much on point.

I am on the Senate Select Committee on Intelligence. I remember when this whole brouhaha came up, how demeaned the President of the United States was, not only by the media but by this man, Ambassador Wilson, who immediately took great glee in slamming the President because of 16 words that happened to be accurate. We could not talk about it before now, but the British findings show the President was accurate. And I, for one, am very happy for the Butler report and for what came out.

I agree with the distinguished Senator from Kentucky that this was page 1 offensive media to the President of the United States, undermining what he was saying, what he was doing, and what we have backed him on this floor in doing. Now that this man has been caught in these shall I say discrepancies—some might be a lot stronger than that—we see hardly any comments about it. But having said that, I have to say I have been reading the Washington Post, and they have acted quite responsibly. Many of the other media have not acted that way. But the distinguished Senator from Kentucky covered this matter very well.

I feel sorry whenever partisan politics trumps truth, whenever, in the interest of trying to get a political advantage from one side or the other, anybody of the stature of a former Ambassador of the United States would participate in distorting the record, especially when he knew better.

So again, I thank my colleague.

Mr. MCCONNELL. Mr. President, I thank my friend from Utah. Hopefully, this will be the beginning of a wave of coverage both on the networks and in the newspapers on correcting the record and making it clear that Mr. Wilson's assertions are demonstrably false and have been so found by two different important reports.

Mr. HATCH. Mr. President, I thank my colleague. I want to comment that anybody with brains, when they saw that Iraqi team and knew of the Iraqi team—of course, they could not say much about it until now—knew the Iraqi team had gone over to Niger, why else would they have spent the time? Niger had hardly any exportable products other than food, except for yellowcake uranium. Why would they waste their time going to Niger?

I remember at the time thinking: This smells, this argument that the President has misused 16 words and that the CIA should be held totally responsible because those 16 words were wrong. And now we find they were not necessarily wrong. In fact, they were right.

That smacks of this whole matter of partisanship with regard to the current Presidential race. We have our two colleagues on the other side who are now running for President and Vice President who voted for our actions in Iraq. At least one of them spoke out on how serious the actions of the Iraqi regime under Saddam Hussein were, voted for it, and now they are trying to weasel out because they voted against funding it, saying they wanted to get it done right. Well, that is a nice argument, except that we have well over 100,000 of our young men and women over there, and others as well, who are put at risk if we do not fund the effort once it has started.

Secondly, I heard lots of comments from the other side as to weapons of mass destruction. They knew Saddam Hussein had them in the early 1990s. The U.N. knew they had them. Almost every Democrat of substance spoke out that he had them, were concerned about the fact that he had weapons of mass destruction, that he was trying to obtain weapons of mass destruction, including the distinguished candidate for President in the Democratic Party.

And to get cheap political advantage, they have tried to undermine the President of the United States because, so far, we have not been able to discover except small evidences of actual weapons of mass destruction.

What has not been said, for the most part, is any basement in Baghdad, any swimming pool in Baghdad—a city the size of Los Angeles—could store all of the biological weapons necessary to kill a whole city such as Baghdad or Los Angeles and could store all of the chemical weapons that could cause havoc all over the world. The fact we have not found them yet does not mean they are not there.

It does appear the nuclear program Saddam Hussein had authorized in the early 1990s—and had been well on its way to accomplishing the development of a nuclear device—was not as forward advanced as many of us thought. But there is no question they had the scientists in place. There is no question they had the knowledge in place. There is no question they had the documents in place. There is no question he wanted to do that, no question that he would have done it if he could.

I think as time goes on, more and more information will come out that will indicate that the President of the United States has taken the right course, with the help of this whole body. It seems strange to me that so many are trying to weasel out of the position they took earlier in backing the President of the United States and in backing our country and in backing

our soldiers, and are trying to make political advantage out of some of the difficulties we have over there.

Now that political advantage has been tremendously diminished—tremendously diminished—as of the time that jurisdiction was turned over to the Iraqis. They are now running their country, with us as backup to help them, to help bring about the freedoms all of us in America take for granted every day. I doubt they will ever have the total freedoms we take for granted every day, but they have a lot more freedom now than they ever even contemplated or thought possible under the Saddam Hussein regime.

