

vice dean from 2005 to 2006. She has been rated unanimously well qualified by the American Bar Association. I believe she is an extraordinary prospect to go to the Court of Appeals for the Second Circuit.

There has been conversation, discussion, about the confirmation process. I commend the distinguished chairman for what he has done to date. We work together very closely. In the 109th Congress, he was ranking member. I liked it better when he was ranking member and I was chairman, but we have had bipartisan teamwork.

The record for confirmations of circuit judges in the last 2 years of a Presidential term, when the control of the Senate is in the opposite party, has been in the 15 to 17 range. I am hopeful, perhaps even optimistic, that we can get there this year.

A good bit remains to be done by the administration in submitting nominations. We have some 8 vacancies on the court of appeals which do not have nominations from the White House. Toward that end, there has been a leadership meeting with the White House counsel. We have tried to structure a plan which would enable us to go forward to confirm more circuit judges and to fill the vacancies of district court judges.

Many of these courts are in the category of judicial emergencies. As a practicing lawyer for many years, I can attest firsthand to the importance of having judges on the bench so that litigants can have a speedy disposition of their trials.

There is an adage: Justice delayed is justice denied. I think that is very true.

I ask unanimous consent that the full text of a prepared statement be printed in the CONGRESSIONAL RECORD following my extemporaneous remarks and that the specific text of my introduction be printed in the RECORD. Sometimes comments are made extemporaneous and then the written statement appears in the RECORD. If anybody reads the CONGRESSIONAL RECORD, they must wonder why there is so much repetition, so I would like to have an explanation included.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT ON THE NOMINATION OF DEBRA LIVINGSTON TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT AND CALLING FOR A FAIR CONFIRMATION PROCESS

(Senator Arlen Specter)

Mr. President, I seek recognition today as the ranking member on the judiciary committee to discuss the state of judicial nominations in the 110th Congress and the nominee pending before the Chamber today.

Today, the Senate will confirm Professor Debra Livingston to the U.S. Court of Appeals for the Second Circuit. She was first nominated over 300 days ago to a vacancy judged to be a "judicial emergency" by the nonpartisan Administrative Office of the Courts. She is a very fine choice for this important court and I am glad she will soon bring her much needed skills to the Second Circuit.

Before discussing judicial nominations more generally, I would like to say a few words about Professor Livingston's impressive background as an accomplished attorney, prosecutor, and legal scholar.

She graduated magna cum laude from both college and law school: Princeton University in 1980 and Harvard Law School in 1984. At Princeton, she was elected to Phi Beta Kappa. At Harvard, she was the Editor for the Harvard Law Review. Following law school, Professor Livingston worked as a law clerk to the Honorable J. Edward Lumbard of the U.S. Court of Appeals for the Second Circuit. In 1985, after her clerkship with Judge Lumbard, she joined the firm of Paul, Weiss, Rifkind, Wharton and Garrison as an associate, where she worked on a variety of State and Federal litigation.

The following year, Professor Livingston joined the Office of the U.S. Attorney for the Southern District of New York as an Assistant U.S. Attorney. Her work in the U.S. Attorney's Office focused on criminal trials and appeals. In 1990, she was elevated to serve as Deputy Chief of Appeals, an assignment that had her handling appeals before the Court to which she is now nominated.

After a successful career in the public sector, she briefly returned to Paul Weiss in 1991 before leaving the following year to become a law professor. She worked as an assistant professor at the University of Michigan Law School until 1994, when she joined the faculty of Columbia Law School as an associate professor. She became a full professor in 2000 and in 2004 became the Paul J. Kellner Professor of Law. Her principal areas of teaching at Columbia have been criminal investigations and evidence and she has published numerous articles in the area of criminal law and co-authored the casebook Comprehensive Criminal Procedure.

Professor Livingston has received a unanimous "well qualified" rating from the American Bar Association, the highest rating that organization gives. I'm sure she will enjoy a strong positive vote today.

