

run Judge White through the process in just 35 days. It scheduled a hearing for her that was only 22 days after her nomination. I respect the abilities of members on the Judiciary Committee, but even they cannot review 4,500 cases in 22 days.

In addition, when the majority scheduled her hearing, the ink was barely dry on the FBI's background investigation, which had come up only the day before, and the committee had yet to receive her ABA report. In fact, today as I speak, it still is not here.

This matters because Chairman LEAHY has made it abundantly clear that the receipt of the ABA report is a precondition for him to allow a vote on a judicial nominee, saying: "Here is the bottom line. . . . There will be an ABA background check before there is a vote." He reiterated that his rule will be observed with respect to the White nomination.

So to honor the majority leader's commitment, did our Democratic colleagues choose someone whom the committee had ample time to vet, whose paperwork has been done for a long time, and who, in the case of Judge Conrad, the Senate had already confirmed—twice? No, they decided to rush through Judge White, someone whom several members of the committee are completely unfamiliar with, and whose record for most of the last decade the entire committee is completely unfamiliar with, including thousands of her cases.

In essence, the majority decided to throw a confirmation "hail Mary" to satisfy its own Democratic membership, instead of taking a bi-partisan path that had every indication of success and would have fulfilled the commitment, like finally processing Mr. Keisler or Judge Conrad.

If the majority were serious about keeping its commitment all this should have been avoided. My friend from Nevada has said he consulted fully with Chairman LEAHY before making his commitment. Chairman LEAHY has been the lead Democrat on the Judiciary Committee for over a decade. He, perhaps more than anyone, is aware of the logistical requirements for processing nominees.

We assume he would have advised the majority leader of the near-certain impossibility of confirming Judge White in time to keep the commitment. Even if he didn't, the ranking member and I did just that almost a month ago, when we wrote to him and the Chairman, expressing our serious concerns about this very situation arising.

I ask unanimous consent that a copy of the letter be printed in the RECORD.

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

U.S. SENATE,

Washington, DC, April 29, 2008.

Hon. HARRY REID,
Majority Leader, U.S. Senate, Capitol Building,
Washington, DC

Hon. PATRICK J. LEAHY,
Chairman, Senate Committee on the Judiciary,
Dirksen Senate Office Building, Wash-
ington, DC

DEAR SENATORS REID AND LEAHY: We write to express our serious concern regarding statements made by Chairman Leahy during last week's Judiciary Committee Executive Business Meeting. In discussing Senator Reid's April 15, 2008, commitment to confirm three more circuit court nominations before the Memorial Day recess, Senator Specter asked Chairman Leahy to clarify whether he was saying he would not honor the commitment if the scheduling was not "convenient for the two Michigan nominees." In response, Chairman Leahy stated, "I will do everything possible to get it [done] by Memorial Day, but if the White House slow walks [the Michigan nominees' paperwork], we probably won't."

We all know there are several time-consuming steps in the judicial confirmation process, including a Federal Bureau of Investigation background investigation, the issuance of a rating by the American Bar Association (ABA), a hearing, questions for the nominee following the hearing, a Committee vote, and finally a floor vote. Given these standard prerequisites and Judge Helene White's recent nomination date of April 15, 2008, we do not believe regular order and process will allow for her confirmation prior to May 23, 2008. In addition, the FBI is currently conducting a supplemental investigation for Mr. Raymond Kethledge, which must be completed prior to his hearing. Chairman Leahy's statements insinuate that, if the Committee cannot process Judge White and Mr. Kethledge prior to the recess, then the straightforward commitment made by the Majority Leader and, by reference, Chairman Leahy will not be honored.

We would hope, given the likelihood that Judge White and Mr. Kethledge cannot be confirmed prior to the recess, that, in order to fulfill the commitment, Chairman Leahy would turn to other outstanding circuit court nominees pending in Committee who have been ready for hearings and waiting far longer than Judge White or Mr. Kethledge. As we have mentioned previously, Mr. Peter Keisler has already had a hearing and has been waiting for over 660 days for a simple Committee vote, and Judge Robert Conrad and Mr. Steve Matthews, nominees to the Fourth Circuit, are ready for hearings and have been waiting for many months. Both Judge Conrad and Mr. Matthews have enjoyed strong home-state support from their Senate delegations, one of whom is a valued member of the Committee. All three of these nominees deserve prompt consideration by the Committee and up-or-down votes by the full Senate.

It is simply a matter of fairness to include in the commitment, nominees who clearly can be processed and who have been ready for hearings and pending the longest. Further, we object to the selective importance that the Judiciary Committee is placing on home-state senatorial support. The Committee appears to view the support of Republican senators as a necessary, but insufficient, condition for their constituent nominees; while at the same time deeming dispositive the views of Democratic senators, either for or against a nominee. As the Majority Leader himself noted, such disparate treatment is patently unfair.