That is because of our country. That is because of our young men and women who have sacrificed. I particularly resent it when, for cheap political advantage, some of our colleagues get up and moan and groan about what is going on over there. Every time they do it, it undermines the very nature of what our young men and women are sacrificing to accomplish.

Fortunately, it is the few who do that. But nobody on this floor on either side should be undermining our young men and women over in Iraq, who are heroically serving, some dying—over 900, as we stand here today.

Cheap political advantage—that is the era we are in, I take it. Both sides from time to time have used efforts to accomplish cheap political advantage, but I have never heard it worse than what I have seen this year against this President. I have never seen a more vicious group of people than the outside commentators who hate President Bush. In all honesty, we can sit back and let these terrorists run around this world and do whatever they want to do and act like it won't affect us or we can take action to try to solve the problem.

It is a long-term problem; it is not a short-term one. It is going to take a lot of courage and good leadership, and it is going to take people who don't just quit and hope they will go away. They are not going to go away. These people are committed ideologues. They are theocratic ideologues. And in many respects throughout the history of the world, that is where most of the really dangerous difficulties come. It is through vicious, radical, theocratic ideologues. Frankly, that is what we are facing. Anybody who thinks this is going to be just an easy slam dunk to resolve has not looked at any of the intelligence, has not thought it through, and really has not spent enough time worrying about it on the Senate floor or otherwise.

I have not always agreed with our President. I probably have been wrong when I haven't. The fact is, I sure agree with him in supporting our troops and supporting freedom in the world. Think about it. If Saddam Hussein had been allowed to go on unchecked, not only would millions of Iraqis be kept in terrible conditions, upwards of a million killed viciously by that regime, but ultimately he would have developed nuclear weapons, as he was trying to do in the early 1990s and came close to doing by everybody's measure who knew anything about it. Had that occurred and we didn't do anything about it, guess who would have had to. And if they had to, as they did in the early 1980s in taking out the nuclear reactor, we would have world war III without question.

So there is a lot involved here. This is not some simple itty-bitty problem, nor is it something conjured up by the President of the United States, nor is it something that really intelligent, honest, bipartisan people should ignore. We need to work together in the best interests of this country and of the world to make sure that these madmen do not control the world and continue to control our destinies and that these madmen don't get so powerful that they can do just about anything they want to in the world. You can see how they try to intimidate just by threats and even action. Well, great countries cannot give in to threats, nor can we give in to offensive action that needs to be dealt with. This country has led the world in standing for freedom.

I have to say that I loved the comment of Colin Powell when somebody in a foreign land snidely accused the United States of attempted hegemony or trying to be imperial. He basically said: Our young men and women have given their lives all over this world for freedom, and the only ground that we have ever asked in return is that in which we bury our dead. That is true to this day. I think if the rest of the world looks at it honestly, they will have to say America really does stand for that principle: freedom and decency and honor and justice, not just in this land but for other lands as well.

Mr. President, as I understand it, we are on the Saad nomination.

The PRESIDING OFFICER (Mr. TALENT). The Senator is correct.

Mr. HATCH. As we begin the debate on this nomination, I want to put it in the larger context of the judicial nomination process.

On May 9, 2001, President Bush nominated 11 outstanding individuals to serve on the Federal bench. I would note that this was months earlier than previous new Presidents, giving the Senate plenty of time to begin considering his nominees. In the 3-plus years—over 1,100 days—since those nominations, the Senate has confirmed only 8 of the first 11 nominees. By comparison, the previous 3 Presidents saw their first 11 appeals court nominees all confirmed in an average of just 81 days following their nomination. We are now 1,100 days past. Not so for President Bush.

While three of his first nominees were confirmed within 6 months, many others waited for 2 years or more before they were confirmed. But even this long wait was better than the fate of the three remaining nominees who have been subjected to filibusters.

One of those, Miguel Estrada, waited for more than 2½ years and became the target of the first filibuster against a judicial nominee in American history. This Hispanic man deserved better treatment, but he was mistreated for crass partisan purposes. Though a bipartisan majority of Senators supported Miguel Estrada, he had to withdraw after an unprecedented seven cloture votes, meaning seven attempts to try and get to a vote where he could have a vote up or down. Those seven cloture votes, any one of which would have ended the filibuster and allowed that vote up or down, he went through seven of them, the most in the history of this country for any judicial nominee. By the way, the only nominees who have ever had to go through cloture votes in a real filibuster or in real filibusters have been President Bush's nominees. We have had cloture votes before, but there never was any question that the nominees were going to get a vote in the end.