Chairman LEAHY must be commended for working with Senators on both sides in order to get us off on the right foot during this Congress. Professor Livingston will be the 18th judge, and the third circuit court judge, confirmed this year. This is, admittedly, a much more auspicious beginning than that made by the Republican controlled Congress during President Clinton's final 2 years in office. That said, much work remains to be done.

The average for similarly situated Congresses in recent times is 17 circuit court confirmations. Despite its slow beginning, even the 106th Congress ultimately confirmed 15 men and women to the circuit courts and a total of 73 article III judges. And this was a historical low point. At the very least, the 110th Congress should meet or exceed this standard.

On several occasions, members of the majority have indicated that we can expect a dramatic slow down in confirmations in the latter part of next year. While I do not agree that historical record supports any kind of "rule" in this regard, we do know that the press of a Presidential election has a tendency of slowing down work in the Senate. If nothing else, we can expect the Congress will be in recess for a substantial portion of the second half of next year.

Therefore, in order to meet the standards set by similar Congresses in recent times, it will be necessary for us to confirm approximately one circuit court judge for every month we are in session.

There are five circuit court nominees currently pending before the Judiciary Committee. Three of these nominees are to vacancies designated as "judicial emergencies"

by the Administrative Office of the Courts. Some of these nominations are being delayed by home state Senators who have not returned blue slips. It has generally been the practice of the Senate to not proceed without the consent of home state Senators. I have urged these Senators to return these blue slips and allow the process to go forward.

Although there is an understandable focus on the circuit courts, it should also be noted that there are 18 district court nominees pending in the Committee, eight of whom have been pending over 120 days, and 14 of whom are awaiting a hearing. These nominations also deserve prompt action.

I said before that Chairman LEAHY deserves to be commended for the progress made so far. The President also deserves to be commended for acknowledging the reality of a Democratic controlled Congress and withdrawing nominations that the other side has adamantly opposed. This was a very productive step that was rightly commended by Senators of both parties and the editorial pages of major newspapers including the Washington Post and the Los Angeles Times.

I have urged the President to build on this precedent by consulting with Senators of both parties as he moves to fill additional vacancies on the federal courts. As of today, eight circuit court and fifteen district court vacancies still do not have nominees. Three additional circuit court vacancies are imminent. In addition, 15 district court vacancies await nominees. The Senate cannot fulfill its duty to provide advice and consent until the President first sends us nominees. I am hopeful he will do so soon.

It will take both Republican and Democratic Senators, and the White House, working together to ensure an orderly confirmation process. Both sides have ample reason to complain about past grievances over the last two decades. But we cannot continue settling old scores. The partisan tit-for-tat over judges got so bad that it virtually paralyzed this body during the last Congress. This environment is deleterious to the Senate, to the nominees, and ultimately to litigants who wait for justice as judgeships go unfilled.

I believe the 110th Congress provides an opportunity to turn the page. Today's confirmation is further evidence that we are off to a good start. I look forward to working with Chairman LEAHY, and all my colleagues, in this effort.

IMMIGRATION

Mr. SPECTER. Mr. President, I now intend to take some of the time allocated for the judicial issue to talk very briefly about the immigration question which is front and center in the Congress today. It is second only to the concerns about the Iraq war and the current funding impasse which we have in the constitutional confrontation between the Congress and the President, and the sustaining of a veto and our efforts to try to work that out.

I believe there is a universal agreement that the immigration situation in the United States today is an unmitigated disaster. Strong language, but not strong enough for what is going on with immigration. We have a porous border and undocumented immigrants are coming into the United States. They pose a security risk. Terrorists are free to wander across our borders and come into our country and pose potentially grave threats to our national security.

We find a significant number of incidents of crime among undocumented immigrants. Crime does not have a sole source, but it is a problem. We definitely need to get a handle on immigration.

We worked very hard in the 109th Congress in the Senate. I give my colleagues in the House of Representatives credit for working very hard too. We produced a bill out of the Judiciary Committee. It was reported to the floor, and it passed the Senate. It was comprehensive reform, which is what was called for by the President, a bill which would deal with the 11 million undocumented immigrants, would provide for a Guest Worker Program, and would, as a preliminary to secure our borders, provide for employer sanctions if employers hired illegal immigrants.