The clock is ticking. It has now been two full weeks since your commitment to do "everything" you could to confirm three more

circuit court nominees by the Memorial Day recess. Yet since that commitment, the Committee has only scheduled one hearing for one circuit court nominee. More troubling still is the fact that the Chairman strongly intimidated last week that the Committee may refuse to honor the commitment, not because it is impossible for it to do so, but because the Chairman's preferred queue of nominees will not be ready in time due to the standard requirements of the FBI and the actions of a third party (the ABA), upon which the Democratic Majority has placed particular importance over the years.

If the Committee does not hold a hearing for two more circuit court nominees prior to May 6, 2008, it is exceedingly unlikely that the Senate will be able to confirm at least three circuit court nominees prior to May 23, 2008, given the standard amount of time it takes to move a nomination through the steps in the confirmation process. In order to honor the commitment, we respectfully urge the Committee to schedule hearings for Judge Conrad and Mr. Matthews, and hold a Committee vote for Mr. Keisler as soon as possible.

We look forward to your response.

Sincerely,

MITCH MCCONNELL.
ARLEN SPECTER.

Mr. MCCONNELL. The reasons for our concern a month ago have proven to be correct. Anyone could have seen this problem coming—anyone, except evidently, our Democratic colleagues who must have chosen not to.

Which brings me back to the question I and my Republican colleagues are asking: Is it consistent with a commitment to do "everything within your power" to confirm three more circuit nominees by Memorial Day, to then choose the one nominee who, for logistical reasons alone, is the least likely to be confirmed in time to keep the commitment? Mr. President, chasing the impossible, and then blaming others or expressing surprise when it eludes your grasp is not a good excuse, and will be remembered for a long, long time.

So today is a sad and sobering day for me and my colleagues. There are now well-founded questions on our side about the majority's stated desire to treat nominees fairly and to improve the confirmation process. And there is frustration that will manifest itself in the coming days, and will persist until we get credible evidence that the majority will respect minority rights and treat judicial nominees fairly.

MEMORIAL DAY 2008

Mr. MCCONNELL. Mr. President, in observance of Memorial Day this year, I had the distinct honor of meeting a group of World War II veterans from Kentucky who had traveled to our Nation's Capital to see the World War II Memorial. A couple of the veterans, by the way, told me this was their first trip to Washington.

This memorial, completed in 2004, is a fitting tribute to the millions of Americans—some who returned home, some who did not—who put on their country's uniform to fight the greatest and most destructive war the world

had ever seen. The awe the memorial inspires reminds us all why this group of patriots is called the "greatest generation."

The 35 Kentucky World War II veterans I met were able to travel to Washington thanks to the nonprofit organization Honor Flight, which transports World War II veterans from anywhere in the country to see their memorial, free of charge. Many veterans, for physical or financial reasons, are unable to make the trip on their own, and so without Honor Flight they would not get the chance to visit the memorial created for them and their fellow fighters at all.

About 36,500 World War II veterans live in Kentucky today, with about 2.5 million throughout the country. Unfortunately, that number shrinks each day as time advances for these brave warriors. Honor Flight and its volunteers, many of whom are veterans themselves, are doing a great service for our Nation by making it possible for these veterans to make this important trip.

So this Memorial Day, I hope everyone says thank you to a man or woman who wore the uniform. We should remember the bravery of those who made the ultimate sacrifice for our country. And while most of us will never know the heroism shown by the World War II veterans I was privileged to meet, we can marvel at the courage shown every day by our current generation of heroes serving in Iraq and Afghanistan.

I mentioned to the veterans from Kentucky yesterday my own father who served in Europe during World War II, who arrived after the Battle of the Bulge and was in the conflict from about March of 1945 forward, until he met with the Russians at Pilsen, which I believe is now in the Czech Republic. I mentioned to them that I have a letter he wrote to my mother. There were a number of letters, but this particular one is etched in my memory because it is dated May 8, 1945.

Underneath the date he wrote "V-E Day," so they were calling it Victory in Europe Day even then. He had seen some very severe fighting and lost a great many of his company, and one could sense the elation in his voice that the conflict was now ended.

But then there was a subsequent letter I thought was quite prophetic, particularly for a regular foot soldier who was not an officer. He had a chance to interact with some of the Russians because they met the Russians in Pilsen. He said to my mother: I think the Russians are going to be a big problem down the way.

So it was interesting that there was this sense, even to the foot soldiers, that our alliance with the Soviet Union was a short-term marriage of convenience and might subsequently be a big problem down the road. Of course, his prophecy was proven accurate.

While in Pilsen, he got a chance to befriend some Czechs, and I have some letters that were exchanged with

friends from what was then Czechoslovakia. He told me that all of those letters stopped a couple years later when the Iron Curtain descended across Europe and he was unable to communicate further with any of the Czech friends he made. I share that story of my own father on Memorial Day for my colleagues.