Several weeks prior to those first nominations, shortly after President Bush's inauguration, the Democratic leader stated that the Senate minority would use ''whatever means necessary'' to block judicial nominees they did not like. We have seen the fulfillment of that statement as a variety of techniques have been employed to delay or obstruct the confirmation of nominees, including bottling up nominees in committee, injecting ideology into the confirmation process, seeking all unpublished opinions, requesting nominees to produce Government-owned confidential memoranda, repeated rounds of written questions, and multiple filibusters. It is a sad commentary on the deterioration of the judicial confirmation process that we are now approaching double-digit filibusters in the U.S. Senate of 10 judges or more.

Let me reiterate a few points which I made yesterday concerning the process of confirming judges. Despite this range and frequency of obstructionist tactics which we have seen, some of them entirely new in American history, the Senate has confirmed 198 judges during the past 3 years. I will note that this is behind the pace of President Clinton in his first term. And the minority has made even these confirmations as difficult as possible. Yet some of my colleagues think that the constitutional duty to advise and consent has a time clock attached to it and that the time has run out for the Senate to do its duty. I reject this analysis, either that the previous agreement to allow the vote on the 25 judges was the sum total of our work in the Senate or the notion that judicial nominations cannot be confirmed after some mythical deadline is announced.

There are plenty of examples of confirmation of judges in Presidential election years during the fall, some of which occurred during or after the election was held. Stephen Breyer is a perfect illustration. He now sits on the Supreme Court of the United States.

Stephen Breyer was confirmed to the First Circuit Court of Appeals. That is just one example. I was the one who helped make that possible because Reagan had been elected.

The Republicans had won the Senate for the first time in decades. There was no real reason to allow what many thought was a liberal Democrat to be appointed to any court at that point or to be confirmed to any court at that point. But Stephen Breyer was an exceptional man. He not only had been chief of staff to Senator KENNEDY on the Judiciary Committee, and not only was he a Harvard law professor and a brilliant legal theorist, he was a very honest, decent, honorable man. I helped carry that fight. It wasn't much of a fight in the end because the Republicans agreed, and we confirmed Stephen Breyer late in the year after the election took place.

I helped facilitate that confirmation which took place after the November 1980 presidential election. That nomination was made by President Carter, who had just been defeated by President Reagan, and yet we acted on it. I note that Senator Thurmond was the ranking member at that time. Yet his name continues to be invoked as the authority of a binding precedent. I reject the notion of this purported rule and would hope that the service of the longest serving and oldest Member to have served in this body would not be used in the manner I have heard repeated in the committee and on the Senate floor.

Besides, Senator Thurmond was chairman of the committee, and at one time he did say: We have had enough confirmations, and this is what we are going to do. We are going to stop this year.

But even then he didn't.

Under the Senate Democrats' theory, the Senate has apparently confirmed enough judges. The remaining vacancies, half of which are classified as judicial emergencies because of the backlog, just don't seem to matter to them. According to their analysis, because of some acceptable vacancy rate or because of the mythical time clock, the remaining 25 judges pending before the Senate should be dismissed out of hand. This is not logical, nor is it the proper approach to take under the Constitution.

I will also respond to some of the arguments made that Senate Democrats have only rejected six or seven nominees. The fact is, the Senate has not rejected the nominees which have been filibustered. If they have the votes to defeat the nominee, then let those votes be cast and let the results stand. But a minority of Senators are denying the Senate from either confirming or defeating some of these nominees. That is what we are seeking today—an up or down vote.

Mr. President, unfortunately, one of the battlegrounds of this judicial obstructionism has been the Sixth Circuit Court of Appeals. Despite President Bush's attempt to fill four critical vacancies on that court, and two district vacancies in Michigan, these nominations remained stalled in the Senate. There are many factors contributing to the stalemate we have found ourselves in with regard to confirmations on the Sixth Circuit, some of which go back to the Clinton administration. I will discuss that in detail at a later point, but for now, everyone knows that I have been working to reach an accommodation that would help move this process forward.