The House of Representatives chose a different course to provide only for border security, and it was embarrassing, in my judgment, that we were unable to have a conference and pass an immigration bill last year with both Houses—the Senate and House of Representatives—controlled by the Republicans and President Bush, a Republican in the White House. But we find ourselves this year with the unmitigated disaster of immigration, worse now than ever.

There have been major efforts to try to find consensus legislation to present to the Senate for consideration. The first meeting was held on February 13 of this year, and the meetings have been held continuously right up to the present time, almost 3 laborious months. These were not abbreviated meetings. These meetings were held every Tuesday, Wednesday, and Thursday from 4 to 6 o'clock. They were attended by an average of 8 to 10 to 12 Senators. They were attended also by the Secretary of Commerce and the Secretary of Homeland Security, signifying the President's deep concern and deep interest in the issue.

They started off with Republicans meeting separately, and then we moved into bipartisan meetings. Last week, illustratively, we had 12 Senators meeting off the Senate floor for 2½ hours. It is pretty hard to keep 12 Senators in one room for 2½ hours, but we did.

We have come to what has been categorized as a "grand bargain." That is a term one of our most active participants, Senator LINDSEY GRAHAM, gave to it because we had the overall structure of an immigration bill. We did not have all the aspects of it worked out, but we were proceeding to provide for real border security—border security which would increase the number of border guards from 12,000 to 18,000 and border security which would encompass a fence. We cannot have one across the entire border, but we can have a fence to secure our major metropolitan areas, illustratively San Diego and southern Arizona.

We have worked laboriously to craft identification so an employer would know whether an applicant for a job

was legal or illegal. When an employer has the opportunity to be certain of the legal status of those he hires, then the stage is set for tough sanctions on employers so that we can reduce the magnet to bring people to the United States for jobs when they are not legally in the United States.

We have provided the mechanism for dealing with the 11 million undocumented immigrants. We have structured a program so it would not be fairly or accurately characterized as amnesty. The requirements of that program are that immigrants learn English, that the immigrants have roots in the United States, that they have held a job for a protracted period of time, that they pay a fine, and that there be a so-called touchback provision. It is still not decided as to the issue of back taxes, but that is a consideration which is on the table. We have provided for a Guest Worker Program which is what it says; that is, people come to the United States for the purpose of filling jobs and then will return to their native homes.

We provided that if there are people living in the United States legally, citizens or legal immigrants, they would have the first opportunity at these jobs.

We have held some 23 meetings over the course of the past 3 months. So I was a little surprised to see the statement by the majority leader at a press conference yesterday. Perhaps it was said partially in jest, but Senator REID pointed out that there had been notice for some 2 months that the immigration bill would be taken up in the last 2 weeks before the Memorial Day recess. Then he said:

And anyone who thinks that 2 months is not enough time to get ready should get another occupation.

Maybe he said it in humor, but certainly I would fit into that category of looking for another occupation. The distinguished chairman of the committee has elected to have the matter go through the negotiating process which I have just described, so he doesn't have to seek another occupation. But there are many people on both sides of the aisle, under the Reid dictum, who now must seek another occupation.

I think it is a fair representation to say we have worked tenaciously. The problem we face now is that the so-called stakeholders all want more than can be divided from what is available. There are stakeholders who want more green cards and who want the advantages of family admission on a widespread basis, and if it were left up to me alone I would be in favor of the broadest reach of family unification. But if we are to find the realism of enough green cards to accommodate the undocumented immigrants who are going to come through the process at the end of the line, there has to be some give somewhere.

The critics of the immigration bill are descending on us from all sides be-

fore we even have an immigration bill. The Hill publication reports today of opposition from Members of the House of Representatives for Senate legislation when we don't even have legislation in existence. One Member of the House is quoted as saying:

It is important that the Senate knows there will be strong bipartisan opposition to amnesty.

Well, we don't even have a bill that could be accused of having included amnesty, and the outline which we are considering and contemplating is certainly not amnesty by any fair interpretation.