In closing, I would mention that the particular flight from Kentucky yesterday was dedicated to the memory of John Polivka, who had planned to be on the trip. He was a World War II veteran who planned to be on the trip but who passed away on Monday, May 19, just this week. So the veterans dedicated their Honor Flight to Washington to their colleague whom they had hoped would be able to join them. Even though there was great sadness over his loss, there was great joy in being able to witness the World War II Memorial which symbolizes their extraordinary contribution to our country.

I ask unanimous consent that names of the World War II veterans who were here this week be printed in the RECORD.

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

WORLD WAR II VETERANS

Homer Brown, Jr.; Joseph Raley; James Thomas; George Coffey; Charles Hanson; Donovan Chard; Bernie Carr; William Pickerill; Robert Barrow; Robert Davis; Gainey "Ed" Sipes; Emmett Leezer; Charles Mauer; Leroy Faber; Russell Harrison; Morell Milroy; Blue Lynch; George Wolford; Norman Inman; Frank Godbey; John Toy; Burnett Napier; Bobby Barker; Oscar La Fontaine; Joel O'Brien, Jr.; Louis Tracy; Garnett Clark; Joseph McFadden; Earl Wieting; Woodrow Bryant; Raymond Roggenkamp; Robert Weixler, Sr.; Richard Lewis; Thomas Shields; and Joseph Pottinger.

DIRECTORS OF THE HONOR FLIGHT

Brian Duffy, Jean Duffy, William Garwood, James T. MacDonald, and Robert Hendrickson.

This Honor Flight was dedicated to the memory of John Polivka, who passed away on Monday, May 19th.

Mr. MCCONNELL. I conclude by saying they were indeed the best of the "greatest generation."

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

NOMINATIONS

Mr. WHITEHOUSE. Mr. President, as a member of the Judiciary Committee, let me indicate that we are not entirely unfamiliar on the Judiciary Committee with Judge White. She was actually an appointee of President Clinton. For many months, she languished before the committee when it was under Republican control. So she should be a judge with whom at least a considerable number of the members of the Judiciary Committee would have been familiar from her previous appointment. Any suggestion that she

was a new arrival or a novelty of some kind to the committee would not be accurate.

Mr. President, I ask unanimous consent to have printed in the RECORD an April 30, 2008, letter to the Republican leader and the ranking member of the Judiciary Committee signed by the majority leader, indicating, among other things, the following:

In a floor statement on April 15 I pledged my best efforts to have the Senate consider three circuit court nominations prior to the Memorial Day recess. I stand by my pledge. I cautioned explicitly that "I cannot guarantee" this outcome because it depends upon factors beyond my control. Nonetheless, I remain optimistic we can meet that goal.

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

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, DC, April 30, 2008.

Hon. MITCH MCCONNELL,
Senate Minority Leader,
Washington, DC.

Hon. ARLENE SPECTER,
Ranking Member, Senate Judiciary Committee,
Washington, DC.

DEAR SENATORS MCCONNELL AND SPECTER:
Thank you for your letter yesterday regarding judicial nominations.

In a floor statement on April 15 I pledged my best efforts to have the Senate consider three circuit court nominations prior to the Memorial Day recess. I stand by my pledge. I cautioned explicitly that "I cannot guarantee" this outcome because it depends upon factors beyond my control. Nonetheless, I remain optimistic we can meet that goal.

A hearing for Fourth Circuit nominee Steven Agee, as well as district court nominees recommended by Senators Lugar and Kyl, will take place tomorrow afternoon. A hearing for Sixth Circuit nominees Raymond Kethledge and Helene White, as well as a Michigan district court nominee, will take place next Wednesday. Senator Leahy has expedited consideration of the Michigan nominees in light of my April 15 remarks.

Nothing in my pledge regarding judicial nominations deprived Chairman Leahy of his prerogative to determine the sequence of nomination hearings in his committee. No one presumed to instruct Senator Specter about the sequence of nominations during the years he served as Chairman of the Judiciary Committee. And certainly Senator Hatch exercised the chairman's prerogatives freely during the years in which more than sixty of President Clinton's nominees were denied hearings or floor consideration.

The Democratic majority has treated President Bush's judicial nominations with far greater deference than President Clinton was afforded by a Republican-controlled Senate. Three-quarters of President Bush's court of appeals nominees have been confirmed; in contrast, only half of President Clinton's appellate nominations were confirmed. Altogether, 145 of President Bush's judicial nominees, 90 percent of them, have been confirmed in the years that Democrats have controlled the Senate. Last year the Senate confirmed 40 judges, more than during any of the three previous years with Republicans in charge. The federal judicial vacancy rate is the lowest it has been in years.

Chairman Leahy and I will continue to work with you both to process judicial nominations in due course, consistent with the Senate's constitutional role.

Sincerely,

HARRY REID.