I have great respect for Senators LEVIN and STABENOW. I have worked for many years with Senator LEVIN and have reached agreements with him on many difficult issues. For example, Senator LEVIN and I worked with Senators BIDEN and MOYNIHAN to dramatically revise the regulations pertaining to heroin addiction treatment. That effort is paying off. I remain hopeful that we can do so here.

On this issue, I have continued to work with Senators LEVIN and STABENOW. I have carefully listened to their concerns. And while the Michigan Senators' negative blue slips were accorded substantial weight—that is why this has taken so long—I delayed scheduling a hearing on any of the Michigan nominees because of the Michigan Senators' views. Their negative blue slips are not dispositive under the committee's Kennedy-Biden-Hatch blue slip policy. It was started by Senator KENNEDY, confirmed by Senator BIDEN, and I have gone along with my two liberal colleagues on the committee.

I don't think there is any doubt that I have attempted to reach an accommodation that would fill these seats. Unfortunately, my efforts have not been successful. I remain hopeful that we can come to a resolution, and I will keep trying to do so. But I must emphasize, in my view, integral to any accommodation is the confirmation of Judge Saad, Judge Griffin, and Judge McKeague—at least votes up or down. Since they have a majority of people in the Senate who would vote for them, I believe they would be confirmed in the end.

These are exceptional individuals. Judge Saad and Judge Griffin both serve on the Michigan Court of Appeals. Judge McKeague is a district Judge for the United States District Court for the Western District of Michigan. He was unanimously confirmed by the U.S. Senate.

It has been nearly 1 year since the Judiciary Committee first considered the nomination of Henry W. Saad, who has been nominated for a position on the United States Court of Appeals for the Sixth Circuit. This is an historic appointment. Upon his confirmation, Judge Saad will become the first Arab-American to sit on the Sixth Circuit, which covers the States of Kentucky, Ohio, Tennessee, and Michigan.

It is long past time for the Senate to consider Judge Saad's nomination. He was first nominated to fill a Federal judgeship in 1992, when the first President Bush nominated him for a seat on the United States District Court for the Eastern District of Michigan. The fact that he did not get a hearing may have worked to his benefit, since he was appointed in 1994 by Governor Engler to a seat on the Michigan Court of Appeals. He was elected to retain his seat in 1996 and again in 2002, receiving broad bipartisan support in each election.

On November 8, 2001, President Bush nominated Judge Saad for a seat on the Sixth Circuit, the position for which we are considering him today. When no action was taken on his nomination during the 107th Congress, President Bush renominated him to the Sixth Circuit on January 7, 2003. All told, Judge Saad has been nominated for a seat on the Federal bench three separate times. It is high time the Senate completed action on his nomination.

Judge Saad's credentials for this position are impeccable. He graduated with distinction from Wayne State University in 1971 and magna cum laude from Wayne State University Law School in 1974. He then spent 20 years in the private practice of law with one of Michigan's leading firms, Dickinson, Wright, specializing in product liability, commercial litigation, employment law, labor law, school law and libel law. In addition, he has served as an adjunct professor at both the University of Detroit Mercy School of Law and at Wayne State University Law School.

Judge Saad is active in legal and community affairs. Some of the organizations he has been involved with include educational television, where he serves as a trustee, the American Heart Association, Mothers Against Drunk Driving, and other nonprofit organizations that serve the elderly and impaired. As a leader in the Arab-American community, Judge Saad has worked with a variety of organizations in promoting understanding and good relations throughout all ethnic, racial, and religious communities. He is an outstanding role model.

Judge Saad enjoys broad bipartisan support throughout his State, as evidenced by endorsements in his last election by the Michigan State AFL–CIO and the United Auto Workers of Michigan. He has received dozens of letters of support from leading political figures, fellow judges, law professors, private attorneys, the Michigan Chamber of Commerce, and a variety of other groups.

Let me quote from just a few of the letters received in support of Judge Saad's nomination. Maura D. Corrigan, Chief Justice of the Michigan Supreme Court, wrote: ''Henry Saad has distinguished himself as a fair-minded and independent jurist who respects the rule of law, the independence of the judiciary, and the constitutional role of the judiciary in our tripartite form of government. . . . Judge Saad is a public servant of exceptional intelligence

and integrity. He has the respect of the bench and the bar.'' Other judges have written that he is ''a hard-working and honorable individual'' and that he is ''an outstanding appellate jurist with a strong work ethic.'' Roman Gribbs, a lifelong Democrat and retired judge, wrote, ''Henry Saad is a man of personal and professional integrity, is fair-minded, very conscientious and is above all, an outstanding jurist.'' Judge Saad has clearly earned the respect and admiration of his colleagues on the Michigan State court bench. His nomination deserves consideration by this Senate.