The majority leader has said he intends to file under rule XIV today and go to the legislation on Monday. As I said yesterday, there is strong opposition to such a practice, at least on this side of the aisle. It is my hope that we will not face a contested motion to proceed. It is my hope we will not face the threat of a filibuster against the motion to proceed, which would doom immigration reform.

We have encapsulated our views in a letter, following the majority leader's news conference of today, where a number of us are asking that we rethink the schedule we have. If we bring last year's Senate-passed bill to the floor, it is going to have substantial opposition. That has already been announced on both sides of the aisle. Both Democrats and Republicans who supported it last year are opposed to it. If we start there, the floor action is likely to be a free-for-all.

I understand the problems of Senate scheduling, but I also understand the vicissitudes, problems, and pitfalls of proceeding where you don't have the structure of a bill which can be reasonably and realistically debated, with amendments, and then decided upon. We don't even have 2 weeks. We have to act on the supplemental before the Memorial Day recess if we are to provide the troops with the funding they need.

So it is my hope the current process can be allowed to continue. There has been a massive good-faith effort by Republicans and Democrats meeting for very protracted periods of time to come to agreement on a bill and to reduce it to written form. I will concede that there has been a lot of wheel spinning in the process which we have undertaken. Perhaps it was an error to abandon the traditional committee process. But that is where we are, and we need more time to flesh out the grand compromise, the grand bargain which we have structured so far.

If we are not able to legislate, we are not going to be able to provide for people who are interested in bringing 11 million undocumented immigrants out of the shadows, which is the main benefit that comes from those who want to proceed in the traditional American way to welcome the immigrants under a systemized plan. If we don't have comprehensive reform, we are not going to provide the border controls and the employer sanctions to stop illegal immigration.

It may be this is our last best chance. I would urge all sides to take a deep breath and to rethink positions on all sides and try to find a rational, bipartisan way to proceed.

Mr. President, how much time remains on my side?

The ACTING PRESIDENT pro tempore. The Senator has 58 minutes remaining.

Mr. SPECTER. Fifty-eight minutes remaining.

Mr. LEAHY. Mr. President, how much time do I have?

The ACTING PRESIDENT pro tempore. The Senator from Vermont has 49½ minutes.

Mr. LEAHY. Mr. President, I know the Senator from Pennsylvania has the floor, but the Senator from New York wants to speak briefly, and I have also been advised there are a number of Republicans who want to go to a burial service. So just so people can plan, as soon as the Senator from New York has finished his speech, which will be very brief, I am prepared to yield back our time to accommodate those who wish to go to the burial service.

Mr. SPECTER. Mr. President, do I understand the Senator from Vermont, the distinguished chairman, is proposing a grand bargain?

Mr. LEAHY. No, sir.

Mr. SPECTER. A grand bargain which would allocate 1 minute to Senator SCHUMER, and then all time yielded back?

Mr. LEAHY. I am told the Senator wishes 2 minutes.

Mr. SPECTER. Sounds excessive to me, but I will go along. When he finishes his speech, if we are prepared to yield back time, I will consider the proposal for the grand bargain.

The ACTING PRESIDENT pro tempore. The Senator from Vermont yields time.

Mr. LEAHY. Mr. President, I yield to the grand marshal.

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I thank my colleagues, and Raskolnikov as well, since he made the grand bargain once before. It didn't work out so well, so I would say to my colleague from Pennsylvania, I hope his grand bargain works out better than Raskolnikov's grand bargain.

Anyway, I rise to speak on our nominee, the confirmation of Debra Livingston. She is a legal superstar from my home State of New York, and she is nominated to the Second Circuit Court of Appeals.

Let me just say we in New York have a system in place for nominating Federal judges that works. The President and I work together to name highly qualified consensus candidates to the Federal bench. There is often rancor when it comes to judges from other parts of the country, but there has been very little when it comes to New York. It shows that when both sides wish to compromise, we can probably

get there. That is because in New York we have an effective and bipartisan way to select qualified and, almost without exception, moderate candidates for the bench.