I hope that our consideration of Judge Saad's nomination is not overshadowed by collateral arguments about the propriety of his nomination, the committee blue slip process, an attack on his personal character and qualifications, or other diversionary arguments. The question before the Senate is the qualifications of Judge Saad to sit on the Federal bench.

We have heard from the other side about the President just steamrolling these nominations, without consulting with the home state Senators.

Mr. SESSIONS. Mr. President, I join the distinguished chairman of the Judiciary Committee, Senator HATCH, in supporting Henry Saad for the U.S. Circuit Court for the Sixth Circuit. He is an exceptionally qualified nominee who has great support in his area. He graduated with distinction from Wayne State University and then magna cum laude at Wayne State University School of Law. He has served for a decade on the Michigan Court of Appeals. He was nominated for this position by former President Bush 10 years ago and was held up, blocked, and did not get a hearing, and now he is back and being held up again.

He has the necessary experience to serve. He has been active in his community. He is a Heart Association board member, Oakland College Community Foundation chairman, member of the board of the Judges Association, Michigan Department of Civil Rights hearing referee. He is a Community Foundation of Southeast Michigan board member. He has written a number of articles on subjects such as employment discrimination, AIDS in the workplace, libel standards, and legal ethics. He has given a number of speeches, primarily on appellate advocacy. He has been nominated for a position as an appellate judge, so this is good experience. Appellate judges do not try cases, as the Presiding Officer knows. Appellate judges review trials that went on before. They review briefs carefully and they hear arguments from attorneys involved in a case and who have written briefs in summary, and then they make written rulings to decide whether the trial was properly tried or not. We need him on this circuit.

I have to share some thoughts about this matter because it is important and something smells bad. It is not good what has occurred with regard to this nominee and other nominees to the Sixth Circuit. There has been an orchestrated effort to block rule of law nominees for some time now.

The House of Representatives had hearings on this matter some time ago and was highly critical about what has occurred. Frankly, I am not sure we fully know the story yet of all that occurred. Let's take recent history when the Democrats were in the majority in the Senate and they controlled the Judiciary Committee and could decide what nominees came up for vote.

The Democrats made a number of questionable decisions, and they took care of some outside groups, and they took certain steps that were quite significant. A number of nominees were delayed or blocked. As I recall, even then there were four, maybe six, vacancies in this circuit. Right now, 25 percent of the circuit is vacant. It is an emergency situation, according to the courts, because we have so many vacancies there.

Thirty-one assistant United States attorneys—these are the prosecutors who try cases every day, not a political group, but a group of workhorse attorneys trying cases—have expressed concern about the failure to fill these appointments and how long it takes their criminal appeals to be decided. But I want to share this with my colleagues because I think we might as well talk about it. I wish it had not happened, but it has.

Take the case of Julia Gibbons of Tennessee. She was a very talented nominee to the Sixth Circuit early on. When the Democrats were in control of the Judiciary Committee, her nomination in 2001 was mysteriously slowed down. It did not move. At one point in March of 2002, Senator MCCONNELL spoke on the floor, and he complained that she had waited 164 days and never had a hearing, and we wondered what was going on and why this fine nominee was being held up.

We now know through the release of internal memos that were published in newspapers, in the Wall Street Journal and other places that discussed this case, what happened. Frankly, I do not think these memos should have been made public—under the circumstances, they were, based on what I know. But things leak around here. That is the way it is. I have to share with this body what occurred.

What we know is that in April of 2002, there was a staff memorandum to Senator KENNEDY from his staff that indicates that the NAACP, which was a party to a Sixth Circuit case, the Michigan affirmative action case to be exact, that they considered to be an important case—this is what the memorandum says: That the NAACP

> would like the Judiciary Committee to hold off on any Sixth Circuit nominees until the University of Michigan case regarding the constitutionality of affirmative action in higher education is decided by the en banc, Sixth Circuit. . . .
>
> The thinking is that the current Sixth Circuit will sustain the affirmative action program, but that if a new judge with conservative views is confirmed before the case is decided, the new judge will be able . . . to review the case and vote on it.