Ms. Livingston is squarely in that mold. Her career so far has spanned private practice, criminal prosecution, and academia, so she has a deep understanding of the law gained from many perspectives, from the courtroom to the classroom. Ms. Livingston is a graduate of Princeton University, received her J.D. from Harvard Law School—also my alma mater—where she served as an editor of the Harvard Law Review.

From 1986 to 1991, Ms. Livingston was an assistant U.S. attorney in the Southern District, where she prosecuted public corruption cases and served as deputy chief of appeals. Before and after her time as a prosecutor, Ms. Livingston was an associate at one of the very prestigious law firms in New York, Paul, Weiss, Rifkin, Wharton, and Garrison. She is currently the vice dean and Paul J. Kellner professor of law at Columbia University, where she focuses on criminal procedure, evidence, and national security.

I think it is great that we will have an appellate judge who has both a scholarly mind and practical courtroom experience. It is a perfect combination, in my view, for an appeals court judge. I hope my colleagues will join me in voting for her confirmation.

In keeping with the prelude to the grand bargain, I yield the floor.

Mr. LEAHY. Mr. President, I am prepared to yield back time.

Mr. SPECTER. Sealing the grand bargain, I, too, yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. All time having been yielded, the question is, Will the Senate advise and consent to the nomination of Debra Ann Livingston, of New York, to be U.S. circuit judge for the Second Circuit? On this question the yeas and nays were previously ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON), the Senator from Michigan (Mr. LEVIN), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Michigan (Mr. LEVIN) would vote "yea."

Mr. LOTT. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from Idaho (Mr. CRAPO), the Senator from North Carolina (Mrs. DOLE), the Senator from Arizona (Mr. McCAIN), the Senator from Kansas (Mr. ROBERTS), and the Senator from Louisiana (Mr. VITTER).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) would have voted "yea."

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

The result was announced—yeas 91, nays 0, as follows:

[Rollcall Vote No. 158 Ex.]

YEAS—91

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|-----------|------------|-------------|
| Akaka | Dorgan | Menendez |
| Alexander | Durbin | Mikulski |
| Allard | Ensign | Murkowski |
| Baucus | Enzi | Murray |
| Bayh | Feingold | Nelson (FL) |
| Bennett | Feinstein | Nelson (NE) |
| Biden | Graham | Obama |
| Bingaman | Grassley | Pryor |
| Bond | Gregg | Reed |
| Boxer | Hagel | Reid |
| Brown | Harkin | Salazar |
| Bunning | Hatch | Sanders |
| Burr | Hutchison | Schumer |
| Byrd | Inhofe | Sessions |
| Cantwell | Inouye | Shelby |
| Cardin | Isakson | Smith |
| Carper | Kennedy | Snowe |
| Casey | Kerry | Specter |
| Chambliss | Klobuchar | Stabenow |
| Clinton | Kohl | Stevens |
| Coburn | Kyl | Sununu |
| Cochran | Landrieu | Tester |
| Coleman | Lautenberg | Thomas |
| Collins | Leahy | Thune |
| Conrad | Lieberman | Voinovich |
| Corker | Lincoln | Warner |
| Cornyn | Lott | Webb |
| Craig | Lugar | Whitehouse |
| DeMint | Martinez | Wyden |
| Dodd | McCaskill | |
| Domenici | McConnell | |

NOT VOTING—9

| | | |
|-----------|---------|-------------|
| Brownback | Johnson | Roberts |
| Crapo | Levin | Rockefeller |
| Dole | McCain | Vitter |

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid on the table.

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

LEGISLATIVE SESSION

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

Mr. GREGG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2008

Mr. CONRAD. Mr. President, I ask unanimous consent that the Senate proceed to the House message to accompany S. Con. Res. 21, the budget resolution; provided further that the motion to disagree to the House amendment be agreed to, the motion to agree to the request of the House for a conference be agreed to, and the motion to authorize the Chair to appoint conferees be agreed to; provided further that prior to the appointment of conferees, the following motions to instruct conferees be in order and that no amendments be in order to the motions: No. 1, Senator KYL, relating to the estate tax; No. 2, Senator GREGG,