The Kennedy memorandum further states that some ''are a little concerned about the propriety of scheduling hearings based on the resolution of a particular case. We are also aware that the Sixth Circuit is in dire need of judges.''

The memorandum goes on to conclude:

> Nevertheless we recommend that Gibbons be scheduled for a later hearing: The Michigan case is important.

Even though it was understood to be wrong to influence the outcome of a pending case, it was recommended that Gibbons be delayed.

Now, people like to suggest that the holdup in these nominations is some flap with the home State Senators, that it is tit for tat. I remember a good friend who former President Bush nominated, John Smietanka, for this circuit. He was blocked. He was a wonderful nominee, a saintly person really, a great judge. He was blocked, so they say this is all tit for tat, but I do not think so.

I am afraid what really is at work is this circuit was narrowly divided. In fact, as I recall, the University of Michigan case was decided by one vote. Had the new judge been confirmed and voted the other way, it would have been a tie vote. That verdict would not have come out as it did. So I think there is an attempt to shape the makeup of this court. Let's not make any mistake about this whole issue. The judiciary debate is not about politics; it is not Republican versus Democrat. This debate is about the beliefs, the value judgment, and the legal philosophy of President Bush, and I dare suggest a vast majority of American citizens. President Bush and the American people believe that judges should be bound by the law, they should follow the law, they should strictly follow the law, and that unelected, lifetime appointed Federal judges are not in power to set social policy because they are unaccountable to the public. So that is the big deal.

There are people who believe otherwise. There are people who can no longer win these issues at the ballot box, if they ever could. They want judges to declare things that they do not want to have their fingerprints on, like taking God out of the Pledge of Allegiance. These are activist decisions. So I believe this is a matter far deeper than just Republican versus Democrat; it represents a debate about the nature of the American judiciary—do we stay true to an Anglo-American tradition that judges are not political, that they are independent, that they wear that robe to distinguish themselves from the normal person, that they isolate themselves from politics, and that they study the law and rule on the law?

That is what I believe a judge ought to do. That is the ideal of American law. It is very important that we maintain that.

When we have nominees held up explicitly to affect the outcome of a case that might come before them, a very important and famous case, indeed perhaps the most significant case that year—maybe even in the last half-dozen years—to be shaped and blocked simply because of that case is bad. In fact, after the case was over, Judge Gibbons was confirmed 95–0 by this body. There never was any objection to her other than they were afraid it would affect the outcome of the case.

There are vacancies on the Sixth Circuit. The President is empowered to make the appointments. He is empowered to make the appointments according to the legal philosophies and principles he announced to the American people when he ran for office. President Bush declared that he was going to nominate and fight for judges who would follow the law, not make law, who would show restraint, who would be true to the legitimate interpretation of the statutes and the Constitution, not using that document to further promote their own personal agendas. That is what he has done, and that is what Judge Saad's record is. He is not going to impose his values on the people of the Sixth Circuit. That is not his philosophy of judging. His philosophy is to follow the law, not to make the law. We have no fear of that kind of judge. We ought to confirm him.

The people of this Nation need to know that the Democratic leader, Senator DASCHLE, and the Democratic machine is time after time mustering 40 votes to block these nominees from even getting an up-or-down vote. In fact, when we vote on cloture to shut off debate and we have to have 60 votes, we are constantly getting 53, 54, 55 votes for these nominees, which is more than enough to confirm them, but we cannot shut off the debate and get an up-or-down vote. So by the unprecedented use of the filibuster, these judges are not getting an up-or-down vote. I say to the American people, they need to understand this. I believe the rule of law in this country is jeopardized by the politicization of the courts. We must not allow that to happen. I believe the collegiality and traditions of this Senate are being altered. There is no doubt we have not had filibusters of judges before. In fact, about 4 years ago, Senator LEAHY was denouncing filibusters when President Clinton was in office, and now he is leading it. The ranking member of the Judiciary Committee is leading a host of filibusters. It is an unprincipled thing.

I remember Senator HATCH, as chairman of the Judiciary Committee and a guardian of the principles and integrity of the Senate, on many occasions told Republicans when they said, Well, we do not like this judge, we ought to filibuster him, why do we not filibuster him, and he said, You do not filibuster judges; we have never filibustered judges; that is the wrong thing to do. And we never filibustered President Clinton's judges.

I voted to bring several of them up for a vote and cut off debate even though I voted against those judges because they should not be on the bench. I did not vote to filibuster the judge, and I think that is the basic philosophy of this Senate.

I hope we will look at this carefully. These nominees are highly qualified. They are highly principled. Many of them have extraordinary reputations, like Miguel Estrada, Judge Pickering, Bill Pryor, and Priscilla Owen from Texas, a justice on the Texas Supreme Court who made the highest possible score on the Texas bar exam. These are highly qualified people who ought to be given an up-or-down vote. If they were given an up-or-down vote, they would be confirmed just like that.

Unfortunately, we are having a slowdown, unprecedented in its nature. If this does not end and we cannot get an up-or-down vote on these judges, those of us on this side need to take other steps. And we will take other steps. We need to fight to make sure that the traditions of this Senate and the constitutional understanding of the confirmation process are affirmed and defeat the political attempts to preserve an activist judiciary that our colleagues, it appears, want to keep in power so that they can further their political agenda, an agenda they cannot win at the ballot box.

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

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

OMNIBUS SPENDING BILL

Mr. BYRD. Madam President, there are only 22 legislative days left in this fiscal year. The Senate seems to be frittering away those precious days. To date, the Senate has only passed one appropriations bill, the Defense bill. Only four bills have been reported from the Senate Appropriations Committee.

The House has passed nine appropriations bills, but apparently the Senate would rather work on political messagemaking than to take care of the Nation's vital business. So I fear, once again, that the Senate Republican leadership is setting a course for a massive omnibus spending bill. That is what it looks like. That is what we are going to do, have a massive omnibus spending bill, in all likelihood.

This year, with the failure of the Senate Republican leadership to even bring the Homeland Security bill before the Senate, the Omnibus appropriations bill may include as many as 12 of the 13 annual appropriations bills. That is very conceivable to ponder.

On July 8, Homeland Security Secretary Tom Ridge and FBI Director Robert Mueller announced that another terrorist attack is likely before the November elections, yet the Homeland Security appropriations bill, which the committee reported 4 weeks ago, has not even been presented to the full Senate for its consideration. What is wrong? What is wrong with this picture? Talk about fiddling while Rome burns. The flames are all around us.

The Senate Republican leadership is setting the stage for another one of these massive spending bills that may be brought up in the Senate in an unamendable form. And one shudders to think what will go on behind closed doors. Who among the 100 Senators will be in the meetings that produce a massive bill that appropriates over $400 billion for veterans, education, homeland security, highways, agriculture, and the environment? Who among the 100 Senators will be in the meetings when decisions are made about including provisions on drug importation, gun liability, farm bill issues, nuclear waste storage at Yucca Mountain, overtime rules, or on the outsourcing of government services? Does anybody know?

And, who knows what surprises, that were never debated or even contemplated in the Senate, will find their way into such an omnibus? What kind of interesting bugs will crawl into this big bad apple of a bill? I cannot tell you how many Senators will be in the room, but I can assure you of one thing. The White House will be there. You can bet on that. They will be there with their pet projects and their pet peeves and their opportunities to move certain items into their favorite States—doing their bidding, legislating right along with the Senators. They will be there. White House bureaucrats and soothsayers will suddenly become legislators for a day, or perhaps several days.

That is not the way our Constitution contemplated the writing of appropriations bills. The Framers believed that Congress ought to have the power of the purse. This White House would like to have it. They would like very much to have it. But all of those constitutional niceties get blurred and blended when it comes time to deal on Omnibus appropriations bills. The checks and balances gets thrown out the window when it comes time to deal with Omnibus appropriations bills.

One could conclude that the only thing the President wants from the fiscal year 2005 appropriations bill is the Defense appropriations bill. That is the only thing the President would want from the 2005 appropriations process—the Defense appropriations bill.

On June 24, 2004, in its Statement of Administration Policy, the White House urged the Congress to pass the Defense bill before the start of the August recess. Why?

In February, the President did not ask for one thin dime, not one thin dime did he ask for as far as the